

"I AM NOT YOUR FATHER":
INCESTUOUS CRIME AS A WINDOW INTO LATE
COLONIAL GUATEMALAN SOCIAL RELATIONS

AN ABSTRACT

SUBMITTED ON THE SIXTEENTH DAY OF FEBRUARY 2018

TO THE DEPARTMENT OF ANTHROPOLOGY

IN PARTIAL FULFILLMENT OF THE REQUIREMENTS

OF THE SCHOOL OF LIBERAL ARTS


OF TULANE UNIVERSITY

FOR THE DEGREE

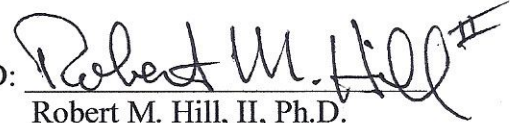
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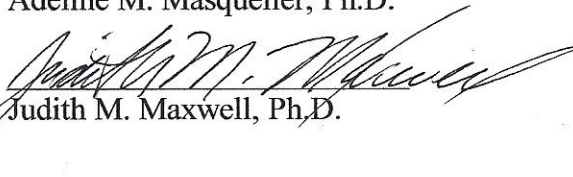

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This research explores late colonial Guatemalan social relations through the lens of incestuous crime. The topic of incest in New Spain has received some scholarly attention (e.g. Margadant 2001, Jaffary 2007, Penyak 2016). For colonial Central America, incest cases have surfaced in studies on sexual violence (Rodríguez-Sáenz 2005 and Komisaruk 2008). Still, research on incest in both its consensual and non-consensual forms is missing for colonial Guatemala, and this investigation fills the gap. The study is based on data collected from criminal records produced in the secular colonial courts. Feminist and postmodern critiques both within and beyond anthropology have shaped its analysis. Chapter 2 begins with a description of the system of socioracial classification and the culture of honor in Spanish America. This is followed by a discussion of how patriarchal authority could lead to violence against female kin. Chapter 3 charts the evolving definition of incest in canon law and shows its impact on Spanish civil law. It concludes with an examination of the penalties associated with Guatemalan incest trials and their intersections with race, gender, and marital status. Chapter 4 presents the types of incest typically brought to trial and the discourse generated by incest in its various manifestations. It also considers how the nature of kin ties influenced the interpretation of evidence and expectations of how individuals would behave in the courtroom. Chapter 5 explores the malleable nature of colonial Guatemalan kinship and the complications it could cause during incest trials. It then looks at how colonial Guatemalans used kinship in strategic ways. Chapter 6 focuses on how incestuous crime was associated with Indianness and the polarizing effect it would have had on race relations. Overall, this study of incestuous crime highlights how the realm of kinship served to reinforce hierarchies of race and gender. It reveals the subjective and relative nature of kin ties and

the strategic actors behind them. It shows a dialectical process in which actors with different conceptions of relatedness and incest confronted one another and created the potential for cultural and legal change.

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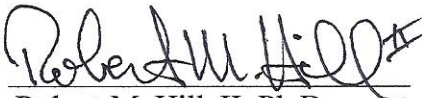
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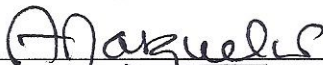
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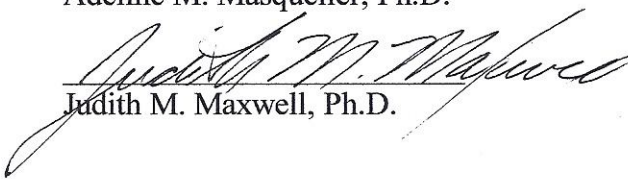

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*In loving memory of
George Paul Saffa, Jr., who I imagine would
appreciate the irony of this dedication*

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I offer my sincerest gratitude to my advisor and committee members for all their thoughtful commentary and advice throughout this process. I am further indebted to the AGCA staff and to my fellow researchers at the archive in Guatemala City for all their help with and guidance to the collections housed there. I would also like to extend my appreciation to my colleagues for their camaraderie and input over the years. And I thank my family and friends for their continued support and encouragement at every step of this journey; I couldn't have done it without you!

FOREWORD

When I began this project, I intended to explore incidences of both incestuous and reproductive crimes (abortion, infanticide, child neglect) for the reconstruction of concepts of relatedness and kin relations in colonial Guatemala. However, once I began to immerse myself in these documents, I found criminal records related to incest especially rich and revealing in terms of kinship dynamics and the contextual nature of relatedness, so I decided to hone my focus on them.

I came to view incestuous offenders as a community of sorts of individuals who were under the thumb but also strayed from Spanish incest law, whether such deviance was carried out consciously, or even on one's own initiative. Examining parallel offenses among individuals of distinct backgrounds brought commonalities in relatedness into view. At the same time, nuances in incestuous crime became apparent. In short, having one unifying factor allowed for the discovery of both similarities and differences in the diverse subject population.

What follows is an analysis of the insights afforded by incest cases into social relations in colonial Guatemala. Occasionally, data from other types of criminal records are used in a supportive capacity. However, the ultimate framework of this study stems from information obtained from criminal proceedings surrounding incestuous crime that were carried out in the secular Spanish courts.

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Indianness in Incest Cases

Challenges to and Reinforcements of Colonial Discourses:
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CHAPTER 1

INTRODUCTION

In *The Elementary Structures of Kinship* (1969 [1949]), Claude Lévi-Strauss argues that the incest taboo is a human universal that is culturally defined.¹ For Spain and its American colonies, the definition of *incesto* (“incest”) was codified in civil and canon law and included sexual relations between individuals connected through consanguinity, affinity, and “spiritual kinship.”² However, considering the level of diversity in colonial Guatemala, non-orthodox interpretations of incest would certainly exist. Colonial Guatemala was largely made up of indigenous Maya,³ but Spanish- and American-born Spaniards, Africans, and individuals of mixed descent also formed a part of the fabric of colonial society. There were large discrepancies in levels of education such that many individuals were illiterate while others held professional degrees. Religious indoctrination and scrutiny by Spanish colonial authorities was uneven at best, allowing indigenous and rural areas greater liberty from the enforcement of civil and canon norms.

This study focuses on secular criminal records in which individuals knowingly or unknowingly breached civil (and canon) incest law. These records provide insights into social relations in colonial Guatemala on various levels. They show expectations of kin (and non-kin) and contain details of the lived experience of kin relations, especially in their gendered aspects. They demonstrate the mutable and contextual nature of relatedness for colonial Guatemalans as they navigated forced and consensual sexual relations and the Spanish criminal process. They reveal strategic actors who used

concepts of kinship and incest for personal protection and gain. Incest trials also include colonial constructions of “Indianness” that would have served to further polarize Indians and non-Indians while marking the former as inferior to the latter. Whether incestuous acts were intentional or not, they represented challenges to legal conceptions of incest and generated discussion about whether all incestuous acts were equally criminal. In the end, the interactions between the various actors in incest trials had the potential to shape respective understandings of relatedness and incest.

Theory and Context

Colonial Guatemala was a region within the viceroyalty of New Spain, which included territories within the southern United States, Mexico, and Central America. The Kingdom of Guatemala included the area between modern-day Chiapas and the Costa Rica-Panama border. Today’s nations of Guatemala and Belize formed the province of Guatemala within the larger Kingdom of Guatemala, and this province functioned as its social and economic center (Jones 1994: xii, 37-38). All of the cases analyzed in this study took place within this colonial province and span from the years 1682-1821, the year in which independence from Spain was declared.

Colonial Guatemala has been a relatively understudied area in New Spain when compared to colonial Mexico. While incest in colonial (and post-independence) Mexico has received some scholarly attention (e.g. Margadant 2001a; Jaffary 2007; Penyak 2016), colonial Guatemala has been largely overlooked in this regard. So far, incest cases seem to have only surfaced in studies on sexual violence (Komisaruk 2008; Rodríguez Sáenz 2005 for Costa Rica). Thus, this study is intended to help fill this gap, looking at incestuous relationships in both their consensual and non-consensual forms.

Incestuous crime naturally intersects with concepts of kinship or relatedness.⁴ In this sense, this study is indebted to anthropological work in kinship theory. Following reflexivity within the broader postmodern movement, kinship came to be viewed as an ethnocentric construct reflecting a Western worldview.⁵ Thus, it was argued, kinship should not be considered to have some pre-social, universal existence (e.g. Schneider 1984; Collier and Yanagisako 1987). Such criticism was based primarily on kinship's supposed roots in reproduction, a prominent feature of Western kinship ideologies and, subsequently, in anthropologists' kinship charts. Because of such debate, kinship is now viewed in more optative and fluid terms and as not necessarily tied to so-called blood relations.⁶ While concepts of relatedness in many ways centered on blood ties in colonial Guatemalan incest trials, the nature of kin ties was regularly presented in subjective and relative terms. Since cultural anthropologists often work with living populations, this study aims to contribute to such conversation by presenting similar dynamics in a historic one.

This study has also been shaped by the work of feminist anthropologists. Early works by scholars like Sherry Ortner (1972), Michelle Rosaldo (1974), and Gayle Rubin (1975) have pointed to how gender asymmetries and heteronormativity are the products of social processes (e.g. kinship) and *not* biologically determined. Along these lines, analysis of incestuous crime highlights the ways in which gender formed a principal component of kin norms and the ways these norms could contribute to violence against women and girls in colonial Guatemala. Indeed, the case sample demonstrates that incestuous violence was gendered; only women and girls in the sample were subjected to it. Concepts of incest also clearly reinforced a heteronormative environment. Following

various legal codes and the cases of incest that were brought to trial in Guatemalan secular courts, “incest” only referred to sexual relations between male and female kin.

Works focused on how power is exercised through language and discourse have been influential as well, especially for analysis of Indianness as it surfaced in incest trials.⁷ The ways in which Indians were portrayed by legal authorities and defense counsel in Guatemalan incest trials led to an association between this sector of the population and this particular crime and placed them in an inferior position in relation to Spaniards. For their part, Indian actors both contradicted and reinforced such representations.

The defendants in the incest cases discussed here were largely non-elite, and this analysis to some extent reflects the growing scholarly interest in subordinated populations and their responses to dominant forces (the resistance/accommodation paradigm). James C. Scott’s (1985) *Weapons of the Weak: Everyday Forms of Peasant Resistance* was particularly influential in the academic world because of how it highlighted the ways in which subordinated peoples resist the powers that bind them. Colonial Guatemalans who committed incest completely aware of its proscription show outright resistance to colonial law and its elite enforcers. Even those who engaged in incest unknowingly demonstrate a failure on the part of colonial authorities to homogenize concepts of incest. Some individuals no doubt obliged warnings by magistrates to separate from their lovers, but others were tried more than once (Case 18). Susan Kellogg (1995: xxii) mentions how law is “an arena of cultural conflict and accommodation” and “a catalyst of cultural change and adaptation.” To be sure, colonial

Guatemalan defendants sparked debate about and conflict over incestuous crime, creating potential for cultural (and legal) change.

Resistance narratives have been especially popular among scholars of indigenous peoples and women in Spanish America in terms of how indigenous peoples adapted to and resisted new systems introduced through contact with Spaniards and the ways in which women dealt with various levels of gender inequality.⁸ Likewise, colonial Guatemalan incest trials show women and indigenous people using the same concepts that placed them in inferior positions relative to men and Spaniards in strategic ways.

Analysis of colonial criminal records has both its limitations and its benefits. Factors to be kept in mind include the power imbalance inherent to legal proceedings, methods of record production that favored the perspectives of those holding the pen, and the absence of records for certain communities (Komisaruk 2008). However, these same records often provide incredible amounts of detail regarding the lives of defendants and witnesses that would otherwise be lost to history (Komisaruk 2008). Further, Steve J. Stern (1995: 52) finds that in colonial Mexico “episodes of criminal violence represented not so much a rupture that stood apart from normal social dynamics but an excess committed within a recognizable logic of behavior.” In other words, deviants can provide insight into cultural norms even when they stray from them.

The value of court documents has also been noted by anthropologists. According to Marilyn Strathern (2005: 50-51),

Anthropologists often find themselves gravitating toward debate, public dispute, litigation even, as telling moments in cultural life. For what may be as interesting as the positions being defended are the cultural resources people bring to their aid, the narratives, tropes and images enlisted in the service of the persuasive point...If only in order to persuade, the narratives, images, tropes and analogies must at the least communicate what is possible, and anthropological interest in such resources is an

interest in the possibilities entailed by what is said or done for what others say or do. It is that possible and potentially realisable [sic.] world that anthropologists abstract as culture. This is not an idealist view, rather, it opens up empirical study to the potentials people make all the time for themselves (and for others), and thus to the possible worlds that inform their actions in the present one.

Thus, incestuous crime is a valuable medium for the investigation of colonial Guatemalan kin norms and social relations because the records it generated speak to the cultural logics and “possible worlds” of the various actors engaged in the criminal process.

Methods and Reporting

Digital images of criminal records were gathered at the Guatemalan national archive, Archivo General de Centro América (AGCA), over the course of nine weeks between the summers of 2012, 2014, and 2015. Using the archive’s *fichero* (card catalog) as a guide, document files were requested that included the specific case of interest and other documents catalogued under a number chronologically near that of the particular case. These additional documents were reviewed as well and photographed when relevant. Card catalog drawer numbers 1-2 through 1-23, 1-25, and 1-28-1-29 of the civil and criminal records section of the *fichero* were consulted.

Seventy-seven of the cases gathered from the archive constitute the data analyzed in this study. All of these cases are summarized in the appendix. Sixty-nine of these cases address incest (or what would theoretically constitute incest) as the single or one of multiple crimes.⁹ One case is a dispensation suit for marriage between an uncle and niece (Case 19) and the remainder are records related to matters such as adultery that contain pertinent information for this analysis. All of these records stem from the secular (as opposed to ecclesiastical) courts and all incest case records were the product of criminal proceedings. Criminal proceedings (in contrast to civil proceedings) dealt with offenses

that entered the public (as opposed to private) sphere and had a perceived negative effect on the community (Cutter 1995: 111-113). Forty-four incest cases come from the capitals of Antigua Guatemala and Nueva Guatemala (modern-day Guatemala City) and the surrounding jurisdictional area of Sacatepéquez.¹⁰ Information contained in the records collected was analyzed using qualitative content analysis and pattern generalization.

The individuals involved in incest trials tended to be non-elites. Only eleven out of one hundred and fifty-eight individuals carried the honorific title of Don/Doña.¹¹ One indigenous man was listed as a principal, an esteemed status in indigenous communities (Case 24). Indians accounted for forty-four of the actors in incest trials, individuals of mixed descent for thirty, and Spaniards for eight.¹² Seventy-six individuals did not have their race recorded in line with Christopher Lutz's (1994: 103) observation of a growing tendency for race to go unrecorded in notarial records from the late colonial period.

In colonial Guatemalan incest trials, the words *amancebamiento* ("concubinage"), *concupinato* ("concubinage"), and *ilícita amistad* ("illicit friendship") were used interchangeably and should be understood here as simply connoting extramarital (sexual) unions between men and women.¹³ As noted above, incestuous relations occasionally intersected with sexual violence. Attempting to determine willfulness is complicated, especially when some surviving court records are incomplete, but for this study, sexual unions were considered incestuous rape when there was a clear articulation at some point during the proceedings that a woman or girl was either physically assaulted (i.e. the sexual act was "forced" or "violent") or scared to resist a male perpetrator. Following this system, incestuous crime was associated with force or intimidation approximately twenty-seven percent of the time.

Some changes in orthography and phrasing have been made to aid the reader. Names and Spanish terms have been modernized for the sake of consistency, though the original orthography for quoted passages has been retained in the endnotes. Court testimonies were generally reported in the third person (from the perspective of the notary), and as a result, some words and phrases have been omitted from translations because they are burdensome to the reader. For example, criminal records are full of qualifiers like “aforementioned” and “said” (e.g. “the aforementioned María”). In translations, this phrase would be simplified to “María.” Identifiers like “the declarant” or “she who states” have been substituted with pronouns or a referent’s name for the same purpose. These substitutions are designated by brackets in the translations. Original phrasing for quotes can be found in the endnotes.

It should also be noted that once a main actor from a criminal case has been identified by their full name, they are thenceforward referred to by their first (and/or middle) name only. First names communicate gender identity, a helpful reference point in cases that center around interactions between men and women. Further, being that incest cases dealt with families, various actors could share a surname, making first names more useful for conveying individual identities. Defense counsel are referred to by their surnames once introduced because they were always male and fell outside the principal narrative of the case.

Overview of Chapters

The following chapter begins with a brief overview of two major elements influencing social relations in colonial Spanish America: the system of socioracial categorization and the culture of honor. It then examines the ways in which an emphasis

on patriarchal authority could translate into (sexual) violence against women and girls and factors that could discourage denunciations of incestuous rape.

Chapter 3 explores the evolving definition of incest in canon law and its impact on Spanish civil law. This chapter also discusses jurisdictional issues and judicial process in Spanish America, including the special treatment afforded Indian actors in the legal realm. It ends with a discussion of typical penalties for incestuous crime in colonial Guatemala and their intersections with race, gender, and marital status.

Chapter 4 first considers debate among legal professionals regarding whether certain forms of incest were more criminal than others and the types of incest that were typically brought to formal trial. It then examines the ways in which the nature of kin ties influenced the interpretation of evidence and expectations of how individuals would behave in the legal arena.

Chapter 5 investigates the malleable nature of kinship among colonial Guatemalans and the complications this could cause in the courtroom. It also looks at how colonial Guatemalans could stress or reject relatedness depending on context and for their own gain. Additionally, this chapter includes a discussion of how colonial Guatemalans occasionally used the institution of *compadrazgo* to ensure sexual fidelity within marriage. It ends with a brief exploration of the logic behind falsely blaming a male relative for a pregnancy or loss of virginity.

Chapter 6 focuses on the intersection of Indianness with incestuous crime. It examines strategic usage of the ignorance defense in incest trials, the ways in which challenges to Indianness were ignored, and how comparisons between a defendant's behavior and the stereotyped behavior of Indians (and their ancestors) worked to further

associate the latter with incestuous crime. Chapter 7 summarizes the findings of this study and proposes possible avenues for future research.

CHAPTER 2

CALIDAD AND HONOR IN SPANISH AMERICA: A FRAMEWORK FOR UNDERSTANDING SOCIAL RELATIONS

This chapter is intended to orient the reader to the cultural context of Spanish America through focus on two major concepts influencing one's social standing and interpersonal relationships: *calidad* and honor. Spanish colonial society essentially hinged on a system of classification for its diverse population. In early Spanish America, these categories of difference were based on both physical and cultural traits and were not necessarily fixed, distinguishing them from modern definitions of "race" (Schwaller 2016: 6; 8-9; see also Kuznesof 1995). A wholly racialized view of difference did not become characteristic of Iberian thought until the mid-seventeenth century when distinctions came to be viewed as stemming from essential or natural differences (Schwaller 2016: 44). The practice of categorizing individuals in socioracial terms in Spanish America has often been referred to as the *casta* or *calidad* system. Though such terms have been found anachronistic or inappropriate for early Spanish America, they are relevant for the seventeenth and eighteenth centuries (see Schwaller 2016). In late colonial Guatemalan criminal records, when individuals were asked to provide their *calidad*, they responded with a socioracial term, making *calidad* the most appropriate terminology for the study at hand. The incest cases reviewed in this study pertain to a range of *calidades*. Since *calidad* determined one's relationship with the Spanish Empire

(e.g. tribute obligations, social mobility, legal standing, etc.), this system of classification will be reviewed below.

