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# Beyond Luxury: Sumptuary Legislation in 17th-Century Castile

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## ABSTRACT

Sumptuary laws were passed intermittently during the Middle Ages and early modern period. They were anti-luxury laws which focussed almost always on items of apparel and which either prohibited certain groups from wearing certain types of clothing, and/or generally forbade excessive expenditure and luxury. Compared to matters of constitutional order, rights, liberties, and privileges, sumptuary laws may appear unimportant or irrelevant. However, they were one of the most frequently enacted forms of early modern legislation. And while they have no counterpart in modern times, they could be found in an impressive array of contexts in the pre-modern world. These ranged from ancient Greece and Rome to the late medieval and early modern Ottoman Empire, China, and Japan – all cultures which shared the common characteristic of resorting to the law to mark differences between social groups.

This chapter examines 16th- and 17th-century Castilian sumptuary legislation and tries to explain the particular legal features of a society in which luxury was condemned and even outlawed while at the same time it served as a marker publicly to define and emphasise status. To the modern observer it may appear that the strategies used to enforce this legislation were somewhat paradoxical. Those strategies, however, were representative of the principal characteristics of the system from which they emerged and oblige us to raise questions regarding how laws in general were applied and functioned during the early modern period.

*Durante la Edad Media y la época moderna se promulgaron de modo intermitente leyes suntuarias, las cuales han aparecido probablemente en cualquier cultura en la que las diferencias entre distintos grupos sociales estén legalmente establecidas o reconocidas. Se trataba de leyes contra el lujo centradas casi siempre en objetos de adorno y que bien prohibían a ciertos grupos el uso de determinados tipos de ropa o bien prohibían en general el lujo y los gastos excesivos. Comparadas con materias de orden constitucional, derechos, libertades y privilegios las leyes suntuarias pueden parecer irrelevantes o poco importantes. Son, sin*

*embargo, uno de los productos más característicos de la legislación de la Edad Moderna y, si bien no tienen paralelos en la época contemporánea, pueden encontrarse en un gran número de contextos premodernos. Estos van desde la Grecia y Roma clásicas hasta China, Japón o el imperio Otomano en la Edad Moderna, culturas todas ellas que compartían la característica de recurrir a la ley para marcar las diferencias entre grupos sociales.*

*Este capítulo examina la legislación suntuaria castellana de los siglos XVI y XVII para tratar de explicar las particularidades legales de una sociedad que reprueba y condena el lujo al mismo tiempo que lo emplea para la expresión pública del estatus. Más allá del lujo se descubre que las estrategias empleadas para su contención y para hacer cumplir la ley pueden resultar paradójicas a ojos contemporáneos. Tales estrategias refuerzan, sin embargo, los principales roles de ese sistema y nos obligan a replantear cuestiones como la aplicación de la ley y el funcionamiento de las leyes en la época moderna.*

#### LUXURY AND STATUS; EXEMPLARITY AND ORDER

Two years after his accession to the throne in 1621, Philip IV issued a series of sumptuary laws devised to reform the “abuses” that had become widespread in Castile during previous years. These reforms were part of a wider program called the *Capítulos de Re-formación*, or “reform chapters”, which addressed not only issues of proper apparel, but also public offices, state administration, and the judiciary. These measures were recommended by a special commission formed at the very end of Philip III’s reign, in 1618, to solve the problems then plaguing the kingdom. The recommendations were taken up in 1623 at the beginning of the reign of Philip IV.

One of the “excesses” detected concerned the exaggerated number of servants, which was duly restricted. Indeed, the text of the law stated – for the first time in Castilian sumptuary legislation – that the monarch and his counsellors should take the lead in reducing the number of employees because “in order to assure the success of such an important matter, example should be given by the Prince and his ministers, whom have on their own – as well as by virtue of the offices they hold – sufficient authority so as not to find it lessened or increased by a larger or lesser number of servants”<sup>1</sup>.

The suggestion that the king and his ministers should set an example for the rest of the subjects of the realm had originally appeared in a *consulta* [consultation, or report] the Council of Castile sent to Philip III on 1 February 1619. In this letter the President of the Council, Diego de Corral y Arellano, argued that “royal example is so influential that what laws and *pragmáticas* [royal decrees] cannot accomplish will be finally take place when Grandees, Lords, and others of middling status know that this is the king’s wish, and when those near his royal person, fearing his indignation, feel his Majesty’s disapproval of these excesses [in apparel]”<sup>2</sup>.

In general terms the 1623 reform was remarkable both for its moralistic tone and for the sheer breadth of the restrictions that it aimed to introduce. Little space was left for

any kind of ornamentation in clothes, while the use of gold and silver was banned in the decoration of a wide range of other items, such as coaches, banners, and furniture. Special clauses also outlawed the wearing of exaggerated collars. Significantly, the date chosen to introduce the new regulation was 1 March 1623, the first day of Lent. Obviously, the officials who promoted these reforms hoped to harness the power of penance in their favour.

Equally revealing is, however, the proclamation issued on 22 March 1623 that suspended the implementation of the law in Madrid until the end of the visit to the city by the Prince of Wales<sup>3</sup>. Charles Stuart had arrived secretly in Madrid on 17 March 1623 and was officially received at the Spanish Court on the 26th. His lengthy stay, whose purpose was to obtain the hand of princess Maria Anna, was an occasion that required the use of gold and silver ornament in clothing and in banners used to embellish buildings. Merchants were allowed to sell forbidden items, while embroiderers and other specialists in luxury clothing were authorised to continue working as they had done before the royal act of 1 March.

