Banishment's Vanishing Act: The Inconstancy of Law in Early Modern Spain

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Banishment was probably the most frequent punishment in early modern Spanish criminal courts. It was impossible to enforce and antithetical to the interests of the state, yet it survived. This article, based on archival sources, proposes that the study of early modern law, probably in general but definitely in Spain, must account for its symbolic and rhetorical meaning beyond the language of a given statute. Looking at the practice of banishment, the long history of legal compilation in Spain, and the particularities and contradictions of legal practice there, this article calls for a deeper and more interdisciplinary approach.

"YO, SEÑOR, soy de Segovia." Thus starts one of the great picaresque novels of Spain's Golden Age, *Historia de la Vida del Buscón* (1626), by Francisco de Quevedo (1580–1645).[1] Buscón, like many picaresque heroes, moves from place to place, restless, observant, untrustworthy. Yet he begins by announcing a place, his home. Don Quixote, too, through the unreliable voice of his narrator, begins with a place, though he won't utter its name. Lazarillo de Tormes tells us he named himself after the river flowing through his birthplace.[2] Guzmán de Alfarache, when he leaves his hometown of Seville, chose his surname for "la heredad adonde tuve mi principio," though he lies constantly about where he's really from.[3] There is no "Call me Ishmael." What is constant, what is true, is the place.

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[1] "I, sir, am from Segovia," author's translation. *Buscón* was first published in 1626; I quote the opening line of chapter 1. See Quevedo, 1.

[2] Cejador y Frauca, 78 (*Lazarillo*). Among the presumed authors are Juan de Valdés and his brother Alfonso de Valdés. The first known edition is from 1554.

[3] "The place [or land] where I was born"; Alemán, 65. Lazarillo and Guzmán were typical of inhabitants of Spain and Spanish America in the early modern era in freely choosing their surnames; on this, see Herzog, 9.

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Yet in this same society one of the most frequent punishments for most crimes, historians confidently tell us, was to deprive people of their place, to banish them.[4] One only has to look at the multitude of compilations of laws and statutes to see that this is so: banishment was imposed for using false weights and measures,[5] holding a clandestine wedding,[6] pretty much doing anything if one was a *gitano* (Roma),[7] and committing most offenses involving perjury, blasphemy, or errant sexual behavior. The following pages explore this synchronicity, or perhaps this contradiction, between reverence for one's *patria chica*, the place where one was a citizen and visited the shrine of the local saint, and wholesale banishment. There is also another, more glaring contradiction: the great likelihood that banishment was rarely enforced, or at the very least was almost always modified. The statute was as untrustworthy a guide to early modern Spanish jurisprudence as Guzmán de Alfarache was to the provenance of whatever he had in his pockets.

A law in the sixteenth or seventeenth century in and of itself was not necessarily a statement of fact or even an indication of a given society's needs or interests. Laws may have said one thing, but they could easily mean another. The absolute lack of correspondence between crime and punishment in the case of banishment, and the enormous variety of combinations of and alterations to the recipes in these supposedly fixed statutes, illustrate the challenges to understanding and interpreting what might appear to be a dictate but in fact was often a suggestion, a parameter, an echo of something else, or a symbol for something else entirely, though not necessarily anything relevant or useful.

In what follows I shall discuss the earliest instances of banishment, its presence throughout medieval and early modern Spanish codes, and the serious interpretive problems that arise when trying to understand how the punishment was used. The article closes with some thoughts on what might be more fruitful ways of understanding banishment than confining ourselves, as so many historians have done, to written codes, or recounting imposition of punishments in colorful or bloody cases without asking what happened next. Put simply,

[4] Two small indications: a study in Navarre found that of 150 cases of public disorders that reached sentencing, half involved banishment; Ruiz Astiz. Similar results were found for Galicia: Ortego Gil, 1996, where of 360 criminal sentences in the seventeenth and eighteenth centuries, 268 included banishment. Most accounts of criminal law in early modern Europe indicate that banishment was the punishment of choice.

[5] *Las Siete Partidas*, *partida* [part.] 7, *título* [tit.] 7, law 7.

[6] Llamas y Molina, 413 (*Leyes de Toro*, law 49).

[7] *Novísima Recopilación*, tit. XVI, "De los gitanos. . ." 357–69, from an 1804–07 edition: https://babel.hathitrust.org/cgi/pt?id=nyp.33433008427357;view=1up;seq=11.

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banishment in the realm of criminal justice was impossible to reliably enforce.[8] Judges apparently had absolute freedom to impose it or not, to whatever degree they wished, and it appears to have been frequently and successfully appealed and/or commuted. Most important, it in no way served the interests of the Crown (or the state), let alone smaller polities and republics. In the words of James C. Scott, "Nomads and pastoralists . . . hunter-gatherers, Gypsies, vagrants, homeless people, itinerants, runaway slaves, and serfs have always been a thorn in the side of states."[9] Displacement, the outcome of banishment, increases uncertainty, exactly what a state does not want. And yet banishment persisted.

It had, of course, persisted for centuries, and that is one of the reasons for its unwieldy presence in early modern Spanish jurisprudence. Banishment and exile obviously were found in the Old Testament, much of which probably was written during the Jews' exile in Babylon in the sixth century BCE. Christians also could turn to the book of Matthew (18:17), in which Jesus tells the disciples that if someone errs and does not listen to his brothers, "tell it unto the church; and if he neglect to hear the church, let him be unto thee as a heathen man and a publican." Greeks and Romans provided early modern European lawmakers and writers with more variants of exile and more literary responses. It was not only a punishment but also a useful political tool, protecting both the subject from his peers, and the polis, or community, from a bad example. Sometimes banishment was used instead of capital punishment, sometimes it included seizure of property. Sometimes it was permanent, other times limited.[10] Sara Forsdyke, in her study of classical ostracism, argues that while its use in archaic Greece tended to heighten social instability, by the classical era rulers had learned to use it more strategically "to reinforce a distinction between the just and unjust use of political power."[11] Roman law also had variants of the punishment: exile, deportation, banishment, relegation, each with its own penalties and conditions; *relegatio in insulam*, for example, relegation to an island, was conceived as a penalty

[8] This article addresses only common crimes. It does not address political banishment, which was frequent in Spain and elsewhere in Europe but took place in an entirely different institutional context. Nor does it address the wholesale expulsions of Jews and moriscos, which were not criminal matters. Inquisitorial and seigneurial courts also banished people, but, again, under different circumstances. The focus here is solely royal justice in Spain, its early medieval antecedents, and its manifestations through acts of grace by the king and his magistrates. Criminal banishment was widespread throughout medieval and early modern Europe; for a few examples, see Frankot; Dresch; Coy; Jordan; Scribner; Tyler; Laitinen; and Weisser.

[9] Scott, 1.

[10] Torres Aguilar, esp. 763–64; Zaera.

[11] Forsdyke, 3.