The concept of honor (status or virtue) was in many ways linked with *calidad*. For example, Spanish elites could feel particularly entitled to it. However, concerns over honor were certainly not limited to this class, and the culture of honor bled into and shaped everyday interactions between family members, genders, and more as individuals sought to protect their public reputations. The heterosexual and familial nature of incestuous crime, in addition to the potential for public scandal associated with crime in general, makes examination of the culture of honor essential to its contextualization. The second half of this chapter is dedicated to the discussion of the major components of this concept.

The Creation and Challenge of a Two-Republic System

From their earliest arrival in the Americas, Spanish explorers and conquistadors used the term *indios* (“Indians”) to distinguish the native population from themselves, a division that would structure various aspects of colonial society. While Indians recognized that Spaniards referred to them as such, they would use local ethnic terms in other contexts (Kuznesof 1995: 166). Because *indio* and its feminine equivalent of *india* were the terms of identification used in Spanish courts, “Indian” is the most proper term to use in discussion of the court documents of this study.

Scattered settlement patterns proved problematic for the conversion and governance of the indigenous population. In 1538 and 1540 the Crown decreed to put friars in charge of creating towns and villages in order to concentrate the dispersed population into a fewer number of larger areas (van Oss 1986: 15), a process termed

congregación.¹ A monastery was to be established if circumstances allowed (van Oss 1986: 15). Monasteries were located in *cabeceras* (“head towns”) and a religious would visit other towns and villages belonging to the *doctrina* (an Indian parish) (van Oss 1986: 54). The term *doctrina* (“doctrine”), as opposed to *parroquia* (“parish”), reflected assumptions that Indians were still in the process of indoctrination (Burkhart and Gasco 2007: 212). Guatemalan friar-missionaries put initial efforts towards the conversion of Indian nobles, for a converted Indian leader would aid in the establishment of such towns (van Oss 1986: 16-17).

As with any colonial project, one of the key aims of Spanish colonization of the Americas was the generation of wealth, and Indians formed an essential component of such generation. Indians were initially subject to enslavement should they refuse to submit to the authority of the Spanish Crown and Church; that is, they were taken in “just war.” The enslavement of Indians was prohibited with the New Laws of the Indies for the Good Treatment and Preservation of the Indians proclaimed in 1542-1543. Still, free Indians were and continued to be obligated to perform labor and tribute obligations through the *encomienda* system. Indian towns were divided up and supplied such funds and labor either to a royal *encomienda* (in the case of crown towns) or to an individual *encomendero* who had been awarded an *encomienda* for their efforts in colonizing the Americas (see Sherman 1979). Most *encomiendas* would eventually be taken over by the colonial state (Smith 1990: 14).

Tribute obligations varied by an individual’s status. *Tributarios enteros* (“full tributaries”) referred to married couples, while *medios* (“half tributaries”) included single people over eighteen years old (Hill and Monaghan 1987: 51). Those who were not

required to pay tribute included justices in the *cabildo* (town council), individuals who provided some sort of service to the church, children, and people over the age of fifty-five (changed to fifty after 1754) (Hill 2002: 114; Villacorta 1942: 144 in Hill and Monaghan 1987: 51). Women were declared exempt from tribute payments in 1756 (Hill and Monaghan 1987: 57).

In response to labor shortages in the late sixteenth century, not only was there increased trade in African slaves but also the *repartimiento de indios* was instituted. This system required that every Indian town send a certain number of individuals to Spanish towns every week where they would be assigned to public works projects or to individual Spaniards who had requested workers (Sherman 1979: 192). Indian communities were required to provide a quarter of their able-bodied men on a weekly basis, and in return, they were to be given room, board, and a standard daily wage (Hill 2002:111-112).

Despite conversion attempts and economic obligations that would theoretically encourage interactions between Spaniards and Indians, early Spanish America was in many ways characterized by a system of “two republics,” a Republic of Spaniards (*república de españoles*) and a Republic of Indians (*república de indios*). Within this system, Indians were to be kept separate from non-Indians out of concern that the latter would have a negative impact on the former (Schwaller 2016:68; see also Lutz 1994: 32.) Those in favor of a two-republic system had a variety of reasons for maintaining this position. Many missionaries viewed Indians as child-like and easily led astray, making them unable to resist or defend themselves against those who wanted to harm them or make them sin. Others believed that Indians held the potential for the creation of a society

better than that found in Europe when supplied with the proper guidance and isolated from Spanish influence (Borah 1983: 30).

Evidence of such sentiments can be found for colonial Guatemala. For example, following the account of colonial chronicler Francisco Antonio de Fuentes y Guzmán (1882[1690]: 254-255), conquistador Pedro de Alvarado included segregationist policies in his rules for governance shortly after the Spanish capital was moved to Almolonga (from Iximche') in 1527. Spaniards were prohibited from going too far beyond the city limits or staying in indigenous communities that had been *repartidos* (i.e. distributed in *encomienda*) for more than four days out of concern they would harm the Indians. Any violators would be fined. Even *encomenderos* were forbidden from residing near the Indians entrusted to them outside of the city limits under the same penalty.

Like their Spanish counterparts, Indian towns had *cabildos*. These councils were staffed by *alcaldes* and lower-ranking *regidores* who were to oversee mundane affairs and the collection of tribute (Hill and Monaghan 1987: 85). Officeholders were more or less able to choose their replacements, who were selected annually, provided their confirmation by royal authorities (Hill 2002: 124). These town justices represented their communities when visited by Spanish officials and in court cases before the *audiencia* (regional high court) when disputes over community property could not be resolved locally (Hill 2002: 126). In addition, Spanish law granted these *cabildos* the authority to resolve petty disputes and crime at the local level and to regulate local markets (Hill 2002: 127; Haskett 1991: 77). Thus, in many ways, Indian affairs could be managed internally (see Hill 2002: 125-127).

The idealistic notion of a separation between the republics proved challenging in Spanish America. Sherman (1979: 86) notes that the overseers (*calpixques*) that *encomenderos* often used for directing Indian labor and collecting tribute from the towns under their jurisdiction were rarely Indians. Many were *negros* (Blacks) and individuals of mixed descent. Colonial centers like Santiago de Guatemala (Antigua Guatemala) were especially vulnerable to interactions and unions between Indians and non-Indians (see Lutz 1994 and Herrera 2003). Urban migrant workers, such as women employed in domestic service, provided multiple links between Indian and Hispanic spheres (Komisaruk 2013: 65-66). Trade also allowed for intermingling between groups outside the urban environment. European petty dealers established close ties with Indians in the countryside, sometimes becoming godparents of their children so as to enter into a reciprocal relationship of *compadrazgo* (Herrera 2003: 173). Economic ventures in agriculture and animal husbandry also signaled an intrusion by Spaniards or their African auxiliaries into the largely native countryside. The majority of permanent workers for these enterprises were black slaves, Indian wage workers, and individuals of mixed descent. Indian draft laborers would arrive during harvest through the institutions of *encomienda* or *repartimiento* (Herrera 2003: 175).

Further, since their entrance into the Americas, male Spaniards engaged in sexual relations (consensual and non-consensual) with women of the local indigenous populations both within the bonds of marriage and outside of them. In response to concerns about sexual violence against Indian women, Spanish policies specified that formal unions between Spaniards and Indians were only allowed if they were consensual. It was believed that Spanish-Indian marriages could aid efforts at conversion and

governance. To the degree that restrictions on Spanish penetration into *pueblos de indios* (“Indian towns”) were enforced, unions between Indians and Spaniards would have been illicit in them. However, interactions between Indians and Spaniards in the *república de españoles* was not subject to regulation (Schwaller 2016:65-66).

Elizabeth A. Kuznesof (1995) discusses the evolution of spousal preference among Spanish men in early colonial Spanish America. She suggests Indian wives were sought out among the first generation of Spanish colonizers. By the second generation, *mestiza* (of Indian-Spanish descent) wives were preferred, and by the third, *castiza* (of Spanish-*mestizo* descent) wives were desirable. After these initial generations, a pattern of endogamous marriage among these “Spaniards” emerged in addition to an increase in racial consciousness by the late sixteenth century (Kuznesof 1995: 161).

Robinson A. Herrera (2007) specifically discusses indigenous concubines and wives of Spaniards in sixteenth-century Guatemala. Some of these women were from Central Mexico and accompanied Spaniards on their conquest expeditions into Guatemala, whereas others were local indigenous women. While Spanish women were the most desirable marriage partners, only a small number of Spanish women lived in early colonial Guatemala. Consequently, only the most elite men were able to attract such partners. The majority of Spaniards maintained unions with non-Spanish women, the majority of whom were of indigenous descent. Formal or informal ties with local native women could help cement alliances or provide access to resources. In general, native noblewomen were more likely to wed Spaniards than commoner women considering their status and wealth, though the latter did occur. Children of indigenous nobles could also be placed in the home of a wealthy Spaniard for their care. Marriage to wealthy

Spaniards declined for both noblewomen and commoner women as the sixteenth century moved forward. Humbler Spaniards continued to marry native women into the 1570s in Santiago de Guatemala with such unions decreasing in frequency thereafter.

While offspring of Indian-Spanish unions were theoretically termed *mestizos* and their presence alone would seem to contradict a two-republic system, the malleability of socioracial categories helped maintain this system to some degree. In his work on colonial Santiago de Guatemala, Christopher H. Lutz (1994:45) says that during the early sixteenth century the two-republic system accommodated *mestizos* by typically assimilating *mestizas* (the daughters of Indian-Spanish unions) and legitimate offspring into the *república de españoles* and illegitimate offspring into the *república de indios*. Following Schwaller (2016), these individuals can be respectively termed “tacit *españoles*” and “tacit *indios*.” A small minority of *mestizo* offspring were not welcome in either republic (Lutz 1994:45).

Royal policy demonstrated the Crown’s preference for African slaves to only marry other African slaves. In theory, not only could endogamous marriage keep them separated from indigenous populations (and in so doing protect indigenous women from sexual assault by African men), it could also serve to pacify slaves and prevent rebellion. Again, even though non-Indians were eventually barred from *pueblos de indios*, Spanish settlements were fertile arenas for interethnic interactions. Further, the colonial population was not always compliant when it came to such prohibitions (Schwaller 2016:67-69).

In colonial Guatemala, the term *mulato* came to refer to those of either Afro-European or Afro-Indian descent and included those with even a hint of African ancestry

(Lutz 1994: 46, 95). Oftentimes individuals in Spanish America would identify themselves as “free” *mulatos*; slave status was inherited from one’s mother (Kuznesof 1995: 164). While *mestizos* were considered *gente de razón* (“people of reason”), those thought to have any African descent were considered to be without reason (Kuznesof 1995: 167). Lutz (1994:46) points out the difficulty *mulatos* posed for the two-republic system. Most of them

...were blocked from passage into either republic, due to racial prejudice, to a lack of phenotypical similarities with either the dominant Spaniards or majority Indians, and to their special role, often resented, as the traders and brokers of the Spanish colonial economy. As such, they became the primary agents of a new sociodemographic reality, progenitors of a *casta*² population neither republic could absorb.

Indeed, *mulato* children were rarely legitimized, a reality that would eventually extend to *mestizo* children as well (Herrera 2003: 127). Of course, illegitimacy did not necessarily signal a complete break with *mulato* relatives (Herrera 2003: 127).

By the turn of the eighteenth century, *castas* (here used in the sense of individuals of mixed descent) had become racially indistinguishable from one another, and they all claimed some degree of Spanish heritage, even if only in a cultural sense (Lutz 1994:50). Members of the *casta* population of Santiago de Guatemala, which included *mestizos*, free *mulatos*, and the offspring of unions between them, were eventually designated as *ladinos* (Lutz 1994:135), a term that had been and continued to be used to describe Indians who spoke Spanish (Taracena Arriola 1982: 90).³ Other trade centers and areas of commercial crop production were also characterized by a growing *ladino* population, which may have stemmed more from unions between free *mulatos* and Indians than from unions between free *mulatos* and *mestizos* (Lutz 1994: 298 n. 45). In *pueblos de indios*, *ladino* was a means to distinguish Indians from non-Indians, whereas in cities it specified

individuals who were neither Indian nor Spanish- or American-born Spaniards (Taracena Arriola 1982: 93-95).⁴

The apparent intermingling between Indians and non-Indians suggests a complete failure of the two-republic system. However, some degree of segregation managed to exist due to particular economic factors. Building on Murdo J. MacLeod (1973), Christopher H. Lutz and W. George Lovell (1990) find that highland and lowland areas lying south and east of Santiago de Guatemala formed a developed core area while those lying north and west of it formed an underdeveloped periphery. The core area was more rich in resources and more conducive to cash crops than the peripheral area, making it particularly attractive to Spaniards who would come to reside in such areas. Core areas became primarily inhabited by *ladinos*, while peripheral areas only ever saw a Spanish minority. In fact, most Indians in peripheral areas only dealt with Spaniards indirectly through the provision of tribute. Lutz and Lovell (1990) suggest that areas of the periphery may have approximated what the Spanish had in mind in terms of a *república de indios*. Core areas, on the other hand, were more vulnerable to cultural transformation.

Of course, attempts to maintain boundaries between Indians and non-Indians were not limited to royal and colonial officials. For example, in an 1802 Guatemalan incest case, the *alcalde mayor* (head magistrate) of Escuintla casually mentioned “the little union Indians and *ladinos* keep with one another”⁵ (Case 33). This notion is also alluded to in an 1807 Guatemalan incest case involving one man and two sisters,⁶ all Indians from Ciudad Vieja (Case 56). During the trial, defense counsel suggested that the male accused only admitted to impregnating one of the sisters out of concern for her honor and reputation. The man who actually impregnated the woman was *ladino* and some

townspeople viewed “the woman who copulates with someone outside of her *casta* [or *calidad*] as the most ‘lost’ and despicable woman.”⁷ Likewise, Robert Haskett (1991: 17) mentions an Indian town in colonial Cuernavaca where residents reportedly refused to allow *gente de razón* to live there.

In sum, while colonial policies advocated for a two-republic system in which Indians and non-Indians maintained a degree of separation from one another, everyday economic and social realities complicated its realization. Further, even though some colonial subjects attempted to uphold similar boundaries, intimate interpersonal relationships had the potential to blur them.

Limits on Social Mobility

As might be expected, socioracial categorization could impact an individual’s ability to better their social station. The colonial Spanish population in Spanish America could be divided into two main categories: *peninsulares* and *criollos*. *Peninsulares* were those who were born in Spain and immigrated to Spanish America for temporary or permanent residence. In fact, during the sixteenth century, the term *español* was apparently reserved for individuals who were native to Spain. *Criollos*, on the other hand, were born in the Americas and included the descendants of the conquistadors and early colonists. These individuals were eventually included in the *español* category as well (Jones 1994: 169-170). Still, birth in Spain had certain advantages.

In their study of the American *audiencias*, Mark A. Burkholder and D. S. Chandler (1977) discuss some of the discrepancies between *peninsulares* and *criollos* in terms of *audiencia* appointments. Individuals born and educated in Spain were the first appointments to these institutions in the Americas. *Criollos* had been initially

disadvantaged when it came to obtaining such high positions for *letrados* (individuals with a law degree) considering their limited access to the most prestigious universities in Spain and the royal court where one forwarded their candidacy. Further, during a period in which many *audiencia* appointments were being sold to subsidize the Crown's weakened financial position (1687-1750), close to seventy-five percent of *criollos* had to purchase their positions, while only eight percent of *peninsulares* were required to do so. This suggests that *criollos* were being discriminated against. In fact, once sales ceased in 1750, the number of *criollos* named to tribunals in the Americas declined. *Criollos* were also absent from the initial appointments to the new office of the regent, a position created in 1776 whose holders functioned as the ranking magistrate of an *audiencia*. However, the crisis of independence would stimulate an increased number of *criollos* being named to *audiencia* posts in an attempt to garner American support.

Criollos also experienced a degree of discrimination in the ecclesiastical sphere. According to Adriaan van Oss (1986), the first Guatemalan clergymen were all European, and as American-born recruits were brought into the secular and regular clergy, complaints against them began to surface. In 1570 the Dominican order prohibited *criollos* from taking the habit altogether (though this was only temporary). Antonio de Remesal claimed *criollos* were not welcome in the Dominican order because of their low moral stature, a product of having been born in the Americas. With the creation of various institutions for religious study in the late sixteenth century, more *criollos* were able to enter the clergy. Still, within the mendicant orders, *peninsulares* continued to dominate the highest positions until the creation of the *alternativa* in the seventeenth century, which required the alternation of *criollos* and *peninsulares* among the highest

provincial offices. Eventually, *criollos* would come to form the majority of each order and dominate the secular clergy (van Oss 1986: 158-160).

Other socioracial groups were restricted when it came to the practice of certain professions and participation in the clergy. For example, Indians and Blacks were not allowed to become master artisans, and the restrictions on Blacks and *mulatos* extended to an even greater number of crafts than those for Indians. Further, Blacks were completely barred from entering the priesthood (Seed 1988: 155, 218). Royal orders of the late sixteenth century had called for *mestizos* to be ordained as priests and for *mestizas* to be accepted as nuns. Decrees from 1697, 1725, and 1766 extended these rights to Indian men and women, but paternalistic attitudes of clergy members interfered with the realization of Indian participation. As a result, the ecclesiastical sphere in Guatemala (and elsewhere in Spanish America) remained dominated by ethnic Spaniards (van Oss 1986:159-162).

Marriage was another realm in which social mobility could be curbed. In her work on colonial New Spain, Patricia Seed (1988: 146) notes that interracial marriages occurred at a greater frequency following economic expansion in the eighteenth century. Many socially mobile families of this period were of mixed racial heritage and began to intermarry with the Spanish elite. This meant that identification as Spanish no longer guaranteed social superiority. However, under the Royal Pragmatic of 1776 (promulgated in New Spain in 1778), parents were granted the authority to veto their children's marriage choices should there exist substantial social inequality between the future partners. When this pragmatic was extended to Spanish America, racial disparity became the only factor that constituted such inequality, a condition that only applied to marriages

between Spaniards and Blacks or Indians and Blacks. Still, Seed finds that Mexican elites were more concerned with economic and status differences than descent from slaves. In 1803, the parents of sons under twenty-five years of age and daughters under twenty-three years of age were free to veto marriages for any reason. Individuals over this age could marry freely until 1805 when elite Spaniards were prohibited from marrying the descendants of slaves whatever their age (Seed 1988: 146, 205-206, 219, 223-224, 300 n. 2). Thus, both parents and the state had the power to prevent marriages that could prove socially advantageous for a particular party out of concerns of *calidad* or other status differences.