Following this suspension, in late March the king addressed a letter to the highest nobility of the kingdom asking for help in “making the greatest demonstrations of solemnity and gratitude”<sup>4</sup>. He was indirectly suggesting that Madrid should show itself as sumptuously as possible. This occasion required more than individual efforts to display wealth and status. A whole monarchy had to be represented, and the vehicle to this end was the city of Madrid, in the guise of its habitants, its streets, and the façades of its buildings. As Ruth Lee Kennedy rightly argued, the new laws were forced to take second place to matters of appearance. English visitors had to be impressed with the opulence and magnificence of the Spanish monarchy and this was impossible if the court was decked out in “Quaker-like simplicity”<sup>5</sup>.

All the same, one aspect of the new sumptuary law was to be maintained during the period of the visit. That was the ban upon the old-style collar adorned with *lechuguilla* [double ruff]. This was an important symbolic gesture, even if a certain amount of ornament was permitted for the new collar (or *golilla*) which the king, some noblemen, and Charles Stuart himself wore<sup>6</sup>.

Symbolic occasions such as weddings and funerals were specially suited to representations of status, and recognition of this fact worked against all efforts, legal or moral, to limit expenditures on them. In the particular context of 1623, respecting his own decree was less important for Philip IV than properly representing his status. The same also applied to his subjects: special circumstances and the need of social display obliged everyone who could, to contravene or circumvent sumptuary legislation. As Lyndal Roper has put it: “In the wedding the couple laid claim to their social prestige by displaying wealth – in giving, in dressing and in feasting”<sup>7</sup>. It is above all this characteristic

of the early modern culture of appearances that best explains the incessant movement between the poles of sumptuary legislation and contravention of the law.

Yet while this oscillating relationship between luxury and status is hardly surprising, it does not completely explain the inner logic of sumptuary legislation. The historian Antonio Álvarez-Ossorio argues that this legislation aimed to “establish a hierarchical order by criminalising plebeian access to luxury”<sup>8</sup>. Sumptuary laws, according to Alejandro López Álvarez, “insisted that luxury was necessary, precisely to distinguish estates, to separate social orders, and to consolidate the socio-political order”<sup>9</sup>. Darcy Donahue points out that it was the “distinctions between one social category and another which occasioned the efforts of both the Church and the secular authorities to regulate the possession and the display of garments and other bodily adornments”<sup>10</sup>. These affirmations correctly perceive how luxury was used to express status in a culture in which appearances were all important. However, extending this logic to the ways in which sumptuary legislation actually worked is a risky proposition. I will argue in the following section that it is misleading to interpret sumptuary legislation as simply one (higher) social group imposing rules upon others in order to affirm its own status. Moreover, the role the king and the judiciary system played in the maintenance of the sumptuary, as well as the broader social order, was conceived of in very different terms in the early modern period. The main objective of sumptuary legislation was to maintain a certain social order, but this proved to be a far more complex matter than merely differentiating between the privileged and the rest of society. Exemplarity was one of the most important codes with which social hierarchy could be maintained, and the full significance of sumptuary legislation cannot be understood without taking it into account.

One can hardly overlook the very real distaste for outward expressions of luxury and wealth that was frequently found during the 16th and 17th centuries. Contemporary moralists and theologians constantly complained of such excesses, but their critics have seldom been taken into account to describe the phenomenon of sumptuary legislation. In the first book of his *Essays* (1580), Michel de Montaigne denounced what he saw as the contradictory attitude of kings and courts in sumptuary matters: “for to say that none but princes shall eat turbot, or shall be allowed to wear velvet and gold braid, and to forbid them to the people, what else is this but to give prestige to these things and increase everyone’s desire to enjoy them?”<sup>11</sup>. Montaigne combined in his writing a real distaste for luxury with a firm belief in the need for social distinction through external appearance: “From the example of many nations we may learn better ways of distinguishing ourselves and our rank externally (which I truly believe to be very necessary in a state), without fostering such manifest corruption and harm”<sup>12</sup>.

Many others joined Montaigne in condemning luxury as a vice, and its prosecution was indeed seen to be one of the tasks of an exemplary monarch charged with maintaining and affirming the social order. As the cleric Tomás de Trujillo proposed in 1563, the

role of the monarch was to oppose luxury not only by means of law, but above all by way of example, reprehension, and demonstration<sup>13</sup>. In 1615 the royal chaplain of Castile, Fray Juan de Santa María, insisted that the remedy for excessive sumptuary expense “does not lie in laws and decrees but in the example of kings”; in “what the ancient and ourselves have said regarding the example of kings, and regarding imitating them, since the desire to please them is much more powerful than the fear of penalties”<sup>14</sup>. Sovereigns in fact performed or staged such royal exemplarity on certain special occasions. Philip III and queen Margaret of Austria, for example, attended the wedding of the marquises of La Bañeza in December 1601 “dressed *a la pragmática* [in the fashion of the royal decrees], without brocades, ornaments, or any other piece of gold, although many of the ladies and gentlemen who attended the wedding wore many gold brocades and ornaments”<sup>15</sup>.

Considered in the light of exemplarity the change of the king’s collar in 1623, which was maintained throughout Philip IV’s reign in official portraits, can be regarded as a means of expressing the sobriety and the symbolic reformation of the monarchy. Even when specific circumstances required the monarchy to display its wealth, the king’s collar showed to all that the monarchy had a different “style”. In 1623, therefore, the king tried both to express his status by adorning the most visible “face” of the monarchy and to demonstrate his commitment to preserving social order, by maintaining the change in the collar as an exemplary measure.