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for crimes such as adultery and premeditated homicide. Augustus famously banished Ovid to the Black Sea, from where the poet wrote bitterly about his exile.[12]

And, finally, the example of banishment that was before the eyes of every inhabitant of Christendom was excommunication. As in the realm of criminal behavior, imposition and degree depended on arbitrary criteria. There was what was understood as minor excommunication, which no longer exists, which prevented one only from participating in the sacraments, and there was so-called major excommunication, today the only sort, meaning one could not enter church and was excluded from participating in church ceremonies. Both were often invoked not for problems of belief but for rebellion of one sort or another, often having to do with payment of tithes or simple indifference.[13] One was excommunicated for an indefinite amount of time (meaning possibly until death, which prevented one from being buried in sacred ground), unlike in the criminal realm, where banishment was almost always for a set period of time. Ecclesiastical and secular law enforcement agents worked hand-in-hand, sometimes augmenting church excommunication with a criminal banishment order. But, as with banishment, this measure meant allegedly to protect the community was often impracticable and, Tausiet says, indeed not enforced.[14] Jerónimo Castillo de Bovadilla (ca. 1547–ca. 1605), one of the most informative guides to local government during the early modern era and author of *Política para Corregidores*, a 1597 manual for royal governors (*corregidores*, who were also judges), devoted an entire chapter to the need to physically exclude delinquents from church and deny them asylum, a nice illustration of the overlapping of ecclesiastical and criminal jurisdictions.[15]

Echoes, sometimes muddled, of all these models can be found in Spanish statutes starting with the reign of Alfonso X "The Wise" (r. 1252–84). The law during the so-called Reconquest and the Middle Ages was common law, a fusion of Roman, local, and canon law, some inherited from the Visigoths, some the result of privileges won during the long fight against the Muslims. Alfonso X asked his advisers to organize this often repetitious and contradictory mass of statutes, and the result is the collection known as the *Siete Partidas*, written in the vernacular and drawing on classical writers, Thomas Aquinas, and Justinian's *Digest*. This would not be the last such reorganization, and indeed, it was not even the first, as Alfonso's father, Ferdinand III, had made similar efforts in compiling the *Fuero Juzgo* (1241). Each iteration, generally the

[12] Sánchez-Moreno Ellart. For classical antecedents, see Starn, 1–30.
[13] Tausiet Carlés.
[14] Tausiet Carlés; Rico Callado.
[15] Castillo de Bovadilla, 469–506.

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outcome of monarchs' acquisition of new dominions and inhabitants, freely repeated, restated, or added laws, apparently endorsing one arrangement over another. Alfonso's opus had been preceded by his own *Fuero Real* (1255) and was succeeded by the *Ordenamiento de Leyes de Alcalá* (Alfonso XI, in 1348) and then the *Ordenanzas Reales de Castilla* (also known as the *Leyes de Montalvo*, 1484), the *Leyes de Toro* (Catholic Monarchs, 1505), and finally Philip II's *Nueva Recopilación* (1567) and the *Novísima Recopilación* of the early nineteenth century. Each one, involving much picking and choosing, was based to some degree on the previous versions, despite frequent references to the need for a new code precisely because the old one had been superseded by new customs, practices, or charters. Subsequent legal treatises and alleged summations of law would do the same. But it is safe to say that many laws during the reign of Ferdinand and Isabella continued on the books into the nineteenth century.[16]

The seventh *partida* concerns criminal law, and most references to banishment are found there. What punishment does someone who utters certain falsehoods deserve? They must be banished forever to an island (*partida* [part.] 7, *título* [tit.] 7, law 6). The use of false weights and measures was to be punished with banishment "for some time on an island according to the king's will" (part. 7, tit. 7, law 7). Malpractice and abortion similarly could be punished with "banishment to an island for five years" (part. 7, tit. 8, law 6). Siblings who knew of an impending act of patricide or infanticide and did nothing to stop it faced five years' banishment, though the island is not mentioned (part. 7, tit. 8, law 12). Assault with or without weapons might result in "banishment for life on an island" (part. 7, tit. 10, law 8). If fathers killed their adulterous daughters along with their lovers, the amount of time the killer was banished would depend on which of the two men was higher ranked; if they were equal, then the killer got five years on an island, and if he were higher ranked he got less, at the discretion of the judge (part. 7, tit. 17, law 14). Bigamists, both male and female, could look forward to five years on an island plus loss of all their property, and if both partners were aware the other was married, then they would be sent to separate islands (from which one might conclude that if they were not aware, they could be confined together, presumably not much of a punishment) (part. 7, tit. 18, law 16). And, finally, if someone were to violate their banishment order, whether or not it be to an island, they would see the sentence doubled; if they had been serving perpetual banishment, the punishment would now be death (part. 7, tit. 31, law 10).

[16] See Velasco for a highly theoretical analysis of the *Siete Partidas*. For a general introduction to Spanish medieval law, see Kagan, 21–78.

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One must remember that at the time these laws were written or rewritten, Spain had no islands to speak of other than tiny crags off the Galician coast that nearly all measure under one square kilometer. The Canary Islands (today an autonomous community of Spain) came under the control of Spanish monarchs in the early fifteenth century, the Balearic and other Mediterranean islands belonged to the Crown of Aragon in the Middle Ages, and obviously the Caribbean islands were not yet an option. But even if by some fluke Menorca or Tenerife had been accessible to the monarchs, the point is that it was the idea of an island, rather than the reality of an island, that mattered. It was an impressive and frightening prospect, and had been so for centuries. The Council of Serdica, convoked by emperors Constans and Constantius II in around the year 343 at the urging of Pope Julius I, criticized bishops who failed to offer sanctuary in Christian churches to criminals condemned to exile "to the islands."[17] It is always possible that the council in the fourth century was thinking in the same terms as one of the definitions in the 1611 dictionary by Sebastián de Covarrubias, according to which an *isla* might refer to isolated houses (or perhaps an isolated town, the case with Sancho Panza's *ínsula*). But the strongest and most frequent meaning in the early modern period is a place surrounded by water, whether or not it actually was a realistic banishment option.[18]

By the time of the reigns of Charles V (r. 1516–56) and his son, Philip II (r. 1556–98), whose kingdoms extended around the globe, there was vast legislative disarray in the wake of all the successive compilations and adjustments. In 1567, after decades of work by committees of jurists, the *Nueva Recopilación* was published. With it, the Council of Castile issued an order, or *pragmática*, explaining that, "In addition to being just and honest, laws must be clear and public and available so that subjects understand what they are obliged to do and what they must not do."[19] The new compendium contained 3,380 laws organized in nine books, each divided into titles and laws. It dropped some *partidas* and other prior legislation and added new ones, and each retained law was followed by a list of the monarchs who had originally included or later modified it. Banishment appears in many places in the *Nueva Recopilación*, and it is worth pointing out that by then, references to *islas* were often, though not

[17] Shoemaker, 22. Serdica is modern-day Sofia, Bulgaria.

[18] Covarrubias Orozco, 673: "No sólo se llaman islas las que están cercadas de aguas, pero también las casas que están edificadas sin que otra ninguna se les pegue."

[19] "Conviene que demás de ser justas y honestas, sean [las leyes] claras y públicas y manifiestas, de manera que los súbditos entiendan lo que son obligados a hacer y de lo que se deben de guardar." Parker, 521–22. Similar collections of old laws were made throughout Europe; see Bellomo.

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always, framed as "las Indias en la Isla Española."[20] One striking example of legal disarray with regard to banishment is that of *gitanos*, who were repeatedly ordered to leave and obviously never did, despite reams of orders to that effect, which María Helena Sánchez Ortega, who has studied the matter in great detail, says stayed fairly constant from the Catholic Monarchs up to the late eighteenth century.[21] (The *Novísima Recopilación* devoted all of Title XVI to *gitanos*.) In the elegant words of Richard Pym, the monarchs not only wanted to be rid of a people, but "they were also concerned to expel an idea."[22]

Despite the state's apparent horror at *gitanos*' itineracy, we must also remember that many people in early modern Spain did move around a great deal, belying the myth of village immobility. They followed harvests and left depressed areas in search of jobs, worked in one place in winter and another in summer, made their way to port cities to enlist in the army, or joined the alleged army of vagabonds wending its way up and down Castile's roads. Though they might always regard themselves as having come from their birthplace, many never returned.[23] One of Castillo de Bovadilla's chief concerns, which he shared with many others, was, precisely, *vagamundos*, the general disparaging term for displaced people. Tract writers in the late sixteenth and early seventeenth centuries, called *arbitristas*, inundated Spanish officials and monarchs with long assessments of the kingdom's ills accompanied by proposals for setting it back on course.[24] One of their most frequent obsessions was the specter of the landless, homeless, jobless hordes milling about throughout Castile. One chapter, for example, titled "Concerning the care and diligence the good Corregidor must employ in cleansing his Province," states: "In order to eradicate crimes from the Republic, the principal medicine that wise men have found, and the most efficient, is to shun idleness. . . . Rome ordered that all wanderers, con men, and scoundrels learn a trade and remain in their houses under penalty of banishment from Rome." It was Jesus Christ who taught that republics must be cleansed of sin and vice, he pointed out at the start of a heavily footnoted series of passages involving cauterizing wounds and expelling pestilence, among other antiseptic measures.[25]

[20] For examples, Atienza, fols. 110^{r} and 201^{v}; this volume is attached to a 1581 edition of the *Nueva Recopilación* [BN R/34186].