Narratives surrounding status differences could make the quest for suitable marriage partners difficult. The works of Nora Jaffary (2007) and Lee M. Penyak (2016) explore how such endeavors might require negotiations with civil and ecclesiastical authorities charged with enforcing incest laws. Focusing on the Archdiocese of Mexico in the late colonial period, Jaffary (2007) notes a tendency for Spaniards (who were predominantly *criollos*) to request episcopal dispensations to marry consanguineous relatives who they would otherwise be unable to marry because of incest prohibitions. The most common argument for such requests was *exigüedad del lugar* (“smallness of the place”). That is, their towns were too small for them to find a spouse of “equal quality,” especially in terms of *sangre limpia* (“clean blood”), beyond a particular relative. Jaffary mentions that Indian couples might also use the “smallness of the place” argument to request similar dispensations. Likewise, Penyak (2016:162) finds that civil and ecclesiastical authorities in late colonial and early modern Mexico considered incest natural when it involved cousins who hoped to marry their social equals.⁸

Such requests also surface in colonial Guatemalan records. In 1796 Nueva Guatemala, Doña Margarita Portillo and Don Vicente Portillo, her uncle, requested permission from the secular courts to marry (Case 19). In order to do so, Doña Margarita's "good *calidad*, customs, and circumstances" needed to be proven. She intended to show that her parents acknowledged her as a *hija natural* ("natural daughter") and *hija tenida en tiempo hábil* ("daughter had at able time"). These descriptors meant that one or both of her parents acknowledged her (in this case both), there were no impediments to her parents having married, and she would have been legitimized had they actually executed the marriage (see Twinam 1999 and 2007). Further, she hoped to demonstrate that she was of their same *calidad*, "Spanish, free of all bad race." Following verbal and written evidence (including a baptismal record), permission for the marriage was eventually granted.⁹

Given all of the above, it is clear that *calidad* had a significant impact on an individual's status and circumstances. Not only did it determine whether someone was subject to tribute and labor obligations, it also had the potential to limit the ways one could earn a living and the possibilities when it came to finding a spouse. As the next section will show, another way in which individuals evaluated one another related to issues of honor and public reputation, determinations which could have material consequences.

Honor, Patriarchy, and Reputation

Another essential component of one's social status in Spanish America related to the culture of honor, a system with roots in Iberia that was transferred to the Americas during colonization (Lipsett-Rivera and Johnson 1998:2). In their edited volume on honor

in Latin America, Sonya Lipsett-Rivera and Lyman L. Johnson (1998: 3) state that William Ian Miller's definition of honor is useful in highlighting the principal features of honor. Miller (1993:84) says,

Honor is above all the keen sensitivity to the experience of humiliation and shame, a sensitivity manifested by the desire to be envied by others and the propensity to envy the success of others. To simplify greatly, honor is that disposition which makes one act to shame others who have shamed oneself, to humiliate others who have humiliated oneself. The honorable person is one whose self-esteem and social standing is intimately dependent on the esteem or envy he or she actually elicits in others.

In the Iberian world, honor conveyed notions of both status and virtue. In Spain and some of its colonies, the two words, *honor* and *honra*, were used to distinguish these meanings. *Honor* (or honor-status) was perceived of as a relatively static condition stemming from the conditions of one's birth with elites having the most honor-status. In contrast to honor-status, *honra* (or honor-virtue) related to an individual's or family's conduct and, thereby, could be gained or lost (Lipsett-Rivera and Johnson 1998:3-4). Komisaruk (2013: 223) has found that *honor* was occasionally used in reference to the honor-virtue of plebeians in late colonial Guatemala. *Honradez* also signified honor-virtue.

The ways in which honor was constituted was gender-dependent. According to Geoffrey Spurling (1998: 45), among colonial Latin American men

...honor was exemplified by assertiveness, courage, authority, and the domination of women; for women it lay in their possession of shame, retained through discretion and sexual control. Though not static through time, nor identically shared by all groups and members of colonial society, the core ideas and concepts of honor nevertheless centered on the unequal (but often contested) ties between men and women, with marriage and the family as key concerns. The values linked to honor, then, were predicated on a set of assumptions regarding appropriate masculine and feminine behavior, within the context of what today we would term heterosexual relations.

For scholars of Western cultures, the image of a patriarchal family and a sexual double-standard is a familiar one. With the colonization of the Americas, these concepts would

be incorporated into indigenous cultures with potentially negative consequences for indigenous women. For example, Susan Kellogg (1997) discusses the emphasis on patriarchal authority and concern over women's sexual purity and honor as among the various factors contributing to the decline in Mexica women's social and legal status following colonization.

The description provided by Spurling (1998) resonates with gendered relationships within marriage in late colonial Guatemala. In her study of the Guatemalan capital, Komisaruk (2013) discusses evidence of idealized spousal norms found in court litigation. Expectations dictated that husbands were to provide for their families financially, demonstrate kindness and fidelity to their wives, and avoid drinking and gambling to excess. For their part, wives were to obey their husbands, put the needs of their husbands and children before their own, maintain sexual fidelity and modesty in public, and provide domestic services such as food preparation and laundry. These ideals theoretically gave men the right to punish their wives if they failed to fulfill them (Komisaruk 2013: 197).

While elites believed honor was exclusive to them, non-elites also claimed and defended honor (Lipsett-Rivera and Johnson 1998:10). Still, class was influential in the culture of honor despite not determining one's claims to it. For example, as Muriel Nazzari (1998: 105) notes in her discussion of colonial Brazil, elites could seclude and protect daughters and wives from sexual advances more easily than members of the lower classes, for not only did elite women have more people to defend them, they also had fewer activities outside the domestic sphere. Komisaruk (2013: 224) finds that honor in terms of female virginity and seclusion was not essential to courtship and marriage in the

Guatemalan capital, especially among non-elites. Indeed, reclusion was unrealistic for women working in the city.

Honor was intimately linked with public reputation in Spanish America, and reputations could be deceptive. According to Ann Twinam (1998:79), among eighteenth-century elites, “honor did not describe a code of personal integrity, honesty, or virtue. Nor did honor demand congruity between a person’s private reality or secret actions and public persona. Private sins or defects need not affect public honor, as long as such transgressions remained secret.” For women, pregnancy and childbirth constituted tangible proof they were no longer virginal (Twinam 1998:81). But if a pregnancy outside of marriage was kept hidden through private pregnancy (more accessible for elites) or infanticide, or if an unwed pregnant woman married, the pregnancy would not pose a threat to honor (Twinam 1998:82-84; Lipsett-Rivera 1998:193-194).

Even in cases of sexual assault, honor was an influential factor in determining response. According to Richard Boyer (1998:152), concern over how complaints of sexual assault would be perceived (women were often blamed) and the notoriety that stemmed from making them public inhibited individuals from bringing them forward.¹⁰ Some women and girls were encouraged to marry their rapists in order to restore their honor. On other occasions, a woman was awarded a sum of money for a dowry with the idea that it would compensate for her nonvirginal status on the marriage market (see Lipsett-Rivera 1997 and 1998). Despite the dishonor that could result from making a sexual assault public, Lipsett-Rivera (1998:195) suggests that some married women in late colonial Mexico, who could not marry their rapist or receive a sum of money as restitution, may have made their rape cases public to reassert and regain their honor.¹¹

Overall, it is clear that honor was an important factor in determining one's social status and reputation. As such, it had the potential to significantly modify how Spanish Americans interacted with one another and responded to stimuli. The following section will focus on the social repercussions of illicit unions for the offspring resulting from them.

Illegitimacy and its Social Costs

Unfortunately, despite having no control over the circumstances of one's birth, the details surrounding it could be a stain on one's honor and reputation. Ann Twinam is one of the better-known scholars who has written on illegitimacy in Spanish America. Twinam (1999: 26) notes the distinctions between *hijos naturales*, children born to single parents who were granted full legitimization if their parents wed, and children who were the products of incest, adultery, or sacrilege (meaning a parent was a religious). The latter were less socially acceptable than *hijos naturales* and it was for them that the term "bastard" was reserved.

Illegitimacy had many social costs for a child, especially when they grew up. Illegitimate males were prejudiced against when it came to holding political office or entering the priesthood. They could not earn a university degree or work as lawyers, doctors, or notaries. Special permission was required for illegitimate women to become female religious. Illegitimate children also were considered inferior marriage partners and were not guaranteed any paternal inheritance (Twinam 2007: 167; Twinam 1999: 174-175, 188).

One method for illegimates to better their social position was through the purchase of an official decree of legitimation (*cédula de gracias al sacar*), but petitions

to this end were not always successful. Some families even attempted to legitimate deceased relatives because the illegitimacy “stain” had been passed on to them by their ancestors (Twinam 1999: 5, 214). In 1803, royal officials determined that subsequent marriage between relatives who had produced incestuous offspring was sufficient to legitimate incestuous offspring (Gacto Fernández 1969: 104 in Twinam 1999: 130). However, offspring of adulterous and sacrilegious unions still had to go through the *gracias al sacar* (Twinam 1999: 130).

Following Twinam (2007: 163), *expósitos* (abandoned children or foundlings) constituted “ambiguous terrain.” Children were designated as *expósitos*, or the equivalent of *padres no conocidos* (“parents unknown”), at baptism if parents refused to acknowledge the child. The principal cause for such refusal lay in concerns over the stigma of illegitimacy. Still, a child who was not officially acknowledged by their parents might still be raised by them, first “abandoning” them and subsequently “adopting” them (Twinam 2007: 165-166). In 1794 Charles IV issued a royal decree that designated *expósitos* as children of the king. They were to be given the natal and racial benefit of the doubt, being granted the privileges of legitimacy and whiteness (Milanich 2002 in Twinam 2007: 164). The decree even ordered officials in Spain and the Americas to fine individuals who disparaged *expósitos* or referred to them as “illegitimate, bastard, sacrilegious, incestuous, or adulterous.” However, the implementation of this legislation was obstructed by imperial bureaucrats, who cooperated with local elites afraid of measures that would create potential for upward social and racial mobility (Twinam 2007:164, 173).

Much like *calidad*, then, illegitimacy (and honor in general) could shape an individual's social world. It not only subjected some children to orphanhood but also placed limits on social mobility for adults in terms of occupation and potential marriage partners.

Authority, Gendered Violence, and Incest

With its emphasis on patriarchal authority and control over female sexuality, the culture of honor had the potential to contribute to an environment in which female kin and lovers were at risk of violence. In his study of late colonial Mexico, Stern (1995: 62) discusses distinctive patterns between assaults on women versus those on men: "the more closely bonded the relationship, the more likely the danger of violence for women compared with men; the more loosely bonded the relationship, the more likely the danger of violence for men compared with women." As might be expected, sexual violence factored into the equation.

In the Guatemalan case sample, incestuous crime was associated with a suggestion of force and/or intimidation on the part of the male approximately twenty-seven percent of the time.¹² Sixty-four percent (16 of 25) of incidents of incestuous rape involved father-types (fathers, stepfathers, and fathers-in-law) (see Table 2.1).¹³ This reflects the ability of father-types in particular to abuse their authority in an environment that otherwise legitimated it. The median age difference between men and women was twenty years (with men senior) when age difference could be determined. This compares with a six-year median age difference (with men senior) for cases in which force was not apparent. The only incident of incestuous violence in which a woman was older than her rapist was case 40, which involved a stepmother and stepson. This compares with six

Table 2.1. Incest and sexual violence.

Case Number	Relationship	Age Difference
4	father/daughter	n/a
15	father/daughter	24 years
27	father/daughter	n/a
30	father/daughter	19 years
39	father/daughter	45-47 years
68b	father/daughter	22-24 years
69	father/daughter	13 years
10	stepfather/stepdaughter	25 years
21	stepfather/stepdaughter	26 years
51	stepfather/stepdaughter	n/a
61	stepfather/stepdaughter	21 years
66	stepfather/stepdaughter	25 years
67	stepfather/stepdaughter	n/a
2	father-in-law/daughter-in-law (1)	37 years
2	father-in-law/daughter-in-law (2)	40 years
64	father-in-law/daughter-in-law	21 years
9	political uncle/political niece	10-11 years
20	political uncle/political niece	3-4 years
67	political uncle/political niece	17 years
24	brother-in-law/sister-in-law	13 years
28	brother-in-law/sister-in-law	5-6 years
55	man/daughter of a mother-daughter pair	n/a
46	man/sister 2 of 2	1-2 years
25	political first cousins	≤ 12 years
40	stepmother/stepson	6-8 years (stepmother is senior)

cases in which women were senior to their male partner in apparently consensual unions (Cases 11, 31, 35, 46, 50, 62).¹⁴ Such instances of sexual violence no doubt contributed to feelings of ambivalence within the realm of kin relations, an essentially universal feature of kinship systems according to Michael G. Peletz (2001: 434).

Of course, it would be a mistake to think women always stood idly by during such excesses. As Stern (1995: 97, 299) notes, female kin and lovers created a world of “contested patriarchal pacts” in which the everyday operational meanings of patriarchal first principles were challenged. Various weapons were available to women for dealing with problems with the men in their lives. Some women used what Stern terms a “pluralization-of-patriarchs” strategy. This tactic essentially established rivalries and hierarchies between men with respective claims on the fate and well-being of a particular woman or girl to check the power of the most immediate patriarch (e.g. seeking help from the parental family to deal with a husband’s family or alerting local authorities who functioned as “superior patriarchs”). Another strategy available to women was the “mobilization-of-female-alliances,” that is, going to female kin, friends, and neighbors for discussion of and intervention in troubles with men.¹⁵ But Stern is careful to point out that female allies did not share the same institutional and cultural legitimacy as mobilized patriarchs (Stern 1995: 100-106). These types of strategies can be found in colonial Guatemalan incest cases as well.

The 1749 incest case against Narciso Gonzales, a *mulato* farm owner living in Mixco, is demonstrative of the ways in which the coexistence of multiple patriarchs could benefit women in their dealings with violent male kin while simultaneously increasing their risk of (sexual) violence due to male-male competition (Case 4). On April 26, 1749, Gregoria Antonia Gonzales appeared before a local magistrate and denounced her father for violently taking her virginity and for repeated sexual acts with her over the course of three years. She recounted how the acts continued until Teodoro Ramírez and Josef Mansilla asked for her to be the wife Nicolas Ramírez, brother of Teodoro. The proposal

was accepted under the condition that Gregoria (and Nicolas) would continue to reside with Narciso.

Sure enough, Narciso continued to have sexual relations with Gregoria after her marriage to Nicolas. Gregoria maintained that her father quarreled with her husband out of jealousy even though he used the pretext that her husband had left his wife, Petrona Quintanilla, unaccompanied in Quetzaltenango. The quarreling lasted day in and day out, with Narciso swearing to kill Nicolas and his brother, and the fights continued even after the return of Petrona. Eventually, Teodoro and Nicolas approached the Señor Provisor (an ecclesiastical magistrate) to request for Gregoria to be placed in Teodoro's power, which was granted, and Narciso continued with his threats and affronts to the Ramírez brothers. The placement of Gregoria under the authority of Teodoro (as opposed to Nicolas) clarifies that Teodoro was functioning as the head patriarch within the Ramírez family.

One day, Narciso sent for Gregoria because he needed her to record some things for him, not knowing how to write himself. Accompanied by various youths from both Narciso's farm and Teodoro's home, Gregoria went by horse in that direction, but Narciso intercepted them prior to their arrival. Succeeding in separating his daughter from the others, he eventually made her get off her own horse, transfer to his, and "sit like a man" in front of him as they rode off together. Once they stopped and dismounted, Narciso proceeded to undress her. He tied her hands to her feet and whipped her from the waist down, placing his foot on her face so she could not scream, all the while revealing his jealousy of various individuals including an Indian farmhand named Juan. He then untied her and had a sexual act with her. He again wanted to know whether she had had

an illicit dealing with another man, which she denied, and he subsequently tied her up and whipped her some more. After seeing the lashes Narciso had given Gregoria, his wife Petrona returned her to Teodoro. Gregoria ended her account by telling the magistrate that she came forward because of “fear, shame, and dread,” her knowledge of the sin her father committed, and concern over the detrimental effects of her husband’s return and discovery of the marks from the lashes.

During the proceedings, it was also discovered that Narciso had severely lashed the aforementioned farmhand named Juan and delivered him bound to Teodoro. Asked regarding the motivation, Teodoro said that when Narciso brought Juan to him he told him that Juan was responsible for the loss of Gregoria’s virginity and not him as had been rumored. Narciso proceeded to untie Juan and instructed Teodoro’s brother and wife to kiss his feet (presumably as a sign of gratitude for delivery of the offending culprit). This account highlights the role that male kin had in defending the honor of female kin and the ways in which concerns over female sexuality fell into the purview of familial patriarchs.

With regards to Gregoria’s return following the whipping by her father, Teodoro reported that Petrona told him that Narciso punished his daughter because he was upset that she was no longer under his authority, but that he had done so in her presence and only gave her six lashes *over* her clothes. In her own testimony, Petrona said she told Teodoro the lashes were given in her presence so that Gregoria’s husband would not be offended. Thus, Narciso acting alone in the punishment of his daughter would have contravened a right owed to a woman’s husband. Even though the case was ultimately inconclusive since Narciso was never obtained, it highlights the ways in which a patriarchal family structure and struggles over authority and sexual possession could

result in (sexual) violence against female kin. But we should also not forget Juan, whose alleged relationship with Gregoria had resulted in his own severe beating.

Preoccupations with sexual possession also appear in Case 68. Josef Silverio Ampérez, an Indian man residing in Chol, was accused of incest with his daughter in 1811 by his wife. His daughter, María Leandra, claimed he took her virginity against her will. Even though she did not realize the act was morally wrong at the time, she protested, and he flogged her for her resistance. The acts continued until she learned it was wrong and reported it to her priest. She was put in *depósito* (temporary custody) for a year once the two confessed. Even though the priest told her to discontinue sexual activity with her father, she gave in to him anyway.

When Josef Silverio was brought in to testify, he claimed that he became sexually involved with his daughter out of revenge because a man named Manuel Cornel had been involved with both his daughter and his wife. However, he maintained that she was not a virgin at the time and that it was consensual. Thus, Josef Silverio felt he could reassert himself before Manuel by having sexual relations with one of the latter's lovers, and the fact that this lover was his daughter was not an issue. Indeed, Josef Silverio stated that he did not understand the gravity of the crime even after being admonished by a priest for it.

Vengeance also surfaces in Manuel's testimony. He said he became involved with María Leandra because he was angry with Josef Silverio for having accused him of involvement with her even when he was not. Further, he had caught Josef Silverio raping his wife on two occasions, and out of revenge, he decided to pursue Josef Silverio's wife. Manuel's wife helped him succeed in this endeavor. In fact, in her testimony, Manuel's wife said she knew that this would calm him down and allow him to avenge himself.

What becomes clear from these testimonies was the way in which Guatemalan men used sexual relations to injure other men, making female kin vulnerable to sexual (and sometimes incestuous) violence.

While some reports of incest were brought before the authorities, fear of an incestuous incident being discovered or concern over retribution from a relative certainly would have prevented some cases from being brought to formal trial. Such fear is alluded to in various cases that did in fact make it to the courts. For example, when a twelve-year-old girl named Ciriaca was asked why she did not immediately tell her mother that her uncle raped her during her absence, she said “out of fear of how much she dreaded she would punish her” (Case 9). As mentioned above, women were often blamed for their own rape, and parents were within their rights to carry out correctional measures.¹⁶ Further, Ciriaca’s mother feared for her own safety. After she reported the crime to the authorities, she reportedly begged, “for God’s sake,” to not let her husband find out about what happened because he would blame her for it and want to kill her.