The rest of this chapter examines some aspects of the making and enforcing of sumptuary laws in early modern Castile. Its aim is both to shed light on some peculiarities of the Castilian legal system and to show in which ways such laws related to other important features of the society which gave rise to them.

## MAKING THE LAW

Early modern Castile was subject to a significant amount of sumptuary legislation, but it has rarely been used as a source with which to analyse the intricacies of the legal system of this central realm of the Spanish Monarchy. Philip II issued sumptuary laws eight times between 1563 and 1594. His son, Philip III, passed four such acts, as did Philip IV. During her regency, the latter’s widow Marianna issued a sumptuary law in 1674, and his heir Charles II himself did so in 1677, 1684, and 1691. At first glance, this may suggest a high degree of repetition, but closer examination of the laws shows that they were continuously modified to meet the necessities of a case-based legal system. Strategic reformulation thus emerged as a means of producing an effect of order while coping with constant changes in fashion.

In December 1564, a year and two months after the publication of his first sumptuary law, Philip II was obliged to issue a *declaración* [explanation] of some of the important points of the decree of 1563, stating that it was his “intention and will that the afore-

mentioned decree be kept and obeyed". The clarification then went on to stipulate that the stitches in the seam of several items of clothing which had previously been banned could now be visible as long as they are not used as embellishments. The new law then went on to express the king's determination regarding this matter, along with his concern that loopholes in the law were being exploited, as a means of "defrauding the contents of the [1563] decree"<sup>16</sup>.

As he neared the end of his reign, Philip II still found himself burdened with the problem of non-compliance with the laws. However, now he adopted the opposite strategy. The edict of 31 December 1593, which was proclaimed and published in January 1594, included precise references to previous laws (1563, 1584, 1590) as a means of conveying the impression that new decrees merely re-enacted past legislation. Yet the 1594 order extended the deadline for shedding illegal clothing, which managed to cast doubt on the enforcement of the 1590 act. Indeed, almost every clause of this text was designed to permit usages that were previously forbidden and to expand rather than regulate and reduce the existing categories of legal clothing. Therefore, the 1593 law, which posed as a new and vigorous means of enforcing existing sumptuary laws, is better seen as a recognition of contemporary practices by means of a rhetoric of explanation of previous laws. Thus while in 1564 Philip II made real efforts to enforce the law, in 1593 he mainly tailored the law, so to speak, to existing usages.

Another example of apparent repetition of a sumptuary law, this one dating from December 1593, addressed new forms of transport. Although previously laws regulated the style and design of horse-drawn carriages, they did not include in their purview new inventions such as three-wheeled chariots or long hybrid carriages known as *carricoches*. The passage of a new law which included the novel vehicles shows that the Castilian legal system was case-based, that is, it legislated on the basis of particular cases instead of general principles. All new forms of clothing, fashion, or design required formulating new regulations which expanded the existing corpus of law. The process of law making, therefore, was not repetitive, but adaptive and strategic.

The process by which new laws came into force is also interesting in other respects. Alejandro López Álvarez has carefully examined this evolution in the sumptuary laws regulating coaches, and sees it as reflecting a process of negotiation between the Castilian Parliament – composed exclusively of representatives of the leading cities of the kingdom – and the king. According to López, apparently minor concessions by the king regarding the design and decoration of coaches, or in the number of horses and mules, reveal important shifts in the process of integration of the urban elites in the structures of royal government<sup>17</sup>.

López Álvarez' painstaking analysis approaches sumptuary laws as a field of negotiation. The final result, as expressed in the legal text, should therefore be understood as reflecting the different interests involved in the process of law making. By carefully examining

these final outcomes one may recover other (unequal) voices that also managed to have their interests represented in sumptuary laws. This does not necessarily mean, however, that there was a perfect link between a particular group's intentions or interests and sumptuary legislation in Castile. As I pointed out earlier, it would be misleading to interpret sumptuary laws simply as being imposed on lower social groups. The legal texts made it clear that at least at first, the laws applied in theory to each and every subject of the crown, to "any person of whatever estate, quality or preeminence". For example, the law of 1565, which regulated spending on funerals specified a maximum number of *hachas* [torches] in the funerals of "any person, regardless of quality, condition, or preeminence, even if he is a titled noble or holds honorary office"<sup>18</sup>.

Specific exceptions to this principle moreover tend to evoke fairly precise categories within contemporary social hierarchies. In 1584, for instance, Philip II exempted university graduates, masters of arts, and holders of doctorates from the provisions of a law – issued in 1579, and already modified for the clergy – that prohibited the use of ornaments when riding mules<sup>19</sup>. Furthermore, many items related to religious practice, such as clothing, altarpieces, and sacred vessels, were repeatedly exempted from sumptuary legislation – hardly that surprising, given the state's strong commitment to the Counter-Reformation. Soldiers are sometimes exempted too, in either concrete circumstances (as when they were involved in military manoeuvres), or more generally, as in the law of 1611. Prostitutes and foreigners are the two other groups such legislation habitually distinguished, and doubtless reflected their dubious status in the eyes of lawmakers.