[21] Sánchez Ortega.

[22] Pym, 87. The last monarch to issue a law specifically banishing them seems to have been Philip V (r. 1700–46). Their case is noteworthy not only because it was savage but also because it was unique. I found no indication that criminal banishment was used to target any other particular group of people.

[23] Vassberg; Eiras Roel.

[24] On the *arbitristas*, see Elliott, 241–61; Gutiérrez Nieto; and Vilar Berrogain.

[25] Castillo de Bovadilla, 441–69; for the quotation, 447–48.

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In the words of the *arbitrista* Sancho de Moncada (1580–ca. 1638):

> There must be more than five thousand laws in Spain. Those of the *Recopilación* alone reach three thousand, and in addition there are laws of style, *partidas*, the royal *ordenamiento*, *fuero real*, *fuero juzgo*, the laws of Toro, and *pragmáticas* that come out every day, ignoring common law. So many laws cause great harm . . . and no one in the kingdom knows them all. How is a farm laborer and an ignorant person supposed to know them in order to respect them? How can he avoid being punished? Who has the money to buy all these big legal tomes, or time to read them? The second harm is that many of the laws are not used, and thus judges have an open door to squeeze whom they wish, saying that certain laws have been abrogated, deceiving whomever they wish.

He proposed four solutions: that statutes be reduced, clarified, removed if they were not in use, or rigorously applied if they remained. "Law is either useful or harmful," he concluded.[26]

Sancho de Moncada was right, at least as concerned crimes potentially punishable with banishment, and subsequent commentators and historians would have been well advised to heed his words. There was an outpouring of legal treatises, compilations, and general advice manuals all reiterating and augmenting inherited jurisprudence, their authors complaining all the while about the bloated corpus while exacerbating the problem with their mash-ups, summations, and repetitions.[27] These compendiums contributed to the illusion that, indeed, there was a method, an order.[28] Compilers variously agreed that blasphemy, conspiracy, vagabondage, adultery, rape, loose morals, unintentional death, and grave-robbing, among many other crimes, might all be punished with banishment, with or without an island, with or without additional burdens, and rarely if ever for any specified time period. But what the statute said or did not say had little impact on what actually happened in courts of law, whether they were royal appeals courts or village courts. They were not prescriptions, regardless of what other sources say. Scholars have long exercised caution when writing about trial testimony and confessions; no matter how fantastic and tempting the stories and details might appear, they reach us through a series of filters including rules of procedure, unreliable

[26] Moncada, 201–04.

[27] Bermúdez de Pedraza in 1612 provided a list of all those who had glossed prior compendiums, evidence of the growing confusion. Similar summaries are Pradilla Barnuevo, and Antonio de la Peña, "Tratado muy provechoso, util y necesario de los jueces y orden de los juicios y penas criminales." BN ms/6379 (ca. 1575), analyzed in López Rey y Arrojo.

[28] Hespanha, 2008.

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scribes and notaries, misogyny, and language difficulties, among other things.[29] But rarely if ever do scholars assume that laws themselves might be similarly unreliable. In ordinary usage, *law* means something that must and does happen. There is something eternal, disembodied, and uncontaminated about it, hovering above the wrangling of everyday conduct and discourse. Because it is the law, it must be true. But that is not the case.

Turning now to how banishment was handled in the courts, it was a punishment that typified the arbitrary or discretionary nature and general confusion of law in early modern Spain. A search through the archives shows that banishment was imposed, then reduced, then reimposed, replaced with fines, augmented with lashes, enforced, or possibly ignored. The cases were almost always appeals, the only instances in which the various parties might actually talk about the banishment itself, though they actually say very little. This is frustrating though possibly revealing, and it skews the sample away from the untold number of lower-level banishment sentences meted out by local judges and never formally contested (though they may have been ignored). But the documents, along with secondary sources and plain common sense, suggest that in those thousands of uncontested cases as well, banishment—unlike, say, fines, flogging, impressment, or death—was virtually impossible to enforce, both for practical and for more ideological or symbolic reasons. Most important, the Crown had no particular interest in enforcing it because it disrupted communities, strained judicial manpower, and put people on the road precisely when the Crown needed to know where they were for purposes of taxation and conscription.

One more note before examining the cases: the focus of this article is on the space between the written statute, outlined above, and its enforcement. At least in theory, that space, or gap, does not exist today, but it was an important and inconstant presence in early modern jurisprudence and daily life. Commentators such as Castillo de Bovadilla were guides to legal principles and procedure but cannot be taken as a reflection of practice. There was distance between the written word and orality; there was also an understanding that what we call law could be mitigated by justice and grace. Law, or statute, then, was at times a sort of illusion. Indeed, law, António Manuel Hespanha wrote, is not a helpful category when trying to understand heaps of instructions, *pragmáticas*, and codes that had many simultaneous objectives: "Only a retroactive application of the current concept of law—written mandate, generic and abstract, emanating from the sovereign—can give a unity to these scattered types of documents, creating, at the same time, a historiographical meaning of 'legislation' which does not correspond to any historical object of the early

[29] See, for example, the caveats of Homza, 250.

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Middle Ages." Put another way, but also with an eye on that gap, Cynthia B. Herrup writes, "Historians of law tell us how the legal process was to work and historians of crime tell us what the legal process was to do, but the interaction between legal and social forces has too often been shortchanged. The absence of any single center of power in decision-making was a crucial characteristic of early modern criminal prosecution, and the process itself, its forums, rules and personnel, is worthy of study." I am also keeping in mind such widely used expressions as *legal culture*, *legal pluralism*, *legal landscape*, or *communal justice*, which all try to get at this distance between promulgation and enforcement, between what I have outlined thus far, the world of written law, and the social and mental world in which it came to rest. I will return to these considerations at the end of the article.[30]

Banishment in royal first-instance and appeals courts was a tremendously flexible sanction and was imposed almost capriciously. Higher courts—the Council of Castile, the Council of Navarre, the Chancillerías, and the Reales Audiencias—routinely overturned or modified lower sentences with no explanation. Neither first-instance judges nor appeals courts had to provide any justification for their sentences or cite any legal authority, and I have found no reference to guidelines that might have served as a reference point. Indeed, according to María Paz Alonso Romero, most judges probably had not read the minutes of the case, instead relying on advice from their assistants.[31] This practice (or non-practice) was well enough known that the Cortes of Toledo in 1538 complained to the king about it, as did the Cortes of Madrid in 1586–88, though nothing changed. Sentences, or *fallos*, were brief: they identified the parties, the alleged crime, and the decision. Unlike in Catalonia and Aragon, in Castile, jurists had no bound collections of criminal sentences with commentaries to guide them, leading to what Alonso Romero called "juridical insecurity, to the point that the accused never knew exactly which punishments would be imposed for their crimes."[32] By extension, though the *Siete Partidas* specified certain crimes for which appeal was not possible, and Castillo de Bovadilla instructed corregidores that a defendant who had confessed was not entitled to appeal, in fact there was no working agreement by jurists or commentators on which criteria could be invoked for appealing, or for accepting or rejecting an appeal, and exceptions to the rules were frequent. Alonso Romero cited a case of sodomy, which in theory was not subject to appeal, in which an initial definitive sentence of being burned

[30] Hespanha, 2018, 350; Herrup, 1–2. The terminology proposed here is explored widely in the introduction to Johnson.