Similar themes are found in Case 2. Isabel Matul, an Indian woman from San Francisco el Alto who likely spoke K’iche,’ stated through interpreters that her mother-in-law came to her one day tearful and asked, “If your father-in-law wanted to whip me, would you defend me?” Asking her the reason, her mother-in-law said she had caught him and another daughter-in-law in “the sin.”¹⁷ Isabel herself had been forced into sexual intercourse with her father-in-law both before and after she married his son. When she got married, she did not tell her husband what happened with her soon-to-be father-in-law out of fear. Questioned as to how she dared to commit “the sin” with her father-in-law, she responded,

...that she did not know the gravity of the Sin, and the reason for not telling anyone about it was and has been out of fear and because of seeming to her that it was the same sin with her father-in-law as with an *hombre extraño* [non-relative], having been (as she has said) forced and frightened by the aforementioned regarding both the sin and the secrecy.¹⁸

Even though Isabel's testimony was ultimately colored by her interpreters, it should be noted that (forced) sexual relations with a father-in-law were, in her opinion, not unique when compared to those with other men. (This theme will be discussed in further detail in Chapter 6.) Despite the sexual engagement with her father-in-law having been against her will, Isabel was ultimately sentenced to be paraded through her town and given one hundred lashes.

Of course, the degree to which women were subject to patriarchal authority and any dangers it might entail varied. Komisaruk (2013) notes various challenges to normative marriage and patriarchy in late colonial Guatemala. For example, while survival in the countryside was often dependent on male subsistence agriculture complemented by female productive and reproductive roles, in the urban environment and on rural estates, the cash-based economy lessened the need for spouses. Also, female-headed households were not uncommon in Nueva Guatemala where women constituted the majority of the population (Komisaruk 2013: 117, 241-242). Similarly, Stern (1995: 258) notes that gendered life among plebeians in Mexico City apparently transformed "the strains of contested patriarchal pacts into a crisis of their existence."

Conclusion

In conclusion, both *calidad* and the culture of honor, while subject to a degree of malleability, played major roles in defining social worlds and possibilities in Spanish America. These factors also influenced law in Spain and the Americas in the differential

treatment of individuals involved in legal proceedings based on *calidad*, class, and gender and in defining what was criminal in the first place. The next chapter will explore the evolution of the concept of incest within the Catholic Church, discuss its applicability to secular law, and highlight how socioracial categories in particular influenced legal definitions of incestuous crime and its procedural aspects.

CHAPTER 3

AN ORIENTATION TO THE COLONIAL LEGAL SYSTEM: SPANISH LAW, LEGAL PRACTICE, AND INCESTUOUS CRIME

This chapter introduces key aspects of the colonial legal system in Spanish America. Attention is given to legal precedent, jurisdictional matters, and elements of legal process in the Americas, especially as they relate to the crime of incest. The focus is primarily on aspects of the secular Spanish legal system and its counterpart in the Americas (as opposed to native or ecclesiastical courts), as the incest cases in this study took place within that realm. The chapter concludes with a discussion of the principal penalties found in the criminal records of incestuous crime in Guatemala and their intersection with gender, *calidad*, and marital status.

Legal Culture and Precedent

By the late fifteenth and early sixteenth centuries, Latin Christianity held that there were three main bodies of law (see Borah 1982 and 1983). The first was Natural Law (*Ius Naturale*), a body of law inherent to the universe and man, meaning all humans were subject to it (e.g. all humans are born and die). The second was Human Law (*Ius Gentium*), a common body of law and custom that might be found among any peoples (e.g. polygyny). The boundaries between these two bodies of law were debated, and practices that contradicted these laws were deemed illicit whether carried out by Christians or non-Christians. Christian law and custom, on the other hand, was specifically reserved for and expected to be observed by Christians and their converts.

For example, while polygyny did not go against natural and human law, it was incompatible with Christian law and could therefore not be practiced by those who professed the faith. A non-Christian, however, could engage in polygyny without causing scandal. This type of legal thinking would come to influence *derecho indiano*, the body of law governing Spanish America, including its policies towards indigenous populations (Borah 1982: 266-267; Borah 1983: 6-7, 28-30). In fact, the Crown explicitly authorized the continuation of indigenous customs to the extent that they were compatible with Crown interests and Christian precept (Margadant 2001b: 36).¹

The definition of incest and the repercussions of incestuous activity articulated in Spanish law were primarily rooted in canon law. Jack Goody (1983) discusses some of the apparent contradictions in the Bible regarding marriages to kin.² He points out how even though there is mention in the Old Testament (specifically Leviticus) that a man should not “uncover the nakedness” of his kin and affines, other biblical scripture encourages marriage to certain kinds of relatives. On the one hand, the Old Testament (speaking from the male perspective) condemns sexual relations with one’s mother, stepmother, sister or half-sister, granddaughter, aunt, daughter-in-law, sister-in-law, and mother-in-law and consecutive sexual relations with a woman and her daughter or granddaughter. Likewise, references to disapproval of relations with a brother’s wife or father’s wife surface in the New Testament.³ Yet, elsewhere in the Old Testament, Moses urges a man to marry his brother’s widow in accordance with the institution known as the levirate, a cultural feature found in Ancient Israel and in various forms throughout the Ancient Mediterranean region. Regardless of such contradictions, the Church was

ultimately not confined by biblical precedent when formulating incest prohibitions, as seen in their outlawing of cousin marriage (Goody 1983: 40, 49-50, 169).

The influence of the Church would come to shape the legal realm in Europe and beyond. With the conversion of some Roman emperors to Christianity, its influence apparently seeped into Roman law even in its infancy. For example, during the fourth century, both the Church and Roman law prohibited marriage to a sibling of a deceased spouse. This meant the leviratic practice of marrying a deceased brother's wife could no longer be carried out within the empire. The justification for this prohibition (and others) in canon law related to the concept of *una caro* ("one flesh"), the idea that a couple became one flesh following marriage and/or sexual intercourse. That is, a husband becomes his wife, and vice versa, making a spouse's siblings one's own (see Goody 1983: 60; Hérítier 2002 [1994]): 83-86; Archibald 2001: 29). Notably, the first emperor to provide a specifically Christian rationale for an incest law was Justinian, a Byzantine emperor who ruled from 527-565 AD, who prohibited marriage between godparents and godchildren (Archibald 2001: 16, 30; Goody 1983: 197).

Following the fall of the Western Roman Empire and the onset of the medieval period in the fifth century, new legal codes would come to govern the area which now houses modern Spain. For instance, the seventh-century *Fuero Juzgo*, a product of Christianized and Romanized Germanic law, defined practice in Visigoth Spain (see Margadant 2001a: 68-69). Using the Roman system of calculating degrees of relatedness,⁴ Book III, Tit. V, Law I prohibited marriage with the spouse of a parent or other relative, with someone in one's parents' or grandparents' lines, and with a relative

of one's spouse to the sixth degree (*Fuero Juzgo* 1815: 60; see also Book III, Tit. V, Law VII for additional prohibitions).

The definition of incest evolved throughout the centuries in canon law. By the eleventh century, the Church prohibited marriage within seven canonical degrees of consanguinity and affinity and within four degrees for persons related through spiritual kinship (Archibald 2001: 28, 34; see also Goody 1983: 56). Affinity also extended to in-laws of one's in-laws, which constituted a relationship of the second degree, and in-laws of in-laws of in-laws (the third degree) (Archibald 2001: 28 n. 71). However, the Fourth Lateran Council in 1215 reduced the prohibited degrees of consanguinity and affinity to four and eliminated second- and third-degree affinity calculated in terms of in-laws of in-laws (see McCarthy 2004: 68-69). This Council also decreed that offspring from a second marriage could freely marry kin of a first husband (see McCarthy 2004: 68-69; presumably this also held for kin of a first wife).

Las Siete Partidas (or "Seven-Part Code"), a thirteenth-century Castilian law code attributed to Alfonso X of Castile, was based on Roman and canon law. This code played a significant role in both Spanish and Spanish American law. Despite changes in legal codes in Spain and its colonies after its production, *Las Siete Partidas* continued to be cited by Latin American courts and judges even into the late nineteenth century (Aguirre and Salvatore 2001: 3).

Las Siete Partidas described the rules of consanguinity and affinity, defined the crime of incest, and outlined how incestuous persons were to be punished. Part IV, Tit. VI discussed the two ways of understanding degrees of relatedness: 1. In secular law, degrees of relatedness were based on the rules of inheritance when someone died

intestate. 2. In canon law, degrees of relatedness took into consideration impediments to marriage. The concept of incest was relevant to the latter system. In terms of consanguinity, canon law held that each generation above and below ego in the ascending and descending line constituted one degree (i.e. parents were first degree relatives, grandparents were second degree relatives, and so on). Within the collateral lines, siblings were first degree relatives, the children of one's sibling were second degree relatives, etc. Affinity, on the other hand, stemmed from sexual intercourse between a man and a woman *regardless* of whether or not they were married. All of his relatives became connected to her through affinity of the same degree that they were related to him and vice versa (e.g. a brother- or sister-in-law would be considered a first degree affinal relative) (*Las Siete Partidas* 1807: 33-37).

Following this process of degree reckoning, Part IV, Tit. II (which concerned marriage) held that a man committed *incestus* ("incest") when "knowingly lying with his female relative, or with a female relative of his wife or of another [woman] with whom he had lain to the fourth [canonical] degree."⁵ Part VII, Tit. XVIII, Law I added that a man committed the sin of *incestus* when he knowingly lay with the wife of his male relative to the fourth degree. The same rules applied to women. Consanguinity and affinity to the fourth degree inhibited marriage and annulled it if it had already been contracted. Such marriage prohibitions remained even after the death of a spouse. In terms of adoption, this text decreed that a man should not marry his adopted daughter, nor should his sons marry her, while the adoption lasted. This also applied to a woman (and her daughters) with regards to an adopted son. However, sexual relations between

individuals connected through adoption were not included in the definition of incest (*Las Siete Partidas* 1807 v. 3: 18-19, 36-37, 659).

Las Siete Partidas also articulated that spiritual kinship (*parentesco espiritual*), which was created through the sacraments of Baptism and Confirmation, was incompatible with marriage. Spiritual kinship was of three types: 1. Between a godparent (and their spouse) and the parents of his or her godchild. They were considered *compadres*. 2. Between *hijos espirituales* (“spiritual children,” or godchildren) and *padres espirituales* (“spiritual parents,” or godparents and their spouses). 3. Between the *hijos espirituales* and the *hijos carnales* (“carnal children,” or biological children) of an individual. Hence, *compadres* could not marry one another, godparents could not marry their godchildren, and a godchild could not marry the son or daughter of their godparent “because they are spiritual siblings.” Sexual relations between spiritual kin of the first two types were explicitly identified as incestuous in this text. Sexual relations with a woman or man of a religious order were considered incestuous as well (*Las Siete Partidas* 1807 v. 3: 18-19, 37-38).

Las Siete Partidas provided guidelines for denouncing and penalizing incest. Following Part VII, Tit. XVIII, Law II, anyone could bring forward an accusation of incest within five years of its commission (thirty years if it had involved rape), and anyone could be accused of incest unless they were a boy under fourteen years of age or a girl under the age of twelve. According to Part IV, Tit. II, Law XIII, if someone committed incest, ideally, they would not marry unless they received a dispensation from the Church because they had been “so young that they were unable to maintain chastity.” If an incestuous person had married anyway, the marriage was still considered valid,

though subject to restrictions on sexual intercourse between the couple. The repercussions of incest were more severe in Part VII, where Tit. XVII, Law III decreed that if a man was convicted of incest (at least in its consanguineous or affinal versions) with a woman to whom he was not married, he was to suffer the penalty for adultery: death.⁶ Except in cases where one received a papal dispensation, men who knowingly married a relative would be subject to banishment. Other penalties included the loss of one's position in society for a man of high rank and public scourging for a man of low rank (*Las Siete Partidas* 1807 v. 3: 19, 659-660).

The Council of Trent (1545-1563), convened in response to the Protestant Reformation, reconfirmed incest prohibitions within the fourth degree dictated at the Fourth Lateran Council in 1215 (Sperling 2004: 74). However, Jutta Sperling (2004: 74, 100) notes a greater tolerance for "cousin marriages" in Europe after Trent, when dispensations were readily granted for individuals related in the third and fourth degree. Impediments to marriage deriving from affinity through fornication (as opposed to marriage) were limited to the second degree (*Council of Trent*, Session XXIV, Chapter IV). Impediments stemming from "public honesty," which referred to a previous public engagement to a relative of one's intended, were limited to the first degree (*Council of Trent*, Session XXIV, Chapter III). Spiritual kinship was also narrowed in such a way that it was only considered to be contracted between sponsors (and executioners) of a baptism or confirmation and the baptized or confirmed individual and their parents (*Council of Trent*, Session XXIV, Chapter II). The tenets of the Council of Trent were accepted in Spain in 1564 and adopted in New Spain in 1585 (Castañeda García 1989: 57).

Incest as defined in sixteenth century and nineteenth century Castilian law reflected such precedents. According to Book 8, Tit. 20, Law 7 of the *Leyes del Reyno*, a man committed incest when he was sexually involved with a relative to the fourth degree, a *comadre*, a *cuñada* (in the broader sense of any female affinal relative),⁷ or a woman in a religious order. (Note that sexual relations with a godchild were not mentioned.) The crime of incest also included sexual relations between a woman and an *hombre de otra ley* (i.e. a non-Christian). Incest was deemed comparable to heresy, and its penalties included the confiscation of half of one's assets (*Segunda Parte* 1567: 193). The *Novísima Recopilación* of 1805 provided the same definition of incest (*Novísima Recopilación* 1805: 426).

Even though marriage prohibitions to the fourth degree of kinship were reinforced at Trent, these prohibitions did not apply to the entire population of Spanish America. In fact, Pope Paul III had issued a papal bull in 1537 that would allow Indians to marry relatives within the third and fourth degree of consanguinity and affinity. Alonso de la Peña Montenegro (1771 [1668]: Lib. I, Trat. IX, Sec. II), Bishop of Quito during the late 17th century, references this bull in his *Itinerario para párrocos de indios*, a guidebook of sorts for those working in Indian parishes.

Ecclesiastical manuals for priests working in Spanish America suggest that Indians were instructed in the Church's definition of incest. In a 1662 manual written in Spanish and Kaqchikel, there is a section devoted to the sacrament of confession (Newberry Library Ayer MS 1508: 146-148). Regarding the Sixth and Ninth Commandment, which respectively refer to proscriptions on adultery and coveting a neighbor's wife, priests were instructed to ask male penitents if they had desired someone

or had sex with a woman. Those who answered in the affirmative were then to clarify, first, if the woman was married, and second, if the woman was by chance a kinswoman or a kinswoman of their wife. If they answered positively to the latter, they were to indicate what degree of kinswoman and whether she was a *comadre*. Similarly, after a woman confirmed she had desired a man, the first question the priest was to ask her was whether this man was a kinsman. If yes, to what degree, and was he her *compadre*. Then, she was to be questioned regarding whether she had “known” a man. If she confirmed she had, she was to be asked whether he was married and about any “degrees of *parentesco* [‘kinship’], of consanguinity, and affinity, and *compadrazgo*.”

It is unclear to what extent religious instruction in incest prohibitions was carried out in indigenous communities. It surely would have been uneven and Guatemalan incest cases suggest there was certainly room for misunderstandings among Indians and non-Indians alike (see Chapter 6).⁸ Some Indians were overzealous in terms of incest law considering the exemptions granted to them in 1537. In her work on late colonial Mexico, Jaffary (2007: 101, 104) discusses an Indian man who submitted a petition to marry a woman who was related to him in the fourth degree of consanguinity. Further, she finds that Indian couples were still occasionally denounced to the ecclesiastical court for third and fourth degree incest.

In sum, incest and impediments to marriage as defined in Catholic canon law have a long history of influence in Western secular law, beginning during the period of the Roman Empire and continuing into nineteenth-century Spain and Spanish America. The following section will briefly examine historical evidence of incest prohibitions and marriage practices among the indigenous populations of Mesoamerica.

Mesoamerican Antecedents

Colonial records provide some evidence of incest taboos and marriage prohibitions among indigenous peoples in the Americas, but it should be remembered that many accounts of indigenous populations at the time of conquest were likely colored by the interpretations, prejudices, and aims of the colonizers. Jaffary (2007:104) notes how reports from secular administrators and ecclesiastics in the first decades of colonization that referenced sibling marriage and secondary unions with parents-in-law among indigenous peoples contributed to the eventual issuance of the 1537 papal bull exempting Indians from incest beyond the second degree.

Fray Diego de Landa's 1566 description of the Yucatán provides some insight into marriage prohibitions among the Maya. In Section XXIV, where he discusses genealogies, he reports,

Sons and daughters were always called by the name of their father and their mother...in this way the child of Chel and Chan was called *Nachanchel*, which is to say, children of so-and-so, and this is the reason...the Indians say that those of the same name are relatives and they treat one another as such...And like so, no woman or man married another of the same name because in them there would be great infamy.⁹

Additionally, Landa says in Section XXV that marriage to a relative on one's father's side of the family was to be avoided, as was marriage to a sister-in-law (a brother's wife or wife's sister), stepmother, or maternal aunt. Marriage to any other maternal kin was considered legitimate (Landa 2015[1566]: 52).

Fray Toribio de Benavente Motolinía (1903: 307-308), a sixteenth-century Franciscan missionary, recorded how incest was perceived and punished by the indigenous peoples of Central Mexico. In Chapter 16 of his *Memoriales*, he says that if a man lay with his stepmother, stepdaughter, or whole or half sister both were subject to

the death penalty. Speaking more generally, Motolinía reports that death was the consequence for anyone who committed incest in the first degree of consanguinity or affinity, except for brothers- and sisters-in-law. In fact, it was custom for a brother (or brothers) to marry the wife (or wives) of their deceased brother, even if they had already had children (as opposed to leviratic marriage in Ancient Israel which applied if no offspring had been produced (Goody 1983: 60)).¹⁰

Fray Bernardino de Sahagún, another sixteenth century Franciscan friar, also delves into matters of sex with relatives among Nahuatl-speaking peoples in his *Florentine Codex*. Book X includes a discussion of the good and bad characteristics of various types of individuals including in-laws. Under the category of brother-in-law (from a woman's perspective), is a description of a "bad brother-in-law" as "one who lives in concubinage with his sister-in-law, who lives in concubinage with his mother-in-law." This man "is covetous" (Sahagún 1950-1982 v. 11: 8).

The extent to which principles articulated in these texts reflected past or contemporary colonial practice is difficult to determine. Beyond their colonial production, they also reflect elite male perspectives. Still, they remain relevant to the Spanish American cultural environment. Having reviewed legal and cultural precedents impacting incest law in Spanish America, the following section will approach issues of legal jurisdiction.