In 16th-century England, sumptuary legislation was applied "on a graduated basis according to the condition and means of the wearer"<sup>20</sup>. This suggests a legal system more sensitive to social distinctions. Castilian law did not recognize such distinctions until 1600, when grandees were allowed to be preceded in processions by four torches, whereas everyone else was permitted only two. Reference in legislation to differences among estates became more frequent as time went by. In 1657, together with a series of measures banning commerce with Portugal, France, and England, there appeared for the first time mention of "everyone in his estate ... observing due sobriety, according to his rank"<sup>21</sup>. In 1674, the Council of Castile was admonished when trying criminals to judge and punish them according to the "quality and station of the defendant"<sup>22</sup>. This explicit social differentiation reached its peak in 1691 when a law seeking to reduce the number of coaches on the streets of Madrid prohibited certain groups from owning them. These included lesser officials of the monarchy, ministers, craftsmen, and merchants<sup>23</sup>.

Notwithstanding such references to differences in rank, perhaps the most important argumentative foundation of the legislation against luxury was economic. Sumptuary laws expressed specific concern that the kings' subjects would spend their fortunes on luxury goods to the detriment of their own wealth<sup>24</sup>. This fear found clearest expression in the law of 1611, which ordered that "the wealth of our subjects is not to be con-



sumed nor wasted in superfluous and excessive things but rather should be preserved to be employed in those which are useful and necessary”<sup>25</sup>. The stated purpose of the law of 1623 was the “universal benefit of the crown and the restoration of commerce, utility, and [public] welfare”<sup>26</sup>. The law of 1657 sought to protect “the good public governance of our realms”<sup>27</sup> while that of 1674 referred to the “great harm occasioned in all these realms, both universal and particular, by relaxation in the apparel of men and women”<sup>28</sup>. Furthermore, in both of these latter cases special mention was made of foreign merchandise and the damage it wreaked on domestic manufactures. Such explicit references to economic motivation, combined with devising measures to combat the perceived danger, may well be regarded as an early form of protectionism.

Such references to the need to legislate with the public good in mind portrayed the realm as a large family needing proper governance. For example, in 1623 it was stated that because servants “enjoy a free, idle, and comfortable life they leave their houses and towns, abandoning their wives, children, and the cultivation of the land”. This, it was stated, led to “universal and public harm” because it “depopulates the Realm, lowers our royal income, and lessens the number of people available for military service”<sup>29</sup>. Preoccupation with the public weal also coloured contemporary English sumptuary legislation. An Elizabethan proclamation of 5 June 1574 states that the excess of apparel had grown to such a point that “the manifest decay of the whole realm is likely to follow”. It then goes on to lament the particular harm sumptuary expenditures cause, namely “the wasting and undoing of a great number of young gentlemen, otherwise serviceable who, allured by the vain show of those things, do not only consume themselves, their goods, and lands but also run into such debts as they cannot live without attempting unlawful acts, whereby they are not in any way serviceable to their country as otherwise they might be”<sup>30</sup>.

It could be argued that some of the grounds and justifications these laws expressed obscure their aim of controlling and maintaining the differences between estates. Still, a discourse concerning the maintenance of public order emerges clearly enough. Within its framework wealth is seen as a matter of public concern which affects the health – economic and otherwise – of the monarchy and the common good. This is particularly interesting because this is by no means the predominant emphasis within the discourse of moralists and theologians, which habitually refers to the feminization and weakening of society in moral terms. Strictly moral considerations inconveniences of this sort tend not to appear as grounds for action within the public text of sumptuary laws.

The actual wording of sumptuary laws is closely tied to the king’s role as head of the judicial system. The sovereign’s responsibility for both issuing and executing laws were key attributes of his authority. Wilfrid Hooper has shown that in England, the disappearance beginning in 1604 of acts regarding apparel reflects the opposition of the houses of Parliament to legislation by proclamation, an all too frequent practice under Elizabeth I. Hooper clarifies that “the sudden repeal of the sumptuary laws seems at-

tributable, therefore, solely to opposition excited on constitutional grounds and not to any perception of their futility or to any reaction in sumptuary feeling<sup>31</sup>. Following Hooper, one could affirm that in the very promulgation or elaboration of this kind of law the monarchy was exercising real power, a power that was in a certain sense independent of the contents of the law.

Still, recognizing disorders and difficulties in the attribution of social status, and stating them as such in a legal text amounted to recognising the existence of a disordered republic. Not surprisingly, moralists criticised more overtly and often this slippage in social differentiation than kings did. At the same time they introduced a gendered vision of contemporary problems, habitually identifying feminization with corruption and decay. In 1635, for example, Tomás Ramón published his *Nueva Pragmática de Reformatión* [New Act of Reform], as an explicit act of protest against the disordered republic. Naturally, he focused on sumptuary expenses: “Were everyone to pay proper attention to his estate, there would not be the excesses [that we see] in the clothes used by men as well as by women”. But, unfortunately “*Nemo sua sorte contentus est*. Everyone wants, by his clothes and manners, to seem to be what he is not”; “now everyone is so nicely dressed that divine revelation is needed to know whom is whom<sup>32</sup>. From the viewpoint of the legislator, “excesses” and “abuses” had to be corrected and the order reformed, but no doubt could be cast on the existence of the order itself. It is therefore not strange that sumptuary laws were written in a language that also constantly stressed the role of the king in maintaining public order.

I now turn to examining the implementation of sumptuary laws to show how the particular ways in which legislation was applied or moderated by the king or used by other persons also helped to reinforce the roles they played within the Castilian legal system, as well as the system itself.