[31] Alonso Romero, 1982, 257–65.

[32] Alonso Romero, 1982, 261.

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at the stake was later reduced to lashes and banishment.[33] Appeals, in short, were largely a question of grace, which Cervantes (1547–1616) certainly understood. The protagonist of one of his *Novelas ejemplares* (*Exemplary Novels*, 1613) recalled a time when he ran across a friend who had just handed down an exorbitant sentence, and he asked him the reason: "He replied by saying he had thought he would grant the appeal, thus leaving the door open for the gentlemen of the Council [of Castile] to show their mercy, moderating and cutting his rigorous sentence down to its appropriate dimensions."[34] Thus justice and grace, the former in theory the implementation of law, the latter an act of will and inclination, were the two, somewhat contradictory, attributes of royal power.

Tinkering was built into the very formula of a banishment sentence. The fact that sentences were widely acknowledged as being personal rather than statutory meant that one could accuse the judge of favoritism, malice, or of having made an error. And given the nature of the sentence, it was logical for defendants to say that incriminating witnesses—neighbors, relatives, or town officials—were personal enemies and thus unreliable. Additionally, banishment sentences more frequently than not stated that half the time imposed would be *preciso*, or obligatory, and the other half would be at the discretion of the king, *a su voluntad*. The *preciso/voluntad* formula allowed the judiciary the flexibility to impose frightening sentences that could then be lifted with a show of grace. This practice speaks to the very nature of law, which was not unrelated to Christian concepts of sin, repentance, penance, and redemption. The making of law was the supreme power of the prince, but justice was his supreme virtue, and banishment sentences were a showcase for both.

Thus at the halfway point, judging from petitions that reached the Cámara of Castile, the apex of the royal judiciary, defendants automatically requested relief (*alzamiento*, not the same as an appeal), introducing a new round of discretion. A man in Azuaga (Badajoz), Gonzalo de Aldana, for example, was sentenced to four years' banishment from the town (as well as from Granada, where his appeal was heard) for having insulted the town doctor; he turned to the Cámara of Castile two years later, saying, "I have completed more than two years of the said banishment, and I beg that the rest be lifted," which it was.[35]

[33] Alonso Romero, 1982, 271n13, and in general chapter 10 on appeals. Her citation is to Archivo General de Simancas, Cámara de Castilla (hereafter AGS CC), leg. 2557, exp. 9. Elsewhere Alonso refers to grace and justice as the "two inseparable eyes of royal power . . . whose adroit alternation to a large degree ensured the efficiency of that punitive system": Alonso Romero, 1996, 203–04.

[34] From "Licenciado Vidriera": Cervantes, 1:322.

[35] AGS CC leg. 325, exp. 11. The appeal was probably lodged in 1552.

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(Four years is a huge punishment for a crime of speech; murder was sometimes punished with less.) Juan Carrasco, a citizen (*vecino*) of Córdoba, had killed a slave named Pascual, whipping him to death in the countryside, and was to receive one hundred lashes and three years on the galley ships. He appealed to the Chancillería in Granada, whose judges, "given how little blame the accused had," switched out the punishment for fines and three years' banishment from Córdoba. Fifteen months later, a bit less than halfway, he lodged his plea to the Cámara of Castile for relief, saying he and his wife and son were suffering great need wherever they were. His plea was granted.[36] Three men apparently involved in a bit of street violence in Guadalajara that included smashing church doors in January 1552 were sentenced to short spells of banishment, which they spent in nearby Alcalá de Henares. In March they filed a petition in Madrid pointing out that they had completed the *preciso* portion of their brief sentences and asked that the remaining part be lifted, which it was.[37]

But reductions of sentences could occur well before the halfway point and without there having been *años precisos*. Immediately after imposition of sentence, defendants (or sometimes plaintiffs) could lodge an appeal alleging error or excess—though never, it is worth stating, departure from statute or common practice, because there was none. The impression one gets from the documents is that one had little to lose in filing an appeal because something good might always happen. Though, of course, the percentage of cases actually appealed was probably small, we have no way of knowing. Defense of the sentence was generally in the hands of the prosecutor, not the judge or judges who handed it down.

A few examples: Juan Alonso Tejero and his friends apparently were incorrigible troublemakers in the city of Segovia, and Tejero was arrested in April 1586.[38] His crimes included theft, rowdiness, rock-throwing, armed attacks, and, as time went on, violating successive banishment orders and resisting arrest. From April to September there were a series of arrests, appearances, punishments, and modifications that at one time or another, alone or in combination, included four years of banishment, six years of banishment, ten years of banishment, public shaming (being led through town, nude

[36] AGS CC leg. 325, exp. 41.

[37] AGS CC leg. 325, exp. 8. Inexplicably, the original sentence stated that violation of their respective banishment orders, all under a year, would lead to banishment for life.

[38] Archivo de la Real Chancillería de Valladolid [hereafter ARCV] Registro de Ejecutorías 1570.12, with the caveat that the exact chronology of this case and the successive violations of court orders are not entirely clear. *Cartas de ejecutoría* were writs issued at the end of a case summarizing the proceedings and ordering execution of the sentence once no more appeals were permitted.

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from the waist up, on a donkey with hands and feet tied and accompanied by a town crier yelling out his crimes), two hundred lashes, ten years rowing on galley ships, and court costs. The four years' banishment was violated almost immediately and therefore should have been doubled, according to the initial sentence, but just six years were applied. What is clear is that he did not comply with his banishment and that the punishments were many, varied, and contradictory.

Another resident of Segovia at pretty much the same time, Ana Sánchez, also violated her banishment and also saw the number of years vacillate. She had been banished for living in sin with a priest, Gerónimo de Peñafiel, despite several warnings. Authorities finally took her to the town of Lozoya, where she was originally from and where she had family, and she was ordered not to have any contact with Peñafiel. But Sánchez returned to Segovia and to her priest, and they were discovered in bed together. She was tried again by city authorities, and this time was taken to Guadarrama, also in the nearby mountains, and ordered to stay there for six years. She appealed to the Chancillería, where her lawyer argued that the alleged crime had not been proven. The prosecutor replied that she had obviously violated her first banishment order, but in any case the appeals court ruled that the proper sentence was three years "and no more," the first two of which were *precisos*. Sánchez immediately lodged another appeal to the same court, and banishment was now down to one year, "and no more, *preciso*."[39]

Not far away, in the town of Maqueda (in the province of Toledo, but belonging to the Duke of Maqueda), an apothecary, Gaspar de la Cruz, and his wife, Isabel de Babia, had their own problems. In late 1598 the chief local judicial officer (*alcalde mayor*), Licenciado Guadalupe, got wind that Cruz and Babia were dispensing their goods using a measuring cup with a hole in it. An inspector from the city of Toledo and a local town councilman paid a surprise visit, and the couple were jailed during the subsequent investigation. Guadalupe then sentenced them to be banished from the town for two years *precisos*, plus court costs, leaving the duke the option to add on more. The couple was also prohibited from exercising their profession elsewhere, though it is unlikely such a stricture could be enforced. In his appeal, Cruz's lawyer invoked the theory of double jeopardy; having been fined once for what he tacitly admitted was the use of improper weights and measures, he could not be fined twice for the same crime. Furthermore, the town doctor (allegedly the source of the denunciation) was a capital enemy, while his client had been an excellent and honest apothecary for forty years. There was lots of

[39] ARCV Reg. Ejecutorías 1641.75. There is no indication that the priest was prosecuted, though he may have been.