Legal Jurisdictions and Protections in Colonial Society

Shortly after the conquest wars in the Americas, the Crown took measures to gain control over its new territories, which had been more or less left in the hands of the conquistadors. One method was to establish *audiencias*, high courts of justice with

additional administrative and executive functions, in important colonial cities, the first of which was founded in Santo Domingo in 1526 (see Burkholder and Chandler 1977: 1, 229; Cunningham 1919: 12). Responsibilities of the *audiencias* included the enforcement of royal laws and supervision of officials, holding them accountable for any misconduct. Accordingly, judges went on occasional inspection tours within their jurisdictions (Burkholder and Chandler 1977: 2; Cunningham 1919: 121, 129). An *audiencia* also exercised power in the ecclesiastical sphere in terms of royal patronage, which granted temporal and spiritual jurisdiction to the Crown, and as a court of justice, whose jurisdiction extended into ecclesiastical matters (Cunningham 1919: 4-5, 363-364 n. 2). The Council of the Indies supervised administrative matters in the colonies and served as the high court of appeal for the colonial *audiencias* (Cunningham 1919: 15-16).¹¹

Central America received its first *audiencia* following the New Laws of 1542. The Audiencia de los Confines, as it was termed, was first established in Honduras and formally convened in 1544. Under the advice of the new president (i.e. chief justice of the *audiencia*), Alonso López de Cerrato, the seat of the *audiencia* was moved to Santiago de Guatemala in 1549 where it became referred to as the Audiencia de Guatemala (Sherman 1979: 129, 151). Beginning with four *oidores* (judges),¹² by 1687 the Audiencia of Guatemala had five, in addition to its *fiscal* (a crown attorney) (Sherman 1979: 129; Burkholder and Chandler 1977: 2, 230-231). The seat of the *audiencia* was relocated to Nueva Guatemala following a destructive earthquake in Santiago de Guatemala (or Antigua Guatemala) in 1773. As mentioned in the previous chapter, individuals occupying the office of the regent (created in 1776) would eventually come to act as the

chief justices of their respective *audiencias* (Cunningham 1919: 211; see also Burkholder and Chandler 1977).

Whereas the viceregal *audiencias* in Mexico and Lima had both a criminal and civil *sala* (“chamber”) with their own respective magistrates and *fiscales*, smaller *audiencias* like that in Guatemala only had one (Cunningham 1919: 18, 21 n. 32). The Real Sala del Crimen was a junior chamber of the Spanish *audiencias* with civil and criminal jurisdiction in first instance within a five-league radius of the seat of the *audiencia* (Borah 1983: 273, 444). The *audiencia* functioned as court of appeal for cases originating in lower tribunals within its jurisdiction (Cutter 1995: 53). Indeed, many cases were first tried under the direction of an *alcalde ordinario* (town magistrate) or an *alcalde mayor*, the head of a larger geographical area referred to as the *alcaldía mayor*.¹³

Colonial law granted Indians the right to use the *audiencia* as a court of first instance, a court of appeal, or together with lower level indigenous authorities (Kellogg 1995: 7). These rights can be seen in the case against Simón Hernández, an Indian man arrested for suspected incest with his daughter in 1802 (Case 33). The circumstances of the alleged incest were being investigated by the *alcalde mayor* of Escuintla, who supposedly had ill will against Simón, and the latter demanded to be tried in first instance by the tribunal of the royal *audiencia* of Guatemala.

Parallel jurisdictions operated simultaneously in Spanish America and circumstances dictated which would apply. In addition to ordinary royal jurisdiction (*justicia real ordinaria*), military and ecclesiastical jurisdictions had their own prerogatives (Cutter 1995: 6-7). Criminal cases involving soldiers were carried out in military tribunals, with appeals made to the viceroy or governor (in their role as captain-

general) (Cunningham 1919: 231). Military procedural norms were similar to those of ordinary royal jurisdiction which will be discussed below (Cutter 1995: 55). In some Guatemalan incest cases, conflicts over jurisdiction meant one accused party could be tried in the military court while the other would be tried in an ordinary court (Case 70). However, if a crime was committed prior to enlistment in the military, ordinary jurisdiction would apply (see Case 46).

Ecclesiastical jurisdiction was restricted to breaches of canon law (Borah 1983: 92). In fact, because the *audiencia* held jurisdiction over the secular church courts, it could intervene, if, for example, an ecclesiastical judge overstepped and assumed jurisdiction in temporal matters (Cunningham 1919: 420, 411 n. 3). Significantly, the *audiencia* did not have such authority in matters of the Holy Office of the Inquisition, an ecclesiastical tribunal with special royal protection until the late eighteenth century (Cunningham 1919: 428-429).

The Holy Office of the Inquisition did not establish a tribunal in colonial Guatemala. Indians made up the vast majority of the Guatemalan population and they had been removed from inquisitorial jurisdiction in 1571 (see Jones 1994: 65-66 and Few 2000: 166). As new converts to Christianity, Indians fell under the domain of a parallel institution referred to as the Provisorato, created after 1571 as an alternative to the Inquisition for the administration of religious orthodoxy among the indigenous population (Few 2002: 10; Few 2000: 174 n. 2).¹⁴ Spaniards and individuals of mixed race, on the other hand, were subject to the Inquisitional tribunal based in Mexico City beginning in 1572. Still, inquisitorial activity in Guatemala was relatively low when compared to other places in Spanish America. When active, it focused on issues such as

blasphemy, witchcraft, bigamy, adultery, and solicitation during confession. Its authority was briefly suppressed from 1813 to 1817 following the liberal Spanish Constitution of 1812 (abolished in 1814) (see Jones 1994: 65-66, 232).

The crime of incest fell under *fuero mixto* (“mixed jurisdiction”), which meant that it could be tried under an ecclesiastical or lay judge.¹⁵ Theoretically, the judge who began the trial was obligated to conclude it (Escriche (1847) in Cunningham 1919: 430 n. 55). In line with the Church’s subordinate position to the civil government and *audiencia*, the Church did not have the power to remove a criminal case that began in the secular courts from that jurisdiction or to change the sentences pronounced by secular authorities (Margadant 2001a: 90).

As mentioned above, the records from the Guatemalan incest cases analyzed here stem from the secular courts. However, sometimes these cases had been previously tried in ecclesiastical courts. An injured party might take a case to secular magistrates after a trial in ecclesiastical courts if they felt that religious authorities had not been effective (e.g. Case 65). One Guatemalan woman first went to ecclesiastical authorities regarding her husband’s incestuous behavior with their daughter. However, while the case was still pending, she decided to take her complaint to royal authorities because she feared her husband would cause her injury, he having already threatened to kill her (Case 15). Sometimes priests even sent individuals who came to them with a complaint to secular authorities (see Case 48).

It was not uncommon for both ecclesiastical and secular officials to be involved in colonial Guatemalan incest cases even when a trial was carried out in the secular courts. In cases of incestuous adultery, a guilty party might be sent to ecclesiastical authorities

following the conclusion of the case for “habilitation of the marriage,” a process through which the created impediment was waived. Following the teachings of the church, incestuous activity rendered a spouse incapable of sexual union with their partner until this process was undergone. Ecclesiastical divorce was also an option after a spouse committed incest (see Case 49 and Case 57).

As mentioned in the previous chapter, Indian towns had their own *cabildos* and were granted jurisdiction over local crime to a certain degree. In fact, Hill (1989: 180) finds that criminal procedures were being carried out even at the level of the *parcialidad*¹⁶ through the mid-eighteenth century in Tecpán. *Parcialidad* leaders heard disputes and administered corporal punishments to their members in their own houses. Even though the Spanish judiciary technically held authority in matters that involved Spaniards or in cases of homicide or assault between Indians (Komisaruk 2013: 11), indigenous leaders often held de facto jurisdiction. Because indigenous authority figures often had the ability to govern and enact justice on their own terms, not all criminal cases involving indigenous people made it to the Spanish courts.

Spanish civil and religious authorities could intervene if they felt indigenous authorities were neglecting to uphold Spanish moral and legal norms. For example, according to the Xajil Chronicle, a brother- and sister-in-law married one another in 1590 Santa Lucía. When Father Fray Cristóbal de Olivera discovered the union, he had them punished. The man, witnesses to the marriage, and *fiscal*¹⁷ were lashed and put to work in the vegetable garden and the woman was imprisoned for six months. Her witnesses also served some time in jail (Maxwell and Hill 2006: 386-387).

Similarly, in 1682 San Juan Atitlán, the *corregidor*¹⁸ of Totoncapán was informed that Pedro Cardona, a *regidor* of the town, was *amancebado* with his stepdaughter (Case 1). He allegedly had had two children with her that he killed prior to their baptism and buried in an unknown location. Through an interpreter, the stepdaughter (presumably a Tz'utujil speaker), Madalena Velasco, admitted to sexual involvement with Pedro in his milpa and said she did not think it was sin. After she gave birth to a child, Pedro told her he wanted to marry her and “that it would not be good to go with a child in her arms.” Madalena reported that she did in fact marry him and that she did not know where he left the infant. The other had been born dead. Despite denying any involvement with his stepdaughter, Pedro was sentenced to be carried on horse through the public streets with a town crier announcing the legal proceedings and crime. He was also to receive one hundred lashes, be banished twenty leagues from his town, and placed in a home with a shackle on his foot “like a slave” for two years. His tribute obligations, clothing, and court fees were to be paid from what he would receive monthly.

The cases from Santa Lucía and San Juan Atitlán reveal both interference in indigenous communities on the part of religious and secular authorities and a degree of autonomy in marriage choices within these same communities. In both instances, individuals who would have been barred from marrying one another under canon and civil law executed the marriages anyway. “Justice,” by Spanish standards, was not carried out until after the fact.

Indians were theoretically granted special privileges and protections within the Spanish legal system. In Roman and medieval European jurisprudential thinking,

miserabiles were the poor, ignorant, and wretched folk in need of special protections. The status of Indians in the Americas became more and more likened to that of this class, and therefore, they were arguably deserving of a reduction or elimination of legal fees and the simplification of legal process (Borah 1983: 5, 13, 80, 83). Further, the *fiscal* (crown attorney) acted simultaneously as the *protector de indios* (“protector of the Indians”) and was responsible for reviewing all *audiencia* decisions related to Indian matters (Hill 2002: 136).

Such privileges are referenced in the criminal records in this study. For example, legal advisors suggested that Indian defendants be exempted from court fees “because of their *calidad*” (e.g. Case 22; Case 48). In Case 2, the magistrate ordered the trial to be carried out briefly and summarily since it was a *cosa de Indios* (“an Indian thing”; i.e. involves Indians). Further, legal counsel regularly used the issue of *calidad* when formulating their defense for the criminal actions of Indian clients, a matter that will be discussed further in Chapter 6.

In sum, multiple jurisdictions operated simultaneously when it came to crime and punishment in colonial Spanish America. This not only applied in terms of royal versus ecclesiastical and military jurisdictions, but also with regards to the degree of legal (and extralegal) autonomy exercised by indigenous *cabildos* and leaders in criminal matters and marriage choices. Even when Indian persons found themselves in Spanish courts, they were in theory granted special privileges. Accusations of incest could be tried in royal and ecclesiastical courts, but because the documents in this study derive from the former, the next section is dedicated to the specifics of legal procedure associated with ordinary royal jurisdiction.

Procedural Aspects of Royal Spanish Courts

Charles R. Cutter (1995) discusses the principal aspects of criminal procedure in Spanish America, which were based on a Castilian legal procedure inspired by *Las Siete Partidas* and the *ius commune* tradition.¹⁹ The three main phases he identifies are the *sumaria*, the *plenario*, and the *sentencia*. The *sumaria* referred to a preliminary investigative phase involving a magistrate and his assistants attempting to establish facts surrounding a crime. A defendant was presumed guilty and remained ignorant of the charges during this phase. If injuries had occurred, a physical examination by a medical expert of the injured person might be ordered.²⁰ Next, witnesses of the crime were questioned, all of whom were qualified to speak at this point in a trial, even though they might be later disqualified for being a relative or otherwise interested party (Cutter 1995: 109, 113-116, 120, 126). Following Guatemalan documents, statements were recorded by a notary or by a magistrate himself in the absence of a notary.²¹ A witness's statement would be read back to them and they would affirm its accuracy, signing it if they were literate.

An accused person could be arrested at various points of the *sumaria*, sometimes immediately following an accusation of a crime.²² Once in custody, they were to give a *confesión* ("confession"), a statement in response to the accusation. As Cutter (1995: 122) notes, the *confesión* often resulted in a denial, and the term similarly comes across as misnomer in many Guatemalan incest cases. While Cutter (1995: 126) finds that a *curador* (defense counsel) would be assigned to minors following the *confesión*, colonial Guatemalan cases suggest this occurred prior to the *confesión* for minors and Indians (considered juridical minors). Still, defense counsel was only present when an accused

person was sworn in and when their *confesión* was read back to them for affirmation. That is, an accused person was questioned without their attorney present. The absence of a *curador* during the swearing of an oath, at least in a case involving Indians, could make a *confesión* null (see Case 48). Interpreters were also required for individuals who did not speak Spanish adequately, and legally, two interpreters should have been present, though this was not always the case (see Case 64). Defense counsel was named or assigned following the *confesión* for non-minors and non-Indians.

The next major phase Cutter (1995) describes is the *plenario*. This was the period in which trial participants tried to prove their respective positions, but a distinct *plenario* phase was not always evident should a trial take place as summary proceedings (*juicios sumarios*). During the *plenario*, a defendant was formally charged with a crime. Defendants were asked to ratify their *confesión* and plaintiffs might be asked to present a formal complaint. This phase could also include requests for witnesses to reaffirm their testimonies, summons of new witnesses, and disqualifications of others because of their relation to the parties involved. Often a magistrate would form an *interrogatorio*, a set of questions to be asked of the various witnesses. If any inconsistencies surfaced among testimonies, a magistrate could form a *careo*, a process in which different parties were brought together to confront one another. (*Careos* could be utilized during the *sumaria* as well.) The *plenario* also included a formal defense of the defendant, carried out either by the accused themselves or by a legal representative (Cutter 1995: 126-128).

Following Cutter (1995), the last phase of criminal proceedings was the *sentencia*. During this stage, a magistrate used his discretion (*arbitrio judicial*) to formulate a punishment without explaining his reasoning in coming to his conclusion. However, one

does find legal opinions and references to specific laws or legal doctrine in, for example, the commentaries presented by *fiscals* and legal representatives of the accused prior to sentencing. In the end, colonial magistrates “drew from a system that sought justice somewhere in the convergence of written law, *doctrina* (the opinions of jurists), custom, and *equidad* (a communally defined sense of fairness).” This casuistic approach meant judicial decisions were inconsistent across cases. Further, an accused person could be released as the result of the Crown issuing an empire-wide pardon (*indulto*) as part of a celebration of an event such as a wedding (Cutter 1995: 34, 130-131, 141-142). The results of the *sentencia* phase of the criminal documents in this study are the subject of the next section.

Criminals and Penalties in Guatemalan Incestuous Crime

Examination of penalties (or their absence) in the case sample for this study provides some insight into how legal authorities responded to individuals allegedly involved in one or multiple crimes of which incest was a part. Because incestuous crime so often coincided with other crimes such as adultery and sample size is limited by the historical record, it is difficult to confidently determine one-to-one correlations between incestuous crime and penalties.²³ Nonetheless, sentencing data is quite revealing in terms of gender, *calidad*, and marital status.

It was not uncommon for individuals in the case sample to escape (major) punishment.²⁴ When sentencing was recorded, individuals were released and/or received no (major) penalty approximately thirty-seven percent of the time (49 out of 134 records). Women were more likely than men to fall into this “acquittal” group, with women

accounting for sixty-one percent of acquitted individuals (30 of 49 records) while men only accounted for thirty-nine percent (19 of 49 records).

While the gender of a defendant was always evident in criminal cases, *calidad* and marital status was not always apparent. Out of 161 records of penalty data, only 85 contained *calidad* information. When *calidad* was recorded, individuals of mixed race accounted for thirty-five percent (30 of 85 records). Yet, they constituted fifty-seven percent (13 of 23 records) of acquittals. Indians, on the other hand, accounted for fifty-five percent of the total (47 of 85 records), but only thirty-nine percent of acquittals (9 of 23 records). Spaniards made up nine percent of the total (8 of 85 records) and only four percent of acquittals (1 of 23 records). Thus, individuals of mixed race were the most likely to escape (major) punishment and Indians were the least likely. Individuals who were *not* married (single or widowed) were almost three times as likely to be acquitted as individuals who were married (32 versus 11),²⁵ perhaps because of the coinciding crime of adultery.

While Komisaruk (2008: 371) finds sexual violence to be largely disregarded in colonial Guatemala, filtering penalty data from the case sample based on the presence or absence of rape affects the distribution of acquittals in terms of gender. When rape was *not* a factor, men accounted for forty-two percent of acquittals (13 of 31 records). This decreased to thirty-three percent (6 of 18 records) when rape was allegedly involved. Correspondingly, women constituted fifty-eight percent of acquittals in the absence of rape (18 of 31 records), increasing to sixty-seven percent when rape was allegedly involved (12 of 18 records). This suggests men were slightly less and women were slightly more likely to be acquitted when rape formed part of an accusation.

Individuals who did not escape penalty were subjected to four principal categories of punishment: corporal punishment, various forms of forced labor, confinement, and/or orders for physical separation between or a cease (or limit) of communication with at least one of the incestuous parties. Orders intended to prevent communication between parties affected approximately sixty-two percent of penalized individuals (53 of 85 records).²⁶ These individuals were almost equally distributed by gender: 25 out of 53 records for men and 28 out of 53 records for women. For individuals whose *calidad* was reported, Indians accounted for fifty-five percent (16 of 29 records), individuals of mixed race for thirty-one percent (9 of 29), and Spaniards for fourteen percent (4 of 29).

Two penalties tended to be associated with men and Indian men in particular: forced labor and lashes. Thirty-one percent of penalized individuals were sentenced to forced labor (26 of 85 records), which included armed service, public works projects, and other forms of service. Men accounted for seventy-seven percent of such sentences (20 of 26 records). When controlled for individuals of known *calidad*, Indians accounted for seventy percent (14 of 20 records). Ten were indigenous men and four were indigenous women. Individuals of mixed race accounted for twenty-five percent (5 of 20 records) and Spaniards for five percent (1 of 20 records).

Lashes only affected thirteen percent of penalized individuals (11 of 85 records). Ninety-one percent of individuals who received lashes were men (10 of 11 records). Seven of these men were Indian and the only woman in the sample to be sentenced to lashes was also Indian. Indians made up eighty percent of individuals of known *calidad* sentenced to lashes (8 of 10 records) while individuals of mixed race made up twenty percent (2 of 10 records). Lashes do not appear in the sample cases after 1810, the year in

which the Governor and Captain General of Guatemala abolished the practice of whipping commoners and Indians charged with crimes (Salazar 1928 in Jones 1994: 238).

Thirteen percent of penalized individuals were sentenced to confinement (11 of 85 records). This penalty was also gendered: women outnumbered men nine to two. Seven of these women were not married, suggesting sentences of confinement were more appropriate for single or widowed women. This may reflect a general concern among colonial authorities to maintain marital units whenever possible. For individuals of known *calidad*, Indians accounted for approximately seventy-one percent (5 of 7 records), individuals of mixed race for fourteen percent (1 of 7), and Spaniards for fourteen percent (1 of 7).