## ENFORCING THE LAW

The difficulty of enforcing sumptuary laws has attracted the attention of historians who believe that the sheer amount of legislation testifies to widespread disrespect for these laws in early modern Europe. Valérie Dionne, for example, considers that “the high number of sumptuary edicts in sixteenth-century France (two with Henry II, four with Charles IX and two with Henry III), reveals their failure or the difficulties of observance and a requirement for constant call to order<sup>33</sup>. Darcy Donahue argues a similar point in reference to early 17th-century Spain: “despite the barrage of sumptuary legislation in the decade before the publication of the *Novelas Ejemplares* in 1613 these laws were on the whole difficult to enforce<sup>34</sup>. In her analysis of Venice, Jutta Sperling goes even further and states that “sumptuary laws were unenforceable<sup>35</sup>. Donald Shively has tackled the crucial question of the effectiveness of sumptuary laws by using literary and legal texts. He concluded that in Tokugawa Japan (1600-1868) “the frequency with

which laws were reissued suggests that the government relied more on admonition, exhortation, and threat than on actual penalties. As in the case of laws concerning kabuki, it is probably true that the laws received considerable respect for a period immediately following their issue, and that gradually the infringements became more overt and more extreme. This is evident in the derisive expression, *mikka hatto*, ('three day laws')<sup>36</sup>.

All this should make us think more deeply about the meaning of enforcement. One can hardly doubt that extensive enforcement of these laws by early modern courts would have provided historians mountains of trial records. The fact that such abundant sources have yet to be located leads one to suspect that sumptuary laws were not enforced consistently, if at all. As Shively suggests, the clue to understanding this issue may lie in the study of alternative forms of enforcement which, while not involving actual prosecution, were still considered to be effective means of maintaining order.

First, it should be noted that scepticism regarding the effects of sumptuary legislation was widespread throughout the early modern era. Luis Cabrera de Córdoba, a contemporary historian who wrote an account of the early years of Philip III's reign, expressed his doubts regarding the efficacy of the 1611 regulations of clothing, coaches, and jewels. In his view, even if great penalties were introduced "it is doubtful whether compliance with the decrees would lead to any great reform in this court"<sup>37</sup>. Such doubts can also be found in the comments of a Madrid silversmith and producer of luxury goods, who ended his account of the implementation of the 1623 law with the following remark: "this will last as long as God enjoys the *burla* [joke]"<sup>38</sup>. Alejandro López Álvarez has found two other contemporary opinions regarding the 1593 law in the letters of the aristocrat Diego Sarmiento de Acuña. One of his correspondents, one Pedro de Rojas, wrote that "these matters always go so slowly that when they finally come out they are already forgiven, and about this one [1593] I believe that it will be completely forgiven". The second correspondent, García Sarmiento de Acuña, disagreed and assured that the law "will be properly observed"<sup>39</sup>.

Notwithstanding this scepticism about their enforcement it seems logical to assume that sumptuary laws were expected to produce some effect; otherwise the king and his ministers would not have devoted so much effort to this matter. In fact, in 16th and 17th-century Castile the enforcement of the law was considered extremely important. In the famous novel by Miguel de Cervantes, *Don Quixote* instructs his squire Sancho Panza, who had been named governor of the island of Barataria, "not to make many proclamations; but those thou makest take care that they be good ones, and above all that they be observed and carried out; for proclamations that are not observed are the same as if they did not exist; nay, they encourage the idea that the prince who had the wisdom and authority to make them had not the power to enforce them"<sup>40</sup>. Examination of two different sumptuary laws shows the differing strategies the sovereign used to deal with the difficulties of enforcing the law while maintaining his authority as its maker. In some instances this implied making corrections of or exceptions to the gen-

eral law. These exemptions can be interpreted as an expression of the incapacity of the king and his justice to enforce the law. Yet they can also be seen as another means of reinforcing the judicial attributes of the king and the judiciary system as a whole.

In the parliamentary session of 1590 a number of members representing the cities raised doubts about applying the regulations of 1586 to silk manufactures. Apparently the silk merchants of Toledo, Murcia, and Madrid had protested against such restrictions and “supplicated” the king for “some moderation in the aforementioned prohibition”<sup>41</sup>. They addressed a formal petition to the crown which enumerated the inconveniences the law gave rise to, and proposed remedies and asked for new regulations. As a result silk weaving was permitted in Castile subject to certain restrictions. Also, the time limit for wearing clothes which infringed the law was extended another six years. All this meant that the measures of 1586 regarding silk were never enforced. However, the procedure for “moderating” the law allowed the king to maintain his authority even if the actual implementation of the measures never took place. As this example shows, attempts to claim special favors and exemptions from previous laws could strengthen the authority of the king or of other figures to whom these petitions were addressed. A similar mechanism can be clearly perceived in the licenses issued for coaches whose general use was banned by royal decrees. The very fact of requesting such a license meant recognising the king’s authority. At the same time, obtaining such a license reinforced the particular status of the petitioner, and differentiated him from patently “illegal” users of coaches.

My second example refers to the 1623 legislation which affected in particular the *pasamaneros*, or haberdashers. The authorities had proved that they were very capable of enforcing the law in March 1621, when the merchants of Madrid’s Calle Mayor and Puerta de Guadalajara were forced to burn all prohibited goods stored in their shops. According to the chronicler Andrés Almansa y Mendoza this episode represented “the beginning of great reforms” in clothing and collars<sup>42</sup>. These artisans complained of being “more affected than the rest” and demanded special measures to protect them against such rigorous measures. When making their petition “they spoke to the Count of Olivares, to the [royal] confessor and to other persons who could intercede with his Majesty. But little pressure was needed, for a benign prince does not want harm but good for his vassals”. Recourse by means of petitions wound up reinforcing the different roles involved in the administration of justice in Castile. In the end the artisans were given licenses which allowed them “to finish the pieces of cloth that they were already working on and to use, within certain limits, the silk that they had bought for this end”<sup>43</sup>.