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back and forth, with the case ending up before the royal Chancillería in Valladolid, where the bench agreed that there had been wrongdoing but reduced the two years to one year, "and no more, half being *preciso* and the other half at the king's *voluntad*."[40] (So the duke's authority was ceded to the king.) The appeals court furthermore seems to have removed the prohibition to practice his profession, and may also have exempted the wife. The couple appealed again, unwisely as it turned out, and the sentence went back up to two years, though just one was *preciso*. So, there were three different banishment sentences over a period of a year and a half.

There are also instances in which prominent defendants asserted their importance to the community as an argument against banishment, and, not unexpectedly, such arguments generally swayed judges and prosecutors. Members of the Jaén city council petitioned the Crown that the city's armorer, who had just been sentenced to ten years' banishment for some financial impropriety, be released from the sentence, given how important he was to them; "Let him finish another year and I will lift the rest, *fiat*," reads the cover sheet assenting to the request.[41] Likewise a Madrid tax collector spending his two-year sentence in Alcalá de Henares pointed out to authorities that he was far more useful to the Crown collecting the *renta de francés* (a tax on French residents) than sitting in Alcalá. The defendant, Francisco de Guerres, had been convicted for killing a Frenchman when in fact, he argued, he had acted in self-defense as the deceased and his confreres had violently set upon him while he was merely carrying out his fiscal duties. The melee, in a boarding house owned by a baker on Calle San Vicente (possibly San Vicente Ferrer, in the Malasaña district), featured swords, people hiding under beds, and insults ("come on out, you French cuckold!"). Guerres proposed to the Council of Castile that he be allowed to leave Alcalá to go to Madrid and collect taxes, and the council agreed to give him one month after which he would have to return to Alcalá, and in the meantime he would be subject to a bond. A letter from his lawyer followed, emphasizing his client's enormous poverty (six small children, a sick wife, and major expenses), resulting in his getting two months' leave. And, finally, the cover sheet of the defendant's petition reads, "Lift his remaining banishment . . . and allow him to freely enter the court."[42] So it seems likely the entire sentence was commuted.

This sampling of cases, in which banishment was imposed and then essentially chipped away at, substantiate the contention that the punishment had no direct correspondence with statutory law but rather was used as a

[40] ARCV Reg. Ejecutorías 1670.27.

[41] AGS CC leg. 188, exp. 64.

[42] Archivo Histórico Nacional, Consejos Suprimidos (hereafter AHN CS), leg. 28.069, exp. 17.

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starting point for negotiations. It was most likely there because it was a sentence no one wanted to receive and because few towns were actually able to enforce it. It was a case of bosses pretending to pay employees who were pretending to work. Both fictions keep the plant running. In more scholarly terms, Enrique Gacto wrote, "until the nineteenth century, the law [*ley*] was neither the only nor the most important source of criminal and trial law [*derecho*]. Rather it shared that role with juridical literature and judicial style. Authors and judges, in effect, had no hesitation in criticizing or ignoring what was legally established, proposing and applying alternative solutions. Sometimes judicial style hewed closely to doctrinal suggestions, but in other cases it moved far away, opening up a third possibility that was equally distant from the law and from doctrinal recommendations."[43]

This essentially arbitrary imposition and subsequent modification of banishment sentences is one aspect of what was to some degree the privatization or personalization of criminal law. There were others. Guilty parties sometimes saw their belongings seized by authorities, often upon the urging of opposing parties, though some defendants were so poor they had nothing worth seizing. Banishment sentences (and probably most others) were also almost always accompanied by monetary fines paid to the Crown, though here again there were instances in which fines were pardoned for inability to pay. Fines in general were the offspring of the ancient practice of paying off the injured party, a ceremony of apology and pardon that gradually disappeared from criminal cases.[44] Like banishment itself, pardoning the wronged party had a long genealogy; a translator and editor of the *Iliad* notes that in ancient Greece if compensation were not offered by a wrongdoer to a victim's family, or if it was not accepted, the perpetrator had to go into exile, which was precisely the case of many of the men camped outside Troy.[45] Good Friday pardons by Spanish monarchs sometimes specified that the object of the monarch's grace already had been pardoned by the victims' relatives.[46] Council of Castile petitions for *alzamiento* often mention pardon. For example, after Pedro Ortiz had had words (*ciertas palabras*) with Juan Muñoz Romero in 1526 he was sentenced to two years' banishment. When, after the requisite first year, he petitioned the Crown, explaining not only that his wife and children needed his support but that Muñoz Romero had pardoned him, his request was

[43] Gacto, 507–08.

[44] Alonso Romero, 1985.

[45] See Homer, 631, footnotes to 18.581–92.

[46] For example, AGS CC Libros de Relación, lib. 10, fols. 128^{r}–29^{v} (pardons for 1554); one, for the killing of a slave, includes a pardon by the slave's owner but not his family.

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granted.[47] Gonzalo Aldana, mentioned above for having threatened the town doctor, attached the doctor's letter of pardon to his request for relief.[48] Sexual crimes against women seem to have frequently included the pardon, voluntary or not, of the injured woman, which not only eased the punishment but also returned the man to the scene of his crime; such was the case in Valladolid in 1556 after Juan de la Parra, a tailor, took certain verbal liberties with Luisa Velázquez, a married woman, and was sentenced to one year of banishment. Parra appealed, Velázquez withdrew her complaint, and the sentence was reduced to three months' banishment. Just one month later he filed for further relief, arguing that he was "lost [*anda perdido*] and spending what he doesn't have, and no one is accusing him," an argument which appears to have worked.[49]

More serious sexual wrongs were committed against Isabel Cava, who was raped and left pregnant by Luis de Torres, a resident of Santorcaz (Madrid) with whom she had exchanged love letters and who then went back on his pledge to marry her. In his defense he argued that she had been sleeping around and had tried to abort the fetus, though Cava maintained he had forced her to drink an abortifacient. After Cava's father filed suit, authorities decided to banish Torres for six years, probably removing the woman's only possible source of support for the baby. Unusually, the stated punishment for violation in his case was death, not the usual doubling of the years. However, the six years (plus fines) was then reduced to four, which he also appealed, and he also managed to get Cava to pardon him, which possibly led to the reduction. At one time or another the case was heard in Santorcaz, then the Council of Castile, and then the Alcaldes de Casa y Corte, the royal judiciary in the capital.[50]

There are also countless examples of punishments obviously doomed to fail: four years' banishment for selling overpriced cheese;[51] four years' banishment after an infertile woman desperate to please her husband obtained a dead baby to make him believe she had given birth;[52] an allegedly blind man over seventy accused of currency manipulation sentenced variously to the galleys, African

[47] AGS CC leg. 188, exp. 81.

[48] AGS CC leg. 325, exp. 11.

[49] AGS CC leg. 357, exp. 51.

[50] AGS CC leg. 1623, exp. 7. The Alcaldes de Casa y Corte reported to the Council of Castile; a useful outline of all royal judicial organs mentioned in this article can be found in Heras Santos.

[51] AGS CC leg. 356, exp. 20. The defendant in this case was sentenced to two additional years for violation and told that if she violated again she would receive two hundred lashes plus huge fines.

[52] AGS CC leg. 325, exp. 15.