Overall, women had a greater tendency to be acquitted than men, and this tendency increased when sexual violence was involved. When penalties did result, orders aimed at impeding communication between two parties were the most common. As might be expected, this penalty was not particularly gendered. However, lashes and forced labor were more typically a male punishment, whereas confinement was a largely female one. While Indians constituted approximately fifty-five percent of the total individuals in the sample, they were underrepresented in terms of acquittals and overrepresented when it came to the penalties of forced labor, lashes, and confinement. This discrepancy is especially intriguing considering the special considerations Indians were theoretically granted within the court room.

Conclusion

The aim of this chapter has been to orient the reader to various aspects of the legal system in colonial Spanish America. It began with investigation of various legal and cultural precedents that shaped incest law in Spain and Spanish America. Jurisdictional issues and the procedural aspects of secular criminal trials in colonial society were also examined. Lastly, legal outcomes from the Guatemalan case sample were discussed to provide a general overview of what was at stake when individuals of various backgrounds found themselves being tried for incest (and other crimes). The next two chapters focus specifically on the insights into kinship and interpersonal relations that can be gleaned from criminal records, especially as they relate to incestuous crime.

CHAPTER 4

LA SANGRE TIRA: INCEST, DEVIANCE DISCOURSE, AND EXPECTATIONS OF KIN IN THE LEGAL CONTEXT

While the last chapter examined the major aspects of the colonial legal system and the evolving definition of incest in Western canon and secular law, this chapter focuses on the ways incestuous crime took shape in colonial Guatemala. Debate among legal advisors and defense counsel and patterns in the types of incestuous crime typically brought to formal trial are suggestive of a cultural context in which some forms of incest were viewed as more criminal than others. Further, evidence and testimony in incest trials highlight kin norms and the effects they could have on the realization of sexual relations between kin and various aspects of the legal process.

Valuations of Incest in its Various Forms

As seen in the previous chapter, the term “incest” was used to refer to sexual relations between individuals related through consanguinity, affinity, and *compadrazgo* in Spain and Spanish America. Using “incest” as an umbrella term for sexual intercourse between individuals of such differing connections suggests that incest was equally deviant regardless of the particular form it took. However, the greater willingness of the Church to grant dispensations for marriages between third and fourth degree relatives following the council of Trent, not to mention the papal bull exempting Indians from charges of incest beyond the second degree, suggests otherwise. Penyak (2016: 162) finds that ecclesiastical and civil officials in late colonial and early modern Mexico held a

“nuanced perspective” on incest. In general, “they found incest nefarious and unnatural when committed by close relatives and when violence was involved, but they considered it understandable and natural when cousins sought to marry their social equals.” In colonial Guatemalan incest cases, some individuals distinguished between types of incest whereas others did not.

It was not uncommon for criminal proceedings to include the “degree” of incest committed. That is, incest in the first degree (e.g. (step)father-(step)daughter incest), incest in the second degree (e.g. (political) aunt-(political) nephew incest),¹ and so on, as defined by the degree of relatedness between the parties involved. Such gradation suggests the response of colonial Guatemalan authorities to incest accusations could have varied based on the degree of affinity or consanguinity through which the accused persons were related. Only a handful of incest cases in the case sample clearly exceed first degree incest. However, first degree incest cases occasionally reveal discussion on the subject. For example, in a 1784 case of stepfather-stepdaughter incest, the *asesor* (legal advisor) of the case cited the *Tractatus de Poenis Delictorum* (1603) in stating that incestuous crime could be punished with the death penalty when committed in the closer degrees (Case 10). Similarly, in an 1801 case against Josef Eustaquio García for incest with his daughter, the *fiscal* mentioned in passing “the difference and greater gravity of nefarious copulation between father and daughter compared with that of incest in general” (Case 30).²

Accordingly, incest between certain consanguines could be evaluated as more criminal than that between others. This surfaces in a 1785 case of mother-son incest from Nueva Guatemala (Case 11). Don Manuel Hernández Córdova, defense counsel for the

son, believed the pair to be innocent, using the fact that they were mother and son in his justification. He wrote,

Indecent coitus, not speaking of that between a Mother and son but rather between an aunt and nephew or between cousins, causes natural horror. Nature itself completely resists it, for [nature] would run rampant, and for much greater reason it resists the manifestation of the [incest] of which my party is accused because it's his sixty-year-old Mother, and because it was not possible that in one fell swoop they would have overcome this natural resistance, and as it happens, for reason of age. A preceding continuation of affectionate actions would have been necessary for it, with which, even though with much difficulty, perhaps the natural horror would be overcome, but no crime has preceded.³

In other words, first degree incest between a mother and son is less likely to manifest than second degree incest such as that between cousins because it is more unnatural, especially when the mother's age is taken into consideration.

The gender of a parent does not seem to have been a major contributor to deviance discourse surrounding parent-child incest as has been found in other contexts (see McKinnon 1995). There is certainly an asymmetry in terms of frequency of occurrence in the colonial Guatemalan sample: father-daughter incest accounts for twelve cases and mother-son incest for only one (Case 11) (see Table 4.1). Though the case of maternal incest was referred to as “the most abominable incest” and as a “so very execrable crime” by the *alcalde ordinario* (town magistrate), adjectives like “abominable” and “execrable” surface in cases of father-daughter incest as well (Case 42, Case 69). Further, commentators could be quite explicit regarding the abnormality of father-offenders. For example, during the trial of Patricio de León, a man accused of attempted *estupro* (loss of virginity) of his daughter, Asesor Eusebio de Silva said,

...that the crime of which [these proceedings] deal is atrocious and in such degree that neither in canon nor civil law is found explicit text that deals (in material of incest and its penalties) of that executed between Father and daughter, truly an unexpected crime, and its repugnance was specified to us since [the beginning of] written law, and even

Seneca the Elder, being a Gentile, when he for another purpose happened to touch on the deformity of coitus had between immediate relatives, he evaluated it as extremely criminal, and effectively, in common law the culprits of this crime were punished with the penalty of death, having force of law, for example, access with a stepdaughter, stepmother, niece, etc., with which, being of superior gravity that which Patricio de León is said to have had with his young daughter Francisca, there would be nothing else to do except, according to the merit of the trial, to order him hanged.⁴

However, Silva went on to state the elements of the case that were in Patricio's favor, including the need for greater evidence in incest of the first degree than in common crimes of the flesh where strong presumption is more involved than positive evidence (discussed further below). In the end, Patricio was sentenced to twenty-five lashes and six months of public works. Thus, despite the presence of various forms of gender inequality in colonial society, there is no clear evidence from colonial Guatemala that mother-son incest was more wholly condemned than father-daughter incest.

Some individuals placed greater weight on incest between consanguines than between affines. This distinction surfaces in the criminal records associated with Esteban Quiñones, who was tried for incest with his stepdaughter in 1784 (Case 10). According to his *defensor* (defense counsel), Marcelo de Rivera y Córdova, “the incest that he committed is not one of the most abhorred ones and which the Laws punish with greater severity because the girl is not his relative through consanguinity but rather through affinity.”⁵ In contrast, the *fiscal* of the case argued that *Las Siete Partidas* did not differentiate between incest committed between consanguines and that between affines in terms of penalties.

Looking at the case sample as a whole, incest cases involving individuals connected through affinity are better represented. In fact, cases of affinal incest are almost three and half times as common as those involving blood relatives (see Table

4.1).⁶ The greater frequency of affinal incest compared to consanguineous incest could be indicative of a greater willingness on the part of colonial Guatemalans to participate in the former over the latter. At the least, it suggests an increased likelihood for affinal incest accusations to be brought forward. In terms of sentencing, individuals accused of affinal incest fared slightly better in terms of acquittals (41%, or 40 out of 98 records) than those accused of consanguineous incest (29%, or 7 out of 24 records).⁷ Further, while forty-four percent of consanguineous incestuous incidents involved rape (7 of 16 records), only twenty-six percent of affinal cases did (18 of 70 records).⁸ This suggests affinal incest was more likely to be consensual than consanguineous incest. Like the *defensor* for Esteban Quiñones, these tendencies suggest that affinal incest enjoyed a greater level of cultural acceptability than consanguineous incest.

Table 4.1. Incidents of incest by kinship type.

Kinship Type	N	Total
Affinity		55
<i>brother-in-law/sister-in-law</i>	15	
<i>stepfather/stepdaughter</i>	14	
<i>man/mother-daughter pair</i>	9	
<i>man/sister-pair</i>	5	
<i>political uncle/political niece</i>	4	
<i>father-in-law/daughter-in-law</i>	4	
<i>stepmother/stepson</i>	1	
<i>woman/brother pair</i>	1	
<i>woman/father-son pair</i>	1	
<i>political first cousins</i>	1	
Consanguinity		16
<i>father/daughter</i>	12	
<i>mother/son</i>	1	
<i>brother/sister</i>	1	
<i>uncle/niece</i>	1	
<i>first cousins</i>	1	
N/A		7

There is no apparent association between incest type (affinal versus consanguineous) and socioracial group. In her work on colonial Mexico, Jaffary (2007: 99) finds that Indians tended to submit dispensation applications to remove affinity impediments to marriage whereas Spaniards were more likely to submit applications for consanguinity impediments. For colonial Guatemalan incest cases, affinal incest outnumbered consanguineous incest 3 to 1 for cases involving one or more Indians and 3.6 to 1 for cases involving one or more individuals of mixed race. Spaniards only account for four cases of incest: two were affinal and two were consanguineous (See Table 4.2). Hence, tendencies towards affinal incest obtain for both Indians and those of mixed race in the case sample, while Spaniards demonstrate no clear tendency.

Table 4.2. Incidents of incest and *calidad*.

<i>Calidad</i>	Kinship Type	N	Total
Indian	Affinity	18	24
	Consanguinity	6	
Mixed Race	Affinity	18	23
	Consanguinity	5	
Spanish	Affinity	2	4
	Consanguinity	2	

Whether or not affinity had been formally contracted through marriage or informally through sexual intercourse also had the potential to influence legal opinion. In 1801 Manuel Canales was accused of incest with a woman whose relationship to him was not clarified and carrying arms (Case 29). During the trial, Fiscal Piloña indicated he was not opposed to converting the punishment of Manuel from two years of imprisonment to

two years of public works, “considering the *parentesco* between the two originated from illicit copulation”⁹ and the carrying of arms in public had not been proven.

No incest trials in the sample deal with individuals tied through *compadrazgo*; in fact, only consanguineous and affinal incest are represented. However, in some criminal records allusions to spiritual incest appear, and in one of these cases sexual relations between *compadres* is presented as more inappropriate than affinal incest. Discussion of these instances is reserved for the next chapter.

Overall, those working within the legal realm seem to have agreed that incest in general was criminal, but some perceived certain forms of incest as more criminal, unnatural, etc. Variation in this regard is not surprising since multiple cultural and legal resources could be utilized when it came to formulating arguments. But the greater representation of criminal records pertaining to first degree and affinal incest is suggestive that sexual relations between first degree and affinal relatives were more likely to manifest than sexual relations between relatives of greater degrees and through blood ties. To be sure, relatives of the first and second degrees were more likely to interact with one another on a regular basis, making consensual and forced sexual relations between such kin more attainable. The tendency towards affinal incest could speak to a greater level of cultural acceptability of or ignorance surrounding incestuous relations of this type. On the other hand, these patterns could reflect a lack of reportage due to ignorance of extended kin ties, little concern about sexual relations with extended kin, or fear of relatives within the parental family. The following section will explore how differences in relatedness could also impact reactions to the submission of evidence during incest trials.

Sharing a Bed: Assumptions Regarding Kin and Sexual Relations

It is likely not surprising that beds (or sleeping areas in a broader sense) were generally considered to be intimate places among colonial Guatemalans. Individuals who shared a bed were often suspected of sexual involvement by both authority figures and laymen alike. Finding relatives together in a bed was more complicated when it came to interpreting motive. This surfaces in an 1803 incest case against Domingo Morales, and his sister-in-law, Dolores Gaitán (Case 41). In making his arguments, the *procurador de pobres* (attorney assigned to aid the poor) representing Dolores referenced the *doctrina* of Antonio Gómez, author of *Comentarios a las Leyes de Toro* (1552), which was written with respect to the Laws of Toro that had been promulgated in Spain in 1505. He argued that following this text,

...to find relatives naked in the same bed does not establish presumption nor evidence of copulation between them, because even though it would be sufficient with respect to *extraños* ["strangers" or "outsiders"], relatives have in their favor a stronger and more vehement presumption of honesty born from shared *parentesco*.¹⁰

That is, relatives can share a bed without causing suspicion. However, he went on to say that Gómez includes in this text his own contrary opinion,

...that to find consanguines naked in the same bed [is] sufficient evidence [of] the incest, but he [Gómez] also says that this should be understood [only] when these *collateral* [emphasis added] relatives lie in the bed secretly and occultly, and not in public, because in this case such evidence would not be sufficient.¹¹

In other words, relatives who share a direct line of descent have a greater presumption of honesty than collateral relatives do, but if the latter are open about sleeping in the same bed, then it is likely they are not trying to conceal any illicit sexual activity. Because the attorney proceeded to apply the *doctrina* of Gómez to a case involving a brother-in-law and sister-in-law, collateral relatives through affinity also clearly benefited to a certain

degree from the presumption of honesty as long as they did not keep their sleeping arrangements secret. Of course, as seen above, opinions regarding the presumption of honesty varied.

Regulations on and concerns over sleeping arrangements can even be found in the case of relatives who shared a direct line. Anne Collins (1980) says *corregidores* occasionally made inspections of Indian dwellings in Jacaltenango.¹² As part of these inspections, the *corregidor* “checked to see that each house had beds above floor level, that each contained only one family, that children’s beds were separate from those of their parents, and that male and female children had separate beds” (Collins 1980: 117-118).¹³ Similar concerns are found in the late eighteenth-century account of Pedro Cortés y Larraz (1958), Archbishop of Guatemala, who toured and interviewed priests throughout the Archdiocese. He recorded that the priest of the parish of San Cristóbal Totonicapán, a largely K’iche’ area, told him that “the dominant vices [there] are inebriation and lasciviousness, abandoning themselves to horrible incests between parents and children...the immediate risk being that everyone sleeps together”¹⁴ (Cortés y Larraz 1958: 105). Thus, a parent-child bond itself did not necessarily benefit from a presumption of honesty, and suspicion over sleeping arrangements between parents and children was not limited to interactions between colonial authorities and indigenous populations (see Case 11).

Testimonies in the criminal record suggest that age could also factor into the doctrine of a presumption of honesty when it came to parents and children sharing a bed. This sentiment is alluded to in an 1801 case of father-daughter incest involving Josef Eustaquio García, an Indian bricklayer residing in Nueva Guatemala (Case 30).

According to his sixteen-year-old daughter María Josefa, her father had come home drunk one night and later got on top of her when she was well asleep. She told him, “Tata [‘Dad’ or ‘Daddy’], I’ll tell Nana,” and called to her mother several times. But her mother did not hear her, and she ceased from calling her because she feared her father would hit her. She tolerated him for a little less than a half hour before she again told him she would tell her mother. At that point, he let her be. She did not tell anyone about what happened because she feared what would happen to her. She had been a virgin until this incident and was now pregnant.

Interrogated about the incident, Josef Eustaquio also said he had been brought home drunk one night by some acquaintances and stated that he lay down in the first bed he came across without distinguishing between them. He was upset when he woke up the following day with his daughter next to him and remonstrated his wife for allowing him to sleep in her bed. Evidently, Josef Eustaquio considered this behavior inappropriate. Apparently, his wife did too, telling him that they left him there because they were unable to move him.

Both María Josefa and her mother, Gorgonia Valensuela, were questioned about whether the girl’s father had slept in her bed. Gorgonia said her daughter had had a separate bed since she started getting older; though it was in the same room as the parents’ bed because they were poor. María Josefa said she and her father only shared a bed the night of the incident. Like her mother, she said that “since she was young, or from the time that ‘reason entered her,’ her mother put her in a separate bed such that she never made use of her father’s even though they were in the same room.”¹⁵ Thus, while it

may have been acceptable for young children to share a bed with their parents, sleeping arrangements needed to be altered once they reached a certain age (see Case 11 also).

The association between age and permissible sleeping arrangements also surfaces in the proceedings carried out against an Indian family in San Miguel Totonicapán (Case 21). In 1797 Miguel Caixon was suspected of having committed incest with his stepdaughter. During a search of the home, the *comisionado* (“commissioner”) encountered Miguel’s wife, Antonia Sic, lying down with a small child of about three years of age. Following his statement, Antonia asked him what he was looking for and told him that only she and her husband were there sleeping on the floor. However, the *comisionado* reportedly found a large naked woman stretched out and face down beneath the sleeping mat. Asking who she was, Antonia claimed she was a *criatura* (“infant” or “young child”). Obviously not believing her, the *comisionado* slapped the woman and said, “Get up *criatura!*” The report of the *comisionado* suggests that Antonia thought a *criatura* sleeping alongside her and Miguel did not constitute a criminal matter. She not only used the term *criatura* to describe an older individual but also failed to acknowledge the child she was holding when telling the *comisionado* that only she and her husband were sleeping there.

The issue of the bed is addressed in the testimonies of Antonia and Miguel, which were taken with the aid of an interpreter and likely originally given in K’iche’. At this point in the proceedings, it was known that Juana Velasco (Antonia’s daughter and Miguel’s stepdaughter) was about twenty-five years old. For her part, Antonia claimed that her daughter had hid underneath the straw flooring of the dwelling, *not* under the sleeping mat. In so doing, she distanced her daughter from the controversial sleeping area

altogether. In contrast, Miguel did not deny that his stepdaughter was in his bed. Instead, he said that even though the authorities had found her there, she was sleeping next to her mother so they could share a blanket since they only had two. His explanation suggests the presence of Antonia (and a need to stay warm) would add a licit hue to an otherwise damning discovery. Perhaps, then, parents who shared a gender with the children in their bed could do so with less scandal. This would not be surprising considering the heteronormative environment of colonial Spanish America in general.

In sum, testimony related to sleeping arrangements could constitute a significant piece of evidence in trials dealing with “crimes of the flesh,” but in the context of incest, the issue of bed sharing revealed mixed messages regarding assumptions about kin. On the one hand, kin (or at least certain kin) were assumed to naturally avoid sexual engagement with one another in a space associated with sexual intimacy. On the other, kin (and colonial authorities) needed to be diligent when it came to maintaining boundaries in such spaces, at least once children were beyond a certain age. The next section examines another key concept influencing household organization, that of *respeto* (“respect”), and its intersection with incest.

(Dis)respecting Kin

In his work on late colonial Mexico, Stern (1995: 213) discusses how the various meanings of *respeto* “incorporated a core idea of restraint, a deference to order, place, and legitimacy that restrained destructive inner impulses—whether the impulse to challenge authority or to abuse it.” In colonial Guatemalan incest cases, sexual relations with one’s kin could be framed as a lack of respect. Disrespect in these terms can be found in Case 11 against Manuela Antonia Hernández and Josef María Santa Cruz for

mother-son incest. When Josef María was informed of the charge, he claimed that he “has never, at any time, nor through ill thought, had with his Mother the slightest insolence regarding the particular, as in addition to being an older woman, he has always kept a Mother’s due respect.”¹⁶ In other words, respect towards and sexual relations with one’s mother was incompatible in his eyes.