Referring again to the law of 1623, Almansa provides fascinating insights into the strategies deployed for its “enforcement” during the early period following its issuance. After mentioning the large number of arrests on the first day that the law came into effect he notes that “the rumour about the rigour spread and reached the ears of the President

and the Council of Castile. It is even said that his Majesty heard of it, and it is believed that together they ordered, being the great rulers that they are, all prisoners to be freed at the next day's hearings, and all denunciations voided"<sup>44</sup>. Thus, the king and his ministers reinforced their authority not by enforcing the law with undue strictness, but by keeping it to its just terms. Some may see in these examples of failure fully to enforce the law evidence of the inefficient functioning of the judicial system as whole. Nevertheless, as I have tried to show, they actually strengthened the roles attributed to the different participants in the system.

Finally, I would suggest that the notion of enforcement needs to be enlarged by considering the means by which law was communicated in early modern societies. This question of the presentation of the law was crucial to reinforcing its prestige, even if this sometimes took forms – preaching, for example – that seem incomprehensible from the standpoint of modern conceptions of transmission of law.

In 1563 the cleric Tomás de Trujillo admonished Philip II to fulfil the objectives of his sumptuary legislation through leading by example. He also considered that the situation was already so corrupt “that many sermons have to be preached and books written” to correct the problem<sup>45</sup>. One Arias Gonzalo raised these ideas again in 1636 when he suggested that “this matter has merely to be remedied by each one in his home and family [...] and everyone urged either by the general and evangetic voice of the preachers, or by the private rebuke of his confessor”<sup>46</sup>. Enforcement of the law was therefore intertwined with religious observance. This approach to law was moreover not restricted to preachers and moralists. For example, in 1644 the President of the Council of Castile –one of the highest judicial authorities in the kingdom– wrote a leading Franciscan to ask for help in moderating the sumptuary expenditures of the populace. He penned this missive amid particularly difficult circumstances, including the secession of Portugal and the rebellion of Catalonia of 1640, which together were exhausting the Monarchy's resources. The letter opened with these words: “His Majesty incessantly requires of me the proper administration of justice and the reform of customs, justly attributing the ills we suffer (and that placed such a burden on these realms) to [our] public sins”. What is especially interesting here is the following passage, which identifies preaching and confession as the prime means of reform: “such relaxation cannot be controlled by decrees, which are only mocked, nor can any such penalties refrain such a licentious multitude. Only the pulpit and the confessional can reform these abuses...”<sup>47</sup>. The arguments found in this letter, which tries desperately to explain the reasons behind the misfortunes then befalling the Monarchy, equate transgressors of the laws with sinners, and blames them for the ills afflicting the entire kingdom. Enforcement was not only conceived as an issue which concerned legal authorities. It also extended to the moral and religious governance of society. This proved to be a peculiarly early modern notion of law enforcement and the product of a complex historical rationality that went beyond the strict confines of sumptuary legislation in 16th and 17th-century Castile.

## CONCLUSION

Sumptuary laws were the product of a culture of appearances which required visual expression of status and social distinction. They also stemmed from the disapproval of luxury expressed by moralists and theologians. Such cross-currents led to a constant flux between repression, exemption, and contravention. One of the main characteristics of this curious mixture was one of the more singular features of early modern visions of law: the king's duty of leading by example. Making and executing the law was a unique process of negotiation in which the king played the principal role, but in the company of many other parties. Negotiation, moderation, and exemption also served to reinforce the authority of the king, and to maintain a basic conception of social order. To fully understand how this worked it may be necessary to enlarge our understanding by focusing on alternative sources for the reconstruction of early modern legal culture. For example, the concept of enforcement needs to be modified in order to include forms of communication and implementation which promoted conformity with the law without involving actual prosecution. Above all, more analysis of the linkage between crime and sin is needed. As this case suggests, early modern Castilian sumptuary laws constitute a particularly fruitful locus for advertising and disseminating this connection.

## NOTES

- <sup>1</sup> *Capítulos de Reformatión*, Madrid 1623, f. 7r.
- <sup>2</sup> P. Fernández Navarrete, *Conservación de Monarquías y Discursos Políticos sobre la Gran Consulta que el Consejo Hizo al Señor Rey don Filipe Tercero*, Madrid 1626, p. 14.
- <sup>3</sup> See the source at the end of this chapter.
- <sup>4</sup> G. González Dávila, *Teatro de las Grandezas de Madrid*, Madrid 1623, p. 198.
- <sup>5</sup> R.L. Kennedy, *Certain Phases of the Sumptuary Decrees of 1623 and their relation to Tirso's Theatre*, in "Hispanic Review", 1942, 10, p. 95.
- <sup>6</sup> R. González Cañal, *El Lujo y la Ociosidad durante la Privanza de Olivares: Bartolomé Jiménez Patón y la Polémica sobre el Guardainfante y las Guedejas*, in "Críticón", 1991, 53, p. 73.
- <sup>7</sup> L. Roper, 'Going to Church and Street': *Weddings in Reformation Augsburg*, in "Past and Present", 1985, 106, p. 74.
- <sup>8</sup> A. Álvarez-Ossorio Alvariño, *Rango y Apariencia: el Decoro y la Quiebra de la Distinción en Castilla (siglos XVI-XVIII)*, in "Revista de Historia Moderna: Anales de la Universidad de Alicante", 1998-1999, 17, p. 263.
- <sup>9</sup> A. López Álvarez, *Poder, Lujo y Conflicto en la Corte de los Austrias. Coches, Carrozas y Sillas de Mano, 1550-1700*, Madrid 2007, p. 155.
- <sup>10</sup> D. Donahue, *Dressing Up and Dressing Down: Clothing and Class Identity in the Novelas Ejemplares*, in "Cervantes. Bulletin of the Cervantes Society of America", 2004, 24, p. 107.
- <sup>11</sup> M. de Montaigne, *The Complete Essays of Montaigne*, ed. and trans. D. Frame, Stanford 1967, p. 196.
- <sup>12</sup> Montaigne, *Essays* cit., p. 196.
- <sup>13</sup> T. de Trujillo, *Libro Llamado Reprobación de Trajes, y Abusos de Juramentos*, Estella 1563, unpagged epistle dedicatory.