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fortresses, and (as relief, though it was denied) banishment;[53] and, possibly the most inexplicable, banishment for violating quarantine orders during a massive outbreak of bubonic plague, which clearly only made the problem worse.[54]

Banishment, then, was a punishment handed down irregularly and inconsistently. It was always subject to negotiation, and it could be unpredictable, personal, and cruel, all of which made it not only difficult to put into effect but also ultimately dangerous, given that arbitrary authority undermined legitimacy. This may have been the case with other punishments as well, but the argument here is that the state was especially motivated to negotiate banishment sentences, or perhaps not implement them at all, because they were so unwieldy. It is true that while my first inclination was to think that banishment was not actually enforced, that is not the case. However, the evidence points to initial implementation followed by alterations and, at the halfway point if not before, elimination. Keeping track of banished defendants wherever they went (and it is important to remember that people were banished from a place, not to a place, so they could be anywhere) was expensive and required manpower generally unavailable. Absent breadwinners put strains on the family left behind, the reason often adduced for later reductions, and clearly diminished tax revenue. There is no indication in the records of what towns on the other end thought of felons knocking at their doors, and probably requiring some sort of supervision. Nor is there any indication of where violators who illegally returned to their hometowns had spent what often amounted to several years away. These glaring gaps in the narrative, unusual for a government and judiciary that obsessively recorded everything, point to something wrong with the story.

One part of the process that does appear occasionally, and which points to implementation immediately after the sentence, though not necessarily for the time prescribed, is the ceremony of arrival at the felon's new town of residence, which of course was preceded by his or her departure from the town where the crime took place. These two steps appear rarely in the legal records I have seen but may well have occurred regularly. They ring true both in terms of the theatrical aspect of state punishment and of the need to document acts of authority and control. Castillo de Bovadilla instructed corregidores to ensure that, once expelled, delinquents carry letters to the authorities in their new place of residence, possibly using members of the Hermandad (a largely defunct police force established by Ferdinand and Isabel) or other available "diligent men."[55]

[53] AHN CS leg. 26.016, exp. 4.
[54] MacKay, 71–73, 152.
[55] Castillo de Bovadilla, 463.

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For example, Luis de Torres, the man who made false promises to Isabel Cava and left her pregnant, certainly began his banishment. On 25 November 1596 he appeared before a notary, Diego de Peralta, in the town of Pioz, which is actually quite close to Torres's hometown of Santorcaz. According to the notary, the new arrival was twenty-seven years old, an apprentice, tall enough, and sported a black beard. He said that that day he had left the town of Santorcaz to serve the banishment sentence handed down by the judges of the Casa y Corte in the lawsuit between him and Isabel de la Cava and her father, Francisco Alonso, for rape (*estupro*) and other matters. "This he said on the record and he asked for a record which I hereby issued, in the said town of Pioz," Peralta wrote.[56] Likewise, Juan de la Parra, the tailor who verbally assaulted Luisa Velázquez and had managed to get his one year of banishment reduced to three months, showed up in Medina de Rioseco on 5 February 1556 at a notarial office where he obtained a wordy confirmation before three witnesses that indeed he was there.[57] Diego Martín, a *vecino* of Valladolid sentenced to banishment after stealing a saddle and bit and possibly other things and then trying to sell them, similarly appeared before a notary in Medina del Campo (again, not very far away) who issued a formal document attesting to Martín's presence in Medina, with three witnesses confirming the ceremony.[58] (The theft of the saddle and bit got him three years of banishment, a steep punishment compared to others we have seen, and it was increased after he returned to Valladolid to pick up his wife.)

But before they arrived at their new towns, the accused had left their old ones. On August 25, sometime from 1554 to 1558, a notary in Valladolid, Jorge de Montoya, recorded that Domingo de Villanueva, the chief servant (*mayordomo*) of don Juan de Cardona, had been sentenced by the Alcaldes de Casa y Corte to six months' banishment. He had punched Juan de Fonseca, son of doña Guimar de Fonseca, though the son later withdrew from the suit, presumably having been paid off either by Villanueva or, more likely, Cardona. On that day, Montoya recorded that "I saw him [Villanueva] leave through the city gate [*la puerta de campo*] on a chestnut-colored horse, and he said he was off to serve his banishment, and this was witnessed by Juan Rodríguez and Sancho Muñoz, members of the court," which at the time resided in Valladolid.[59] Villanueva left on his own, with little fuss (perhaps

[56] AGS CC leg. 1623, exp. 7.

[57] AGS CC leg. 357, exp. 51.

[58] AGS CC leg. 370, exp. 20.

[59] AGS CC leg. 339, exp. 11. Frankot, 79–82, describes departure rituals that included banging on cymbals.

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owing to his status), but others were accompanied out the gate, or even further, by local policemen (*alguaciles*).

In general, the process seems to have been a far cry from Castillo de Bovadilla's well-organized handoff to "diligent men." *Alguaciles* worked for courts of law or for the corregidor. They were the physical and visible executors of royal justice and could be called upon to do just about anything; in the capital they arrested people, accompanied them, searched houses, controlled marketplaces, rousted vagabonds, and patrolled streets.[60] Their posts were bought and sold, and they were notoriously corrupt, and therefore they appeared frequently in contemporary literature. The Cortes regularly complained to the monarch about their excesses, which according to Alonso Romero included filching defendants' weapons, belongings, and money.[61] Indeed, they were explicitly permitted to do that with a group of four men from Sonseca (Toledo) who had violated their banishment order; in that case, judges ordered an *alguacil* to capture them, "but if you do not find them you can take their things" after which a default conviction would be handed down.[62] The delusional lawyer in Cervantes's "El Licenciado Vidriera," when reciting his aphoristic opinions of peoples and professions, stated that the job of an *alguacil* consisted of "capturing you or stealing what's in your house or guarding you at his place and eating at your expense."[63] Similarly, in Juan Ruiz de Alarcón's play, *El Texedor de Segovia* (1634), an *alguacil* is attacked by bandits and tries to get out of the jam by saying he had very little money on him. "But haven't you stolen anything today?" his attackers asked. Times are tough, he replied, as "only the poor commit crimes."[64] But if authorities somehow managed to halt *alguaciles*' bad behavior, the latter simply ceased hunting down their prey and, we can assume, ceased accompanying banished criminals on their way out.[65]

The role of the *alguacil*, be he honest or dishonest, speaks to one aspect of banishment that does ring true, which was the vocal, audible, and visible nature of public punishment, though it probably was more show than substance. Manacled or confined criminals might be led through a town while a town crier, the *pregonero*, shouted out his or her name, offenses, and punishments. This certainly occurred when the punishment was death, but also when it

[60] Villalba Pérez, 225–36, on *alguaciles* in the capital.

[61] Alonso Romero, 1985, 9–94, 48–49.

[62] ARCV Reg. Ejecutorías 981.20.

[63] Cervantes, 1:329.

[64] Ruiz de Alarcón, act 2, line 123: http://www.cervantesvirtual.com/obra-visor/el-tejedor-de-segovia--0/html/d3729570-ff03-4b93-a8a8-6fd1351509fc_3.html#I_4_.

[65] Alonso Romero, 1985, 48–49.