This aspect of respect was not limited to consanguineous kin or the parent-child tie. Micaela Gerónima Catalán, a witness in an incest trial involving José María Díaz (alias Cantarillas) and his sister-in-law Agustina (no surname listed), demonstrates this in her statement (Case 71). Micaela said she had lived with the pair for a period of time and it was evident to her that they saw one another as brother- and sister-in-law. Agustina had taken care of “the things of the house” since José María was widowed by her sister.

Michaela claimed she had never witnessed

...any action that might indicate wrongdoing, as Cantarillas treats Agustina with the *respeto de cuñada* [a sister-in-law’s respect], sleeping each one in their bed, and they only receive one another when it is time to eat and drink...and when his wife died, she left Agustina, her sister, in charge of caring for her husband the same as she had.¹⁷

Hence, Michaela defended her housemates against the charge of incest by drawing on a discourse of respect and an emphasis on sleeping arrangements. Further, the remainder of the interactions between the two accused were largely the result of Agustina fulfilling her sister’s wishes. If this was truly the case, Agustina would no longer be able to carry out this obligation as she and her brother-in-law were ordered to separate their residences.

Despite the opposition between sexual relations and respect towards kin, concern over maintaining respect could actually contribute to their manifestation. In 1793 Doña Micaela Sermenio denounced her husband, Don Juan Manuel Dardón, a Spaniard living in Chiantla in the jurisdiction of Totonicapán, for a long-term *concubinato* with their

daughter María Josefa (Case 15). Though it had been going on for ten years, Micaela believed that for the first seven years her husband only used María Josefa “in touches,” not taking her virginity until later. She maintained that María Josefa was never agreeable to her father’s indecencies, but she went along with them “possessed by fear, terror, and respect in terms of his quarrels and threats.” Her daughter always told her about what happened in hopes she would rectify the situation, telling her when she was young to not leave her alone with her father, and once she was older, “to remedy her disgrace, as she was condemned and against her will would go to hell.” This latter statement speaks tragically to the potential psychological trauma of incestuous rape. At the time of the denunciation, Micaela’s husband had intended to alternate whose bed he slept in, sleeping with her some nights and with their daughter on others. After he slept in their daughter’s bed for five consecutive nights, Micaela made a formal accusation to a priest, and María Josefa was put in *depósito* (temporary custody).

María Josefa’s statement is thematically similar to that of her mother. She reported that nine years prior her father, “taking advantage of *halagos de Padre* [“affectionate displays of a Father”] and [her] innocence, had *polución* with her, that is, he used her legs and area external to her uterus for rubbing and ejaculation.”¹⁸ These episodes continued with frequency, even taking place when her mother was around. (Her mention of the presence of her mother seems to have been a means to highlight the gall of her father.) After many years, he took her virginity by force, “and even though he maintains [that] she gave her body to him, she was possessed by terror and respect.”¹⁹ He continued with her in *concubinato* for the next year, and there were so many acts she could not number them, “but he did not consummate any of them *intra vas* [‘inside the

vessel'] because he had particular diligence in *extravasación* [i.e. ejaculation outside of the vagina].”²⁰ Recently, her father had been sleeping with her in the same room as her mother, who was sleeping alone with the other children in her bed. Asked what measures she took to avoid the persecution by her father, she said that she always told her mother what happened (despite her father warning her against it) and asked her to remedy it. However, her mother, “not having greater freedom than she nor better reach, wanted to remedy it quietly and with the complaints” to priests and the royal authorities. Micaela’s relative inability to help her daughter without the aid of male authorities brings into focus the potentially inferior nature of the mobilization-of-female-alliances strategy compared to the pluralization-of-patriarchs strategy mentioned by Stern (1995: 98-108).

From the statements of María Josefa and her mother, it is clear that violent intimidation was not the only factor contributing to María Josefa’s continued sexual abuse by her father; kin norms that demanded respect towards one’s father also played a part. Both women used the concept of respect in their attempt to alleviate culpability on the part of María Josefa. As a daughter, she was in a subordinate position to her father, making resistance that much more untenable. In fact, María Josefa argued he even used fatherly affection to take advantage of her as a young girl, implicitly suggesting another man would not have been so successful. Initially blinded to the crime by youth and trust in a father’s love, she was later obliged to participate out of respect and fear. Respect, then, could be a double-edged sword.

This dual nature of respect also surfaces in a case of alleged incest between a stepfather and stepdaughter. In 1810 Felipe Gil, resident of Santa Cruz del K’iche,’ was accused of mistreating his wife on behalf of his relationship with her daughter, Petrona

Alvarado, who was nineteen years old and pregnant (Case 61). When giving her statement, Petrona was asked how she could have had sex with Felipe, given that he was the husband of her mother, “committing such repugnant excesses.” She replied,

...that as she was a girl and had a reverential respect towards him, she would always obey him in whatever he ordered of her, going with him out of their house on trips or to their farm, and that as soon as they were alone, he caressed her, she attributing these affections to an honest love, until little by little, he went exceeding with her on the occasions...and that once there was time to reflect, Felipe Gil had already consummated the act with her, that [she] did not have a [sexual] dealing with any other person than him, and she always gave in, even though with repugnance, because she did not dare to tell him no.²¹

In other words, being young and undesirous of disrespecting or offending her stepfather in some way, Petrona obliged him when he wished to have sexual dealings with her, and she continued to do so even after she understood the inappropriate nature of such dealings. For Petrona, respect demanded consent even in matters she (and others) deemed improper.

Paradoxically, Petrona was scolded during questioning that she should have viewed Felipe with *respetos de Padre* (“a Father’s respect”) since he was married to her mother and not complied with his sexual advances. Here, the two competing narratives of respect emerge side by side; in one, respect demands compliance in sexual matters, and in the other, respect is wholly opposed to such matters. Because Petrona leaned towards the former, while the magistrate was partial to the latter, Petrona’s defense was compromised. She was instead portrayed as breeching kin norms. Ultimately, Felipe and Petrona were released on behalf of a general royal pardon. Felipe was sentenced to the fees of the trial and ordered to carry out measures for the habilitation of his marriage. Petrona was instructed to move in with her grandfather.

These cases demonstrate an intimate link between notions of familial respect and incest. On the one hand, respect towards kin was presented as an impediment to sexual relations between them. On the other, this same respect could contribute to sexual violence against female relatives, and as will be seen explicitly below, respect could lead to silence surrounding it.²²

Kin and the Justice System

Guatemalan incest cases reveal not only expectations of kin in terms of sexual relations but also assumptions about how kin would behave in the court room. Indeed, family members played a major role in criminal proceedings involving incestuous crime. In cases in which a plaintiff was identified, relatives (through blood, marriage, or godparenthood²³) of one or more parties were responsible for bringing the accusation forward approximately seventy-two percent of the time (See Table 4.3, 4.4). Significantly, women outnumbered men two to one as plaintiffs in these cases when authority figures are excluded (See Table 4.5, 4.6).²⁴ The discrepancy between male and female plaintiffs demonstrates how Guatemalan women in particular could be quite litigious when it came to the correction of perceived wrongs within the familial and marital realm, which was likely in response to a lack of authority within the home itself.

Plaintiffs gave various reasons for coming forward. According to Manuel Valencia, he went to authorities to clear his conscience and “on behalf of being Christian and eager for the honor of God” (Case 7). When Ana Alvarado (mother of Petrona Alvarado mentioned above) was asked her intention in denouncing her husband, who was allegedly mistreating her because of his relationship with her daughter, she said “only the ability to live with him licitly should he be excused” (Case 61). Of course, accusations

Table 4.3. Plaintiff(s) type in cases involving incest.

Relative(s)	Self	Other	N/A	Total
34	2	11	24	71

Table 4.4. Case numbers by plaintiff(s) type.

Relatives	Self	Other	N/A
2, 5, 7, 8, 9, 10, 12, 15, 17, 20, 24, 25, 27, 28, 30, 31, 34, 37, 45, 46, 48, 50, 57, 59, 61, 63, 64, 65, 66, 67, 68ab, 69, 77	4, 62	11, 14, 23, 26, 32, 33, 39, 41, 47, 55, 73	1, 3, 13, 18ab, 21, 29, 35, 36, 38, 40, 42, 43, 44, 51, 53, 54, 56, 58, 70, 71, 74, 75, 76

Table 4.5. Plaintiffs by gender.

Women	Men	Authorities	N/A	Total
34	17	3	23	77

Table 4.6. Case numbers of plaintiffs by gender.

Women	Men	Authorities	N/A
4, 5, 8, 9, 10, 15, 17, 18a, 20, 24, 25, 27, 30, 31, 32, 37, 41, 46, 48, 50, 55, 57, 59, 61, 62, 63, 65, 66, 67, 68ab, 69, 77	2, 7, 11, 12, 26, 28, 33, 34, 39, 45, 47, 64, 68a, 77	14, 23, 73	1, 3, 13, 18b, 21, 29, 35, 36, 38, 40, 42, 43, 44, 51, 53, 54, 56, 58, 70, 71, 74, 75, 76

that plaintiffs went to the authorities out of revenge or ill will towards the defendants were not uncommon, and plaintiffs and witnesses alike could be required to swear under oath that they did not testify for such reasons.

As discussed in Chapter 2, some women and girls were afraid to look for aid when they experienced abuse at the hands of male kin. Case 17 demonstrates these concerns and how the court room could be rigged in favor of a patriarch even when plaintiffs decided to come forward. In 1794 Nueva Guatemala, Valentina and Sabina Castellanos reported their widowed father, Tomás Castellanos, to the *alcalde de barrio*

(an official charged with law enforcement in a subdivision of a city) for physically mistreating them and kicking them out of the house because of a *mala amistad* he had with Ana María Turcios. Because their brother, Mariano Castellanos, had already been ordered to distance himself from a woman named Ana María, the magistrate asked if this was the same woman. The girls answered in the affirmative, which implied Ana María was in an incestuous relationship with a father and son. According to the *alcalde de barrio*, Valentina and Sabina “begged me for their accusation to never be known because of the cruel punishment that they would experience.” Thus, he proceeded to carry out measures with the greatest secrecy to obtain the truth. Despite such attempts, Tomás eventually appeared at court saying he had learned about the accusation of his daughters and that Ana María had been arrested for it. He claimed Ana María took care of his house and that he had punished his daughters because of their bad conduct, Sabina having become pregnant from a married man.

When Valentina and Sabina were brought in to formally testify, the father-daughter relationship between them and Tomás worked against them. Valentina was asked what “reason she had to denounce her Father, Fathers being across the land the people to whom children owe [the] most reverence and love.”²⁵ Just by testifying against her father, Valentina was automatically put on the defensive. Sabina was asked in like manner her reason for forwarding the complaint against her father. Both referenced his mistreatment, but the notion that testifying against one’s father could be framed as disrespectful or an act of betrayal surely would have contributed to an environment in which children were hesitant to do so.

Tomás, on the other hand, utilized the father-daughter relationship to his advantage. When he appeared at court a second time, he reiterated that as a widower he felt it was necessary to have someone care for the family when he was away on errands, and that amidst the measures he had taken to protect the honor of his daughters, he had viewed them with tenderness and kindness. Further, he argued “that children are crows to pick out one’s eyes, and that according to law they should not go against their Father except in capital cases, following the fourth chapter of the Ten Commandments [i.e. ‘honor your mother and father’] that so orders it.”²⁶ In other words, Tomás was acting in the interest of his daughters in correcting them, but they were acting unlawfully in reporting him to the authorities. In a later statement, he said that he presumed his older daughters were avenging themselves with the false accusation because he had tried to correct their excesses. Ultimately, Tomás was sentenced to the court fees and nothing more. Ana María was ordered to return to the side of her husband.

Similar themes surface in Case 69, in which Juana Josefa Gómez, an Indian girl of about fourteen years of age living in Canales, accused her father of being sexually involved with her sister María Baltazara (Case 69). Fearing he would do the same with her, she reportedly asked the *alcalde* of Canales, “for the love of God, to find her a home where she can serve [as a domestic servant] because she did not want to be with her Father.”²⁷ Don Vicente Arrazola, *defensor* for her father, briefly noted “the oddity that it is for a child to accuse their Father.”²⁸ In like manner, the *curador* for María Baltazara referred to Juana Josefa as “the wicked denouncer of her Father.” Further, he argued that María Baltazara admitted to the crime during a *careo* with her father (and after initially denying it) because, “as she would see her Father, José María, confess to a crime that he

had not committed, she, in order to not refute him, not knowing what he was doing, manifested her conviction.”²⁹ Fear of punishment by the authorities was also a factor. Thus, this case not only points to an environment in which a child might fear going to the authorities in the first place but also to one in which they could be intimidated into changing their testimonies once a trial had begun.

Yet, kin norms also had the potential to support denunciations by family members. When María Baltazara denied having had sexual relations with her father, she was ordered to not perjure herself, “as her own sister, Juana Josefa, accuses her, that she has not been pressured nor obligated to denounce them.”³⁰ Hence, it was assumed that someone would not falsely accuse a sibling. Still, for her part, María Baltazara retorted that “her sister is a liar, and perhaps they have counseled her.”

Likewise, in 1810 San Raymundo, Doña Josefa Soto denounced her sister and husband for incest (Case 65). She had reported the relationship many years before, and despite various complaints and measures taken to end the relationship, Josefa claimed their relationship continued. When her sister, Doña Salomé Soto, was questioned about the accusation, she argued that it had been eleven or twelve years since she was involved with her brother-in-law and her sister’s recent claims had been spurred by her jealousy. Salomé was remonstrated that she contravened the truth, “as, since [it] came from her sister, it could not have just been jealousy but rather positive cause that led her to complain of her illicit commerce with her husband.”³¹ That is, it was assumed that a woman would not be so careless as to denounce her own sister to the authorities unless she was certain she had committed a crime.

Sometimes expectations of kin in the legal arena depended on whether an individual was a relative through consanguinity, affinity, or neither. In 1811 Pedro Calderón, a *mulato* tailor in Nueva Guatemala, was accused of physically and verbally abusing his wife and the *estupro* of his stepdaughter, Petrona Calderón (Case 66). The formal denunciation came from his sister-in-law (aunt of Petrona), but Petrona testified against him. During her testimony, Petrona recounted the violent rape by her stepfather. The marks he left on her face caught the attention of her aunt. Asking her about them, Petrona told her, “I’m sorry that my little sister is growing up because [otherwise] she would not see the bad example of my Father.”³²

Pedro denied the accusation and drew on the issue of relatedness to defend himself. He claimed that Petrona only testified against him at the advice of her aunt (with whom he had not gotten along), who went so far as to tell Petrona that she was not his daughter. He explained how his wife was pregnant with Petrona when they got married, she “being child of another,” but as this was not known, she was baptized under the notion that she was a legitimate daughter. Having been told

...it is not believable that the counsel of the aunt would make a greater impression on Petrona than the natural [impression] of a father on a daughter to slander him, he said it’s not surprising that the girl would give in to the advice of the aunt when she has imposed on her that she is not his daughter.³³

Thus, Pedro believed that Petrona’s new awareness that he was not her (real) father contributed to her willingness to testify falsely against him. In other words, a (real) daughter, in this case one that shared a blood tie, would behave differently.

Don Joaquín Mariscal, the *procurador de número* (municipal lawyer) who assisted Pedro, spoke in a similar manner. Rhetorically asking why Petrona would “raise her head” against his client, he argued, “She would not have dared such disrespect if her

Aunt Antonia had not suggested the disobedience to her, revealing to her that she was not a daughter of his.”³⁴ Mariscal’s requests to the magistrate included the release of his client and for Petrona “to be subdued to her Stepfather.” Thus, a daughter (as opposed to a stepdaughter) would not disrespect her father in this manner and a stepdaughter might need to be reminded that a stepfather was due the same respect. Here again, the discourse of respect would surely discourage some children from going to the authorities. Indeed, Petrona’s almost fatalistic attitude towards the sexual abuse from Pedro is revealed in her comment to her aunt regarding the future for her little sister.

The importance of consanguineous relatedness to truth telling is also revealed in the previously mentioned case against Don Juan Manuel and María Josefa Dardón for father-daughter incest (Case 15). Even though María Josefa testified to her father’s use of her “outside the vessel” and his taking of her virginity, Don Juan Manuel completely denied the accusation. In a written document, he even proceeded to disown his family because of their behavior, which included his daughter’s testimony against him. In a section of this rather lengthy text, he wrote,

...I am not a married man nor do I have any children because a woman that I had in my company, she was caring for me for some time, and as soon as she got bored of caring for me, she left and took her children...a girl that appears accusing me of such enormous crimes, she is daughter of the woman that cared for me and is named María Josefa, who is not my daughter, because if she were, she would not go against her father so recklessly...if I were her father like she says, *le tirara la sangre* [i.e. blood would drive her] to return for her father, seeing him in the calamity that he is and imprisoned with such great crimes of which she accuses him, and so I take as null her false statement. And she is considered daughter of Micaela [his wife], and she is not, because if she were, she would not try, nor would she have tried, to separate her father from the side of her mother knowing that they were married. Therefore, she is not a daughter but rather a *pepe* [a non-biological child reared in the home].³⁵

Following this document, it is evident Don Juan Manuel believed that a biological daughter would not make a false accusation against her father that would result in his

harm or the disunion of her parents.³⁶ In fact, as his argument evolved, María Josefa was progressively distanced from the blood tie to her parents. Having injured her father, María Josefa was orphaned by him; having jeopardized the marital bond between her parents, she lost them both.

Similar themes surface in a 1796 case in which Engracia Mangoche, resident of Nueva Guatemala, accused her husband of treating her poorly and the violent *estupro* of her niece, Cecilia Mangoche (Case 20). Cecilia also testified to the *estupro*. While her husband was in custody for the trial, Engracia decided to drop her complaint because her family was suffering in his absence. However, the case was continued *de oficio* (on the court's initiative) because of the gravity of the crime. In later testimony, Engracia reported, "I have come to learn that Cecilia is not a relative by any means in my sanguinity."³⁷ Rather, Cecilia (and her sister) "are surnamed Mangoche [like myself], and they treated me as a relative, [and] I, with the said ignorance, knew them as such, which is why it is that Cecilia says my Husband is who owes her her honor [i.e. took her virginity], despite being false."³⁸ She then went on to say that if what Cecilia said was true, it was she who incited it. Engracia's words make clear that someone who was not a blood relative could not be trusted to testify truthfully. Engracia was in agreement with Cecilia when she believed she was her niece; when it turned out otherwise, Cecilia became a slanderer. Regardless of whether this revelation was new or real, Engracia clearly hoped it would resonate with authorities and encourage her husband's release.