- <sup>14</sup> J. de Santa María, *Tratado de Republica y Policia Christiana*, Madrid 1615, p. 456
- <sup>15</sup> L. Cabrera de Córdoba, *Relaciones de las Cosas Sucedidas en la Corte de España desde 1599 hasta 1614*, Madrid 1857, p. 129.
- <sup>16</sup> *Declaración de la Pragmática de los Vestidos y Trajes que su Majestad Mandó Hacer en las Cortes que Celebró en la Villa de Madrid el Año pasado M. D. LXIII*, Alcalá de Henares 1564.
- <sup>17</sup> López Álvarez, *Poder* cit., p. 154.
- <sup>18</sup> *Premática en que se Da la Orden que se Ha de Tener en Traer los Lutos en Estos Reynos*, Madrid 1588.
- <sup>19</sup> *Cédula de su Magestad para que los Doctores, Maestros, y Licenciados [...] puedan andar todo el tiempo del año en mulas con gualdrapas*, Madrid 1584.
- <sup>20</sup> W. Hooper, *Tudor Sumptuary Laws*, in “English Historical Review”, 1915, 30, p. 433.
- <sup>21</sup> [*Real Cédula Prohibiendo el Comercio con Portugal, Francia e Inglaterra, 9 de Noviembre de 1657*], art. 7.
- <sup>22</sup> *Pragmática que su Majestad Manda Publicar sobre la Reformación en el Exceso de Trajes, Lacayos y Coches*, Madrid 1674, art. 21, fol. 6v.
- <sup>23</sup> *Pragmática que su Magestad Manda Publicar, para que se Guarde, Execute, y Observe la que se Publicó el año de 1684 sobre la Reformación en el Exceso de Trages, Coches, y Otras Cosas en esta Contenidas*, Madrid 1691.
- <sup>24</sup> *Actas de las Cortes de Castilla, I, Cortes de Madrid, celebradas el año de 1563*, Madrid 1861, p. 389.
- <sup>25</sup> *Premática en que se Prohiben Colgaduras y Adereços de Casas...*, Madrid 1600 and *Premática y Nueva Orden cerca de las Colgaduras de las Casas...*, Madrid 1611.
- <sup>26</sup> *Capítulos de Reformación* cit., f. 1v.
- <sup>27</sup> [*Real Cédula Prohibiendo el Comercio con Portugal...*] cit., art. 26.
- <sup>28</sup> *Pragmática que su Majestad Manda Publicar sobre la Reformación en el Exceso de Trajes* cit., f. 2v.
- <sup>29</sup> *Capítulos de Reformación* cit., fol. 7r.
- <sup>30</sup> *Enforcing Statutes of Apparel, issued at Greenwich, 15 June 1574, 16 Elizabeth I*, transcribed in Maggie Secara, *Elizabethan Sumptuary Statutes* [Electronic resource: <http://elizabethan.org/sumptuary/who-wears-what.html>, consulted 12 December 2007].
- <sup>31</sup> Hooper, *Tudor* cit., p. 449.
- <sup>32</sup> T. Ramón, *Nueva Premática de Reformación Contra los Abusos de los Afeytes, Calçado, Guedejas, Guarda-infantes, Lenguaje Critico, Moños, Trajes y Exceso en el Uso del Tabaco*, Zaragoza 1635, p. 284.
- <sup>33</sup> V. Dionne, *La résonance des lois somptuaires dans les Essais de Montaigne. Réflexions sur les paradoxes du luxe*, in L. Frappier, C. Latraverse (eds.), *Cahier du Groupe de recherches sur les entrées solennelles*, Montréal 2003, p. 49.
- <sup>34</sup> Donahue, *Dressing* cit., p. 107.
- <sup>35</sup> J. Sperling, *The Paradox of Perfection: Reproducing the Body Politic in Late Renaissance Venice*, in “Comparative Studies in Society and History”, 1999, 41, p. 23.
- <sup>36</sup> D. H. Shively, *Sumptuary Regulation and Status in Early Tokugawa Japan*, in “Harvard Journal of Asiatic Studies”, 1964-1965, 25, pp. 133 and 134.
- <sup>37</sup> Cabrera de Córdoba, *Relaciones* cit., p. 427.
- <sup>38</sup> A. León Soto el Joven y J. de Manjarrés, *Noticias de Madrid, 1588-1622*. Biblioteca Nacional, Madrid/ Ms. 2395, f. 114r.
- <sup>39</sup> López Álvarez, *Poder* cit., p. 166.
- <sup>40</sup> M. de Cervantes, *Don Quixote*, trans. John Ormsby, Chicago 1952, part II, chap. 51.