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was for public shaming, and I have found quite a few cases in which shaming was followed by banishment. A minor named Diego de Pinto, for example, had been banished for life from Ávila (the underlying crime is not identified in the *carta ejecutoria*, the royal document summarizing the matters at stake and the final sentence), but he returned to the city and therefore was jailed. According to the authorities, he was "incorrigible" even at a young age, and therefore he was taken from his cell and placed upon a mule, facing backward, stripped to the waist and with his hands and feet tied. As they processed through the city, and particularly along the street where the unnamed crime was committed, a *pregonero* announced the crime and the punishment. The ceremony then led to two hundred lashes in public, followed by banishment for life (again) and six years' rowing on His Majesty's galley ships (though galleys was lifted upon appeal, so he was back where he started).[66] Juan Alonso Tejero, the all-purpose troublemaker in Segovia described earlier, also was ridden through town on a donkey. Diego de Ayllón, arrested for publicly and dramatically harassing and proclaiming scandalous things about a woman who had spurned his advances and married someone else, received a banishment sentence in Arévalo of eight years, half of it *preciso*, with public shaming if he violated. He appealed, the sentence was cut to three years and the shaming seems to have disappeared.[67] Several former town council members in Salazar (Burgos) who were languishing in jail three years after having allegedly insulted Luiz Vélez de Alvarado and his wife and smashed up the plaintiffs' family arms on a stone tomb in the San Esteban de Salazar church, along with a footstool, pleaded to be released so they could finally start serving their banishment. They had variously been sentenced to jail time, flogging, fines, banishment, and public shaming; upon appeal all of this was lifted except the banishment, which was reduced.[68]

The parade of shame was an obvious enactment of authority and power. It was a moment for townspeople to exult or turn their eyes or have fear struck into them. Perhaps it made them think about leaving their home and what that might mean. Perhaps also, following a remark by Richard J. Evans concerning Germany, the spectacle was all the more noisy to cover up the fact that law enforcement was ineffective.[69] Surely everyone knew banishment would be

[66] ARCV Reg. Ejecutorías 1214.36.

[67] ARCV Reg. Ejecutorías 1592.22.

[68] ARCV Reg. Ejecutorías 1800.5. Such a long time in jail was unusual; there was no advantage whatsoever to keeping people there longer than necessary while they awaited trial. Pérez Marcos, in her article about the sixteenth-century treatise writer Tomás Cerdán de Tallada, offers considerable background on jails.

[69] Evans, 9.

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reduced or violated or simply ignored after a while, which made the spectacle, in a way, even more theatrical for its falsity. And indeed, in some ways banishment is the antithesis of the spectacle, say, of an execution, after which the prisoner's head might be displayed for weeks on a pike at the town gate. In this case, the body disappears.

After a perp walk through the streets, the delinquent made his or her way to the city gate, accompanied by an *alguacil* or two. Ana Sánchez, the Segovia woman banished because she had a lover who was a priest, was twice accompanied to the Guadarrama mountains by *alguaciles*, to no useful end. When Juana de Salamanca and her daughter Juana de Zúñiga had to leave Valladolid in 1615, evidently because they had each been living in sin (at least one of them with a lawyer at the Chancillería, which may explain why the file is in the section called "Causas Secretas") they first asked that they be given two months to get their affairs in order. They were granted one month, at the end of which the criminal judges ordered Gaspar Fernández, an *alguacil*, to hold his rod of justice high and take the two women eight leagues outside the city; as always, only the distance is stated, not the destination, but in this case the group ended up in the town of Villalón. There the *alguacil* was to tell them in the presence of a notary that if they returned they would be sent to a women's prison (*galera de mujeres*) for six years. The two women were supposed to pay the *alguacil* for his trouble in cash or with their belongings. He and his companion then returned to Valladolid, still holding the staff high, and were to sell or auction off whatever goods they had managed to get. In any case, the two women violated their banishment two weeks later. Two servants of the count of Ayala for some reason betrayed them, and another *alguacil*, Fernando de Vega, was dispatched to capture them, which he did with the help of the two servants, and the women were banished yet again, this time to a distance of thirty leagues. Violation would now bring sixteen years in jail for the daughter and sixteen years of banishment for the mother, plus steep fines for both.[70]

But sometimes there were no ready *alguaciles* to accompany wrongdoers, belying frequent complaints from the Cortes that there were far too many. After a miller, Domingo Sánchez, accused by a widow of having participated in her husband's murder, was banished from Toledo and later violated that sentence, the widow herself appears to have been ordered to find someone to go fetch Sánchez.[71] In other cases, there were available *alguaciles*, but the court was not paying them, which could not have spoken well for the royal judiciary they were theoretically representing. In Madrid, don Bernabé de Castellanos was expelled in December 1614 and the Alcaldes de Casa y Corte ordered

[70] ARCV Causas Secretas, caja 1, 14–4.
[71] ARCV Reg. Ejecutorías 1700.40.

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him to pay an *alguacil* to accompany him from the jail where he was being held out of the city for a distance of ten leagues. Andrés Mexía was given the task; his instructions state that he could take four days to do the job and would be paid 600 maravedíes a day, "which you should charge the abovementioned [Castellanos] and [take] from his belongings."[72]

The Alcaldes de Casa y Corte in Madrid kept records of orders to *alguaciles* to accompany defendants to certain places, including instructions to "*tomar las señas*," or write down the distinguishing features of their charges, yet another time-consuming task.[73] For example, we have an order that "D. Luis Benegas's *amiga* and his mother, being presently in this court, be taken to the women's prison." And after Doña Mechora de Luna, for "certain matters concerning service to God" was banished for four years, the Alcaldes "ordered that an *alguacil* from this court take her ten leagues from here to wherever she orders and wishes, with two guards appointed by the *alguacil*."[74] It is logical to think that instructions to keep track of who was where, where they were going, why, and what they looked like were bound to run into trouble, and indeed a prosecutor in 1610 complained that Madrid's royal jail, where defendants were held before departing, was omitting the reason for the banishment in its reports, and he asked the Alcaldes that upon their release "it be recorded which crime they are being banished for so that the new orders from the Council [of Castile] be obeyed and there be compatibility [*correspondencia*] from now on with other courts of law in these kingdoms."[75]

Enrique Villalba Pérez has written that it was precisely because of inevitable and multiple violations that Madrid's Alcaldes de Casa y Corte wanted notaries to write down everything they knew about the prisoners, especially given the likelihood that they would quickly disappear from wherever they were banished and drift back to the capital. The Alcaldes offered forty reales to anyone who captured a returned exile (adding a new layer of potential corruption) and also collected notarized statements attesting to exiles' presence elsewhere, as we have seen.[76] But the expense and effort involved in accompanying defendants, dragging them before a notary once they reached their destination, forcing them to give up money or belongings to pay the *alguaciles*, and then returning to their own city, only to likely repeat the exercise shortly thereafter, must have been onerous. It was a waste of money and time.

[72] AHN CS Libro 1203, fols. 137^{r}–141^{r}.

[73] For example, AHN CS Libros 2777 and 2778; the orders include references to *legajos* that no longer exist, so there is no way to follow up the cases.

[74] AHN CS Libro 1201, fol. 6 (20 August 1609) and fol. 424 (January 1613).

[75] AHN CS Libro 1201, fol. 184 (probably December 1610).

[76] Villalba Pérez, 205–08.

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What should be clear by now is the absolute impracticality of banishment. It was impossible to control, disrupted communities at both ends of the operation, and undermined royal authority as a result of frequent violations, the unpredictable and heartless nature of the punishment itself, and its irregular implementation. No reputational or material benefit accrued to the state, and though a community freed of a rabble-rouser or wayward prostitute might benefit in the short run, defendants' next towns of residence would not, and indeed the Crown might lose track of a troublemaker. Likewise, in cases where plaintiffs were parties to criminal suits, revenge against a wrongdoer might provide temporary satisfaction, but personal pardons and communities' distaste for upheaval weighted the scales in the other direction. Families left behind would be deprived of whatever material support their absent relatives had provided. If the banished person was an artisan, it is unlikely he would be able to practice his craft, lacking papers from the local guild. A taxpayer had been lost. The banished would not be good neighbors; in fact, they would not be *vecinos* at all. They would be on the move, swelling the ranks of the vagabonds. It was a recipe for flux and lies, exactly what the Crown did not want. It served no punitive or state purpose. It was there only because it always had been there.

While I have offered plenty of examples of banishment sentences that were indeed imposed, in fact they were most likely imposed only at first and then quickly modified or ignored. And while I cannot prove a negative, I can point to indications beyond the unwieldiness of the punishment outlined in the previous pages. One, to return to the opening of this article, is the statutory reiteration, century after century, prescribing banishment for this or that crime. As with early modern sumptuary laws that grew louder and more shrill the more they were ignored, we must remember that the fact that statutes said a certain punishment must be applied for a certain series of crimes did not mean that that was the case in practice. Additionally, there is the silence of the record, which was what first led me to really wonder about banishment. Sixteenth- and seventeenth-century Spanish legal records, whether from the Crown or the Inquisition, are silent about practically nothing. Yet in not a single case of violation of a banishment sentence did I find an account of where the defendant had been while he or she was absent from the scene of the crime. This lacuna, the hasty reference to violation (*quebrantamiento*) of banishment orders with no further details as to where the criminal was during her absence, with whom, for how long, and why—all of which would be expected, with endless reiterations by many witnesses, in any other sort of legal appeal—argues strongly in favor of non-banishment, whether because it was not imposed or because it was subsequently disobeyed.

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The gulf between written law and stated sentence, on the one hand, and reality, on the other, is conspicuously absent from historical accounts of crime and punishment in early modern Spain. These works would have benefitted from Harold Berman's point that the concept of law must include institutions, values, rules, and practices—what in German is called *Rechtsverwirklichung*, or "the realizing of law."[77] At a minimum, this initial foray suggests that legal history must be broader and more imaginative, interdisciplinary, and fluid than it is today, at least insofar as Spanish history is concerned. What is conventionally called *law* did a lot of work in the sixteenth and seventeenth centuries, but matching crimes and punishments in expected and sensible ways was not part of it. The operation of *ius commune* in practice meant there was no central locus, no necessary consistency. The enormous space between social practice and written law also speaks to the ways in which social networks and communities anticipated the functions of still inchoate institutions. In some ways, this mirrors the space remarked upon by Stuart Schwartz regarding race in the Hispanic world, where excruciatingly precise categories of racial mixtures and types in America contrasted with a society that for the most part survived and functioned with mixture. This flexibility, which made the categories meaningless in practice, could benefit both state and society. Over time, detailed racial classifications took on a more metaphorical meaning, he suggests.[78] Banishment, or the threat of banishment, conjures up at least as many frightening, sensitive, and historical sensations as the prospect of racial impurity, though obviously of a different sort. And it, too, became metaphorical, as perhaps did law itself.

Spaniards, like people elsewhere, often bore (and bear) surnames that are geographic or toponymic; one study examining around twenty thousand birth and death certificates in Zaragoza found that around 14.5 percent bore geographic names and around 8.5 percent more bore toponyms. Being called Mesa, Iglesia, Madrid, Fuente, or Prado meant something.[79] And being someplace else against one's will could be a way of stripping away people's values or their sense of self, their coordinates. Losing one's landscape in addition to one's neighbors and family, having a new horizon to gaze at, might be utterly destabilizing. According to a late sixteenth-century book of aphorisms, banishment was "one of the worst evils in existence."[80] Certain crimes were so bad, that's what one got. But, as I have described, it was usually

[77] Berman, 4.
[78] Schwartz.
[79] Ansón Calvo.
[80] Aranda, fol. 25.

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minor crimes that received this worst punishment, whether or not it was finally imposed.

Frivolous and inconsistent imposition of sentences and their subsequent modifications might certainly point to social tensions in a given community, to corruption, vengeance, incompetence, hatred, or jealousy. But beyond that it indicates that the law was not necessarily rational or unitary. Rather, as Giovanni Levi wrote, "Normative systems, both long established and in process of formation, left gaps, interstices in which both groups and individuals brought into play consequential strategies of their own. Such strategies marked political reality with a lasting imprint. They could not prevent forms of domination, but they did condition and modify them."[81] There was, then, a logic to law, but it was not the direct punishment-crime logic assumed by too many legal historians.[82] It was not predictable. Instead, it can point to fissures that might or might not correspond to material interests; and, in the case of banishment, to historical understandings about home and loyalty and family. Further, as Levi wrote elsewhere, there might be "juridical pluralism which . . . presents the interstitial possibility of moving fairly freely among contradictory normative systems, each of them weakened and eroded by their very multiplicity."[83] There was no agreement or consistency regarding correlation between punishment and crime, and nor, apparently, did there have to be.

If it was not the statute that gave enactment of law its meaning, given that the two things did not coincide, then from where does enactment—in this case a sentence of banishment—derive its meaning, its weight? If not from the statute, then from the common good? From royal justice? Or does it not have any real meaning in and of itself, which is why it was so easily and frequently and erratically altered? Has it, then, as Levi described, separated itself from its old ideological anchors? If such a separation, or "juridical pluralism," in his words, was widely the case, with banishment the logic was all the more strained, and all the unanswered questions and paradoxes point to our having looked at it from the wrong angle. Instead of thinking in terms of laws, we must think in terms of a series of contradictory, self-damaging, vindictive, and inoperative practices responding to deep-seated understandings of people's place in the social landscape, to notions of governance and grace and royal majesty. Banishment was an instrument that necessarily relied upon public

[81] Levi, 1988, xv.

[82] In pointing to the absence of deeper exploration, or to the simple omission of inquiry into what happened after the sentence was handed down, I am thinking of historians on Spanish criminal and legal practice including Bazán Díaz, 584–95; Ortego Gil, 2001; and many works by Heras Santos and Tomás y Valiente.

[83] Levi, 2000, 107.

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participation more than on formal policing, probably one of the reasons it would soon disappear.[84]

It was, in a way, a false or perverse version of the picaresque, a journey to nowhere and back, a punishment rather than an adventure or the exercise of freedom. Banishment did not provide the fulfillment that a pilgrimage might. There is a mocking nature to it, an illustration of the wrongness of the model, a trial with no worthwhile end. It is true that some of the cases examined here occurred before *Lazarillo* was published in 1554, and that jurists' and defendants' awareness of literary trends is unknown to us. Even so, it is instructive to keep in mind the evident meaning attached to being somewhere other than home. If writers placed their characters in geographic flux (and if they themselves often underwent flux) as a way of understanding social tensions, injustice, and suffering, then the symbolic weight of banishment as a punishment must be taken into account. Many or most of the leading writers in early modern Spain had been banished for one thing or another, either for their crimes or to get them out of the way: Cervantes (and his character Rinconete), Lope de Vega,[85] Quevedo, Calderón de la Barca, Garcilaso de la Vega, and Tirso de Molina all knew whereof they spoke. When Don Quixote and Sancho Panza finally return home once the knight and his mind have ceased to wander, has Quixote returned to sanity? And, if so, then is being someplace else, by choice or by court order, a recipe for madness? For lies? Or just loneliness?

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[84] Banishment appears to have gradually vanished after the Bourbons took the throne in 1700, even if it remained on the books in the *Novísima Recopilación*. Sánchez Gómez, who writes about the late eighteenth century, barely mentions it. And Palop Ramos, who examines reports from royal courts in the 1780s (AHN CS, legs. 6159–60) shows that banishment was handed down in just 3.2 percent of all criminal cases, far less than is presumed for the early modern era. See Sánchez Gómez; Palop Ramos, 98.

[85] His case, including the banishment sentences and modifications, can be found in Tomillo and Pérez Pastor.

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