- <sup>41</sup> *Pregmática en que se Permite Hazer Sedas Labradas en estos Reinos y Vestirse dellas Libremente*, Alcalá de Henares 1590.
- <sup>42</sup> Almansa y Mendoza, *Cartas de Andrés Almansa y Mendoza: Novedades de esta Corte y Avisos Recibidos de Otras Partes (1621-1626)*, Madrid 1886, p. 83.
- <sup>43</sup> *Ibid.*, pp. 160-161.
- <sup>44</sup> *Ibid.*, p. 160.
- <sup>45</sup> T. de Trujillo, *Libro Llamado Reprobación de Trajes, y Abusos de Juramentos*, Estella 1563, unpagged dedicatory epistle.
- <sup>46</sup> Licenciado Arias Gonzalo, *Memorial en Defensa de las Mugeres de España y de los Vestidos y Adornos de que Usan*, Lisbon 1636, f. 20r-v.
- <sup>47</sup> F. de S. Buenaventura, *Breve tratado del Adorno del Alma, y Descuido del Cuerpo*, Seville 1644, unpagged prologue to the reader.

## BIBLIOGRAPHY

- Bernis C., *El traje y los tipos sociales en El Quijote*, Madrid 2001.
- Berry C., *The Idea of Luxury: a Conceptual and Historical Investigation*, Cambridge 1994.
- Hunt A., *Governance of the Consuming Passions: a History of Sumptuary Law*, Basingtoke 1996.
- De la Puerta Escribano R., *La segunda piel: historia del traje en España (del siglo XVI al XIX)*, Valencia 2006.
- De Sousa Congosto F., *Introducción a la Historia de la Indumentaria en España*, Madrid 2007.
- Roche D., *Histoire des choses banales. Naissance de la consommation dans les sociétés traditionnelles (XVII<sup>e</sup>-XIX<sup>e</sup> siècle)*, Paris 1997.
- Sempere y Guarinos J., *Historia del lujo y de las leyes suntuarias de España*, Madrid 1788.
- Tomás y Valiente F., *Delinquentes y pecadores*, in Tomás y Valiente F., Clavero B., Bermejo Cabrero J.L., Gacto E., Hespanha A.M. (eds.), *Sexo barroco y otras transgresiones premodernas*, Madrid 1990, pp. 11-31.

## SOURCE

The sumptuary laws of 1564, 1565, 1584, 1594, 1600, 1602, 1611, 1623, 1657, 1674 and 1691 mentioned above have been collected in the *Legislación Histórica de España* [Historical Legislation of Spain] project and can be consulted on its web page <http://www.mcu.es/archivos/lhe>. The following source is the special proclamation which suspended the 1623 legislation. By approaching luxury as an expression of status as well as the object of exemplary symbolic measures, it provides insight into some of the peculiarities of the early modern legal system.

*Manda el Rey nuestro señor que no embargante las leyes y premáticas de estos reinos y de las últimamente promulgadas en razón de los trajes, en significación del contento de haber venido a estos reinos el señor príncipe de Gales, por el tiempo que estuviere en ellos, se suspenda, como desde luego se suspende, la execución dellas, y se permite el uso de oro, plata, y seda en telas, quarniciones, bordaduras de vestidos de hombres y mujeres, y en las libreas de fiestas, y*



*en las gualdrapas, y generalmente en todas cosas de traje. Y las mujeres puedan llevar en las lechuguillas, puños y mantos, puntas y guarniciones, y los mercaderes puedan vender y comprar libremente las cosas referidas, aunque no sean de cuenta y ley, y los plateros, bordadores y pasamaneros usar libremente y sin limitación sus oficios como solían; quedando cuanto a1 uso de las valonas y cuellos en su fuerza, para que se guarde puntualmente lo dispuesto por las dichas premáticas, con que se permite en las valonas y cuellos se puedan traer puntas y azul, almidón y goma, conque el tamaño de los cuellos sea el contenido en la dicha premática, que es el dozavo, sin entrar en la dicha medida las puntas y conque se puedan abrir con molde; todo lo cual se entiende por ahora para esta corte. Mandóse pregonar públicamente para que venga a noticia de todos.*

Our lord the King orders that, notwithstanding the laws and acts of these realms and those recently promulgated regarding dress, because of the joy at the arrival at this court of the Prince of Wales, the execution of them be suspended, and that the use of gold, silver, and silk in textiles, ornaments, and the embroidery of clothes, both of men and women, and also in festive liveries, coverings, and generally in every piece of clothing be permitted. Likewise, women may wear laced ends and trimmings in collars, cuffs, and cloaks; merchants might freely sell and buy the said items, even if they do not conform to the law; and silversmiths, embroiderers, and haberdashers may exercise their trades freely and without limitation as they used to do. The laws are to be maintained in vigour for the use of collars and *valonas* [simple collars], and what was ordered in the said acts should be obeyed exactly, although it is now permitted to use blue powder, starch, and gum as long as the length of the collars is the one referred to in the mentioned act, that is the 12th [part of a *vara*, around 7 cm] not measuring the laced ends. It is also permitted to open collars with a mould. All this is to apply to this court city and for the present. It is ordered that it be publicly proclaimed to make it known to everyone.

[*Pregón que por Mandado del Rey... se ha Dado en esta Corte en Veinte y Dos de Março deste Año de Mil y Seiscientos y Veinte y Tres sobre la Suspensión de los Trages, y Otras Cosas Prohibidas en las Últimas Premáticas*, Madrid 1623, Biblioteca Nacional, Madrid, V.E. 37/57 and V. E. 39/71. First translated, with minor differences, in R. L. Kennedy, *Certain Phases of the Sumptuary Decrees of 1623 and Their Relation to Tirso's Theatre*, in "Hispanic Review", 1942, 10, p. 96].