On the other hand, consanguineous kin could be expected to lie in court if it meant that a blood relative would benefit (rather than suffer) from it. In 1809 Nueva Guatemala, Isidora Caseros, a thirty-six-year-old *mulata* woman, was charged with

injuring her *hermana de leche* named María Josefa Pineda, from which she later died (Case 60). The term *hermana de leche* (“milk sister”) theoretically referred to individuals who were nursed by the same woman, though it may have also been used to describe individuals who were raised together.³⁹ Both María Josefa and Bartola Betancurt, mother of María Josefa and the woman who raised Isidora, presented Isidora as the instigator in the scuffle. Even though Bartola and Isidora respectively referred to one another as “mother” and “daughter,” Isidora allegedly called María Josefa an *hija de puta* (“daughter of a whore”). This particular choice of words would have been insulting to both María Josefa and Bartola and is suggestive that the relationship between Isidora and Bartola was distinctive. Further, Isidora discounted Bartola’s testimony when she said, “it is not presumable that she [Bartola] would side with [her] more than with her own daughter [María Josefa].”⁴⁰ Like Isidora, Asesor Robles underlined how the agreement between María Josefa and Bartola that Isidora was the insulter in the incident should be suspect because “in legal opinion it is always presumed that a parent wants to aid the cause of their child.”⁴¹ Thus, blood ties could actually lead someone to testify falsely for the sake of a relative. Both this case and Case 15 above indicate that ties between parents and non-biological children raised in the home could be perceived as more fragile.

The testimony of spouses, who sat at the intersection of consanguineous and affinal relatedness, could also be called into question, particularly in the case of women. The 1798 case against Hipólito Cojulum, an Indian man from Quetzaltenango accused of the rape and deflowering of his sister-in-law, spousal abuse, and causing his wife to miscarry on two occasions, is demonstrative of how the testimony of wives could be undermined (Case 24). His legal representative argued that wives, especially when

offended, could present “an ant as the size of an elephant” (i.e. they exaggerate). Thus, it was not surprising that Hipólito’s wife and *los suyos* (“her people”) would incriminate him to the degree that they did.

In 1809 the *procurador de pobres*, Joaquín Mariscal, was assigned to represent Marcos Maquín, an Indian man accused of incest with his daughter by his wife (Case 59). In attempting to debunk the accusation, Mariscal said the statements of Marcos’s wife were not creditworthy “as much for her sex and *calidad* as for, being [his] own wife, the inability to discover with what intention or what antecedents she would be compelled to depose against her husband a testimony so scandalous.”⁴² And this was in addition to her husband’s suspicions that she was in *ilícita amistad* with another man.

In a similar fashion, Manuel Rodenas, a *mulato* hatter from Cuyotenango, claimed his wife falsely denounced him to the authorities for sexual involvement with his stepdaughter and political niece to be free of him because of her own relationship with another man (Case 67). Elsewhere, Manuel stated that his wife raised the testimony against him “so that I cannot have that *derecho de Marido* [‘Husband’s right’] that is to govern the house” and “so that she might rise upon her return [to their home].”⁴³ Apparently, his wife did not like the way that Manuel regularly scolded her two sons who were “very disorderly because of the poor upbringing that she gives them.” Manuel maintained that “if he had committed such excesses, *como hombre* [‘as a man’], he would confess to it,” and “when she [his wife] raised this testimony against her daughter, how would she not raise it against [him].”⁴⁴ That is, if his wife did not show restraint in slandering her daughter, she would be even less inclined to do so when it came to him, a spouse as opposed to a child. Remonstrated with testimony from Alejandro Vidal that

supported the accusation that Manuel's stepdaughter had become pregnant, Manuel argued that Alejandro was his contrary because of a past dispute between them over some beasts of burden, "and as nephew of [his] wife, they took advantage of the occasion to form this calumny against [him]."⁴⁵ Thus, even though Alejandro would have been Manuel's political nephew, Manuel's statement indicates that Alejandro was more closely affiliated with his wife, and because of such (blood) ties and his own personal motives, he was willing to testify falsely against him.

In sum, it is clear that the nature of a kin tie (or its absence) played a significant role in the criminal process. It influenced whether a crime was reported in the first place and impacted how denunciations and statements were received. Even legal outcomes would have been contingent upon the degree to which authority figures were swayed by expectations of how particular kin would behave.

Conclusion

To review, this chapter has examined the ways in which the essence of kin ties factored into colonial Guatemalan incest cases. It was relevant to the discourse of deviance surrounding incestuous acts in their various forms. It had the potential to impact interpretations of evidence and testimony. Undoubtedly, it contributed to the realization of sexual relations between kin and prevented accusations of incest (and other crimes) from coming to formal trial. One concept that stands out throughout these various threads is an emphasis on consanguineous kinship, a *la sangre tira*, or "blood is thicker than water," ideology. This is consistent with the value attributed to consanguinity in Western societies historically. What also begins to become apparent is the potential for individuals

to use relatedness in strategic ways as they engaged in the legal process. Strategic usage of kinship is the subject of the following chapter.

CHAPTER 5

HERMANAS EN REALIDAD: RELATIVE AND STRATEGIC KINSHIP IN THE CRIMINAL CONTEXT

In his work on rural north China, Yunxiang Yan (2001: 241) finds that current kinship practice is characterized by flexibility and fluidity, centering largely around strategic individuals as opposed to a collectivity. Thus, “kinship ties are better viewed as a set of differentially valued relations, which may mean different things relative to one another in different contexts (Yan 2001: 241).” Yan’s insights into kinship practice in China provide a useful framework for understanding relations between kin in colonial Guatemala.

Criminal records demonstrate the malleable nature of kinship among the diverse colonial Guatemalan population and how this malleability became problematic in cases of incestuous crime where precision in relatedness was a crucial component of determining the validity of an accusation. As a result, the legal process forced individuals to distinguish between “real” and fictive or qualified kin regardless of whether such distinctions were especially relevant in other contexts. Further, incestuous crime and allusions to incest in other criminal records show how colonial Guatemalans could manipulate kinship based on context and an actor’s goals, perhaps providing justification for, arguments against, or impediments to sexual acts. Overall, incestuous crime demonstrates the contextual nature of relatedness for colonial Guatemalans and the ways kinship could be manipulated for personal gain.

“Real” and Malleable Kinship

As alluded to in the previous chapter, colonial Guatemalans sometimes incorporated non-biological children into kin networks, a process Signe Howell (2001:208) terms “kinning” in the context of Norwegian adoption. Laura Shelton’s (2007) study of colonial and early republican northwestern Mexico sheds some light on the practice of circulating children and the nature of relationships between children and their guardians in colonial Latin America. She discusses how individuals often took children into the home under the assumption that they would provide household labor as they grew older. However, this was not through a formal adoption process. Shelton describes these children as occupying an ambiguous status. For instance, they were occasionally listed as both servants and family members in census records. Significantly, guardians often described these relationships in terms of reciprocity, obligation, and charity, and expected “adopted” children to show gratitude for their upbringing. Shelton (2007: 231) suggests the abuse (including sexual assault) that these children were occasionally subjected to “was part of the subordination inherent in their ambiguous status as ‘adopted children’ and *criados* [‘servants’].”

Several of the themes Shelton (2007) discusses surface in the 1749 incest case against Narciso Gonzales, a *mulato libre* farm owner and resident of Mixco (Case 4; also discussed in Chapter 2). He was denounced by his daughter, Gregoria Antonia Gonzales, for violently taking her virginity and repeated sexual acts afterwards. He had also recently severely whipped her. Despite Gregoria and various others referring to Narciso as her father, Francisco Orozco and María Victoria swore before a priest that they were her (real) parents, the record of which was brought to the court by Petrona Quintanilla,

wife of Narciso. Gregoria's "parents" said that *como frágiles* ("as fragile persons") they had had her fifteen years before. Asked how if she was their daughter they had not raised her, they replied, *por no ser hija habida en matrimonio* ("because of not being [a] daughter had in marriage"). Asked how Narciso and Petrona came to have Gregoria, María Victoria said, "that because of the respect that she had for her Mother, Magdalena de Estrada, and the great fear of her aunt, María Phelipa, she allowed her aunt to give the child, Gregoria Antonia, daughter of hers, to Narciso Gonzales and Petrona Quintanilla, his wife, so that out of charity they would raise her."¹

A couple days later, Petrona appealed to the magistrate. She claimed that Gregoria had sinisterly complained

...that I and Narciso, my husband, are her Legitimate Parents, and that as such we raised and married her off, after Narciso, my husband, violently took her virginity without bearing in mind that he was her Father...from which complaint not only results the defamatory calumny against the upbringing that she owes us but also the dispossession of our small amount of assets that we suffer, and being sinister the complaint, and not attending the gravity that is alleged that being Father he had taken the virginity of his daughter, nor even being evident to me that even not being [her father] he had executed it; therefore, I turn to Vm ["Your Mercy"]...²

Ultimately, Petrona requested for the assets that were sequestered to be returned to her because she acquired them, not her husband. While it is impossible to know the actual parentage of Gregoria, the details surrounding discussion of her as an "adopted" child demonstrates the possible motives for giving up a child (i.e. the culture of honor), the ways in which biological and "adopted" children could be confused with one another, and the discourse of charity and gratitude surrounding the latter. Unfortunately, Petrona's statement also suggests that sexual violence against an "adopted" child was not as criminal as that against a (real) child, which would certainly place the former in an even more vulnerable position for such violence.

In colonial Guatemala, the term *pepe* could be used to refer to non-biological children raised in the home. This term surfaces in the trial involving Petrona Alvarado and her stepfather, Felipe Gil (Case 61; see also Case 15). During inquiries into the girl's parentage, one witness, Vicente Aguilar, mentioned debate regarding the matter. He contended,

...that she is daughter of Ana Alvarado, and that she [Ana] had her prior to her first marriage to Benito Berriondo, who treated this girl with the affection of a taken-in orphan. Some in the Town believed her to be the daughter of Benito and Ana, others of her [Ana] only, and some of neither but rather that she was what they call "Pepe."³

Here again, it becomes clear that the essence of kin ties was not always clear to outsiders. But neither was it always obvious within the inner family circle, because Felipe himself said that while some said Petrona was his wife's daughter, he (like others in town) believed she was a "*pepe*, or girl who his wife, Ana Alvarado, had taken into her house out of charity to raise her."⁴ It was under this understanding that he would court her. Charged with incest with the daughter of his wife, he excused himself "on behalf of his ignorance and having believed that she was a girl his wife had raised as an orphan or for some other charitable reason."⁵ Felipe's statement highlights once more the especially vulnerable position of *pepes* in the home when sexual relations with them were considered relatively acceptable. Though stated ignorance of kin ties could have been sincere in this case, there is no doubt some might have chosen to exploit the potentially blurred nature of kin ties to defend themselves while on trial.

The potential for kinship confusion is even greater when flexibility in the use of kinship terms is taken into consideration. In 1798 Manuela de Oliva complained to the authorities in Nueva Guatemala that Manuel Matute, a *mulato* muleteer, had taken the virginity of her young granddaughter, the first cousin of his wife (Case 25). However,

when asked how the girl was related to her, Manuela said she was not. Rather, “she raised the father of the girl as a Pepe, for which reason the children call her ‘grandmother.’”⁶ Asked how Manuel’s wife (Manuela’s niece) was related to the girl, Manuela said she was not. Instead, “because of [Manuela] having raised her, she calls her ‘Cousin,’ but there is no *parentesco*.”⁷ The case of Manuela de Oliva and her “granddaughter” is representative of how the incorporation of *pepes* and their children into a family could be accompanied by kinship terminology. Such parallels in terms of address is significant considering “the power of naming as a way to ‘make’ kinship links” (see Martine Segalen 2001: 268). Yet, the court room forced individuals to distinguish between (real) relatives and *pepes* (and their families), and in so doing, set limits on kinship’s apparently malleable nature.

The plasticity of kinship terminology was not limited to the sphere of *pepes*, as witnessed in an alleged case of father-daughter incest between Simón Hernández and Josefa de la Cruz, Indians from the town of Chiquimulilla (Case 33). Both Simón and Josefa denied being father and daughter and any sexual involvement between them. According to Josefa, her (real) father was a man by the name of Sebastian Morales and her mother had had her out of wedlock, marrying another man afterwards. At the time of her testimony, both of her parents were already deceased. Still, within the same statement in which she clarified Simón was not her father, she referred to him as “her Tata Simón” and, more simply, as “her Tata.” This form of address could have contributed to confusion on the part of witnesses as to the relationship between the pair, but she was clearly confident that such nomenclature would not confuse the authorities, at least after having revealed the identify of her (real) father.

The term *tata* could also be used in an affectionate manner by wives to address their husbands. When María Agustina Vásquez, an Indian *molendera* from Chinautla, was questioned as to why her husband, Francisco Román, stabbed her, she said she did not know the reason because she had not given him any incentive to do so (Case 16). She recounted how after her husband returned early in the morning from sleeping in the milpa, he laid down on the ground away from her. She “began to call to him affectionately, telling him, ‘Come here, *tata*, don’t stay over there.’”⁸ Seeing he did not want to move, she went over to him and lay down. Shortly after, he sat up, took the blanket from her, and stabbed her with the knife. Francisco said that he had no reason to stab her; he just felt like it. In fact, he reported that they had gotten along fine. It seems ironic that women would coopt a term for “dad” to refer to their husbands in an environment in which father-daughter incest was a criminal offense. But, as in modern usage, kinship terms could be divorced from their formal meanings and associations even in sexual relationships.

While colonial Guatemalan criminal records reveal a degree of malleability within the realm of kinship, they also illustrate how kinship could be divided into “real” and “fictive” forms, at least within certain contexts. As will be seen below, kinship could also be conceptualized as falling along a spectrum within this divide.

Degrees of Sisterhood

In 1803 Nueva Guatemala, Domingo Morales, a *mulato* weaver, was accused of incest with his sister-in-law, María Dolores Gaitán (Case 41). Domingo denied the *amancebamiento*. In his testimony, he admitted to living with Dolores and explained that the priest Don Tomás Zapata had left him and his now deceased wife, Ramona Josefa

Gaitán, in charge of her. Domingo also reported how he had gone to visit Father Don Julian Cos to tell him about the recent gossip surrounding the alleged involvement between him and Dolores. He asked him “if since Dolores and his deceased wife were not sisters but rather both daughters of unknown Fathers, he would be able to marry Dolores so as to not leave her abandoned.”⁹ His motivation for the marriage was to put a stop to the gossip, and the priest allegedly told him it was acceptable and to carry it out as soon as possible. However, for lack of money, it was not realized.

The relationship between Dolores and Ramona was important to establish because it had implications for the relationship between Dolores and Domingo. That is, if these two women were not sisters, Dolores and Domingo were not brother- and sister-in-law and an accusation of incest was moot. Initially, Domingo said that Dolores and Ramona shared a mother, which made them *hermanas uterinas* (“uterine sisters”), elsewhere termed *hermanas de madre* (“maternal half-sisters”). Because Domingo claimed that these women “were not sisters,” yet still described them as *hermanas uterinas*, it is apparent that in his mind they were not (real) sisters but rather shared a more qualified form sisterhood. That is, (real) sisters apparently were the products of shared bilateral descent.¹⁰

Domingo’s position on the relationship between him and Dolores is revealed in a note he sent to Dolores while both were being detained for the trial. He wrote,

Dear *Prenda de mi Corazón* [“Token of my Heart”] and *todo mi consuelo* [“all my solace”], María [Dolores] Gaitán...*Hija* [“Child”], this [note] only serves to inform you how it won’t be long before they take rocks and stone us. And because of all of this and to reestablish your reputation and mine, I send this to you, so that you know that the intention that I have at present is for us to get married. This being under your consideration, let me know if it is your desire to continue the matter. I do it as much for the desire that I have for you as for regaining your honor and to put an end to so much gossip, for the term with which they label us is so vulgar; they call us incestuous.

And so I wait only for your response to write to the Priest and execute the proceedings. I promise to behave like a good man and to care for you like you deserve. What I assure you is that [it's] fine, that there is not any impediment, for they think that you are my sister-in-law and that we cannot marry each other. Thus, do not delay in responding to me as soon as you can... Domingo Morales.¹¹

From this letter, it is clear that Domingo did not think that the form of sisterhood between the two Gaitán women was substantial enough to make Dolores his sister-in-law (compare with Case 18).

Other incest cases suggest that having sexual relations with two *hermanas de madre* did equate to incest (see Case 18). This may be significant considering Domingo later changed his stance on the relationship between Dolores and Ramona. It was recorded that Domingo

...has verbally alleged that even though they were regarded as and reputed to be such *hermanas* [de madre] in public opinion, in reality they were not, but rather only *de leche* [i.e. "milk sisters"], because his wife had only been left at the doors of Manuela de León and her husband, Pantaleón Gaitán...and that María Dolores is legitimate daughter of the named consorts.¹²

Therefore, "in order to find out with certainty if they are or are not sisters,"¹³ the baptismal records of these women were ordered to be examined.¹⁴

Domingo's new position on the relationship between Dolores and Ramona introduced a new degree of sisterhood to the discussion, that of *hermanas de leche*. The use of the phrase "only *de leche*" makes apparent that this was an even lesser form of sisterhood than that of *hermanas de madre*, and the subsequent need to verify whether "they are or are not sisters" demonstrates that *hermanas de leche* were again not (real) sisters. Elsewhere, Domingo stressed that Ramona only carried the surname Gaitán because she was raised as a *pepe* in the house of Pantaleón Gaitán and this was the reason that people had mistakenly testified against him.

Don Mateo de la Canal, *defensor* of Domingo, reiterated the divide between “real” and “fictive” sisterhood in his defense. Building on his client’s statement that Dolores had been placed in the care of him and his wife by a priest, he said it was entirely plausible that

...having died the legitimate parents of this girl and she left completely orphaned, Father Zapata, being invested in her security, would have handed her over to her *hermana de leche*, as Domingo has recently said, trying to disprove the public opinion that Ramona, his wife, and María Dolores were *hermanas en realidad* [“sisters in reality”].¹⁵

In other words, *hermanas de leche* were not actually sisters, even though they may have played similar roles.

In order to better defend his client, Canal requested that Father Zapata provide information regarding the case. In a note, Father Zapata recounted meeting Pantaleón Gaitán and Manuela de León. While he was immediately made aware of their three children, Inés, Florencio, and María Dolores, several years passed before he learned about their daughter Ramona. A few years later, Ramona and Domingo came to visit him with Dolores in their company. Asking Ramona how this came to be, she said “that because of her Parents having died, the girl had come to look for her, and she, as an older Sister, took her in and had her in her power.”¹⁶

Initially, Canal admitted that this information did not seem to aid his client. However, he suggested that Father Zapata’s understanding of Ramona as a legitimate child and her alleged self-description as an “older sister” did not necessarily indicate that they were in fact sisters. Indeed, “*expuestos* [or *expósitos*, “foundlings”], just like legitimate children, call and revere as parents those who raise and maintain them.”¹⁷ Further, *expuestos* and legitimate children “view and treat each other inside and outside

the house [i.e. in public and in private] like siblings.”¹⁸ Canal eventually went on to say that it was *por metáfora* (“through metaphor”) that Ramona said she took Dolores in *por hermana mayor* (“as an older sister”). Through these words, Canal created a divide between “real” and metaphoric kinship and highlighted the potential for individuals to be mistaken about the nature of a kin tie.

Canal used similar logic to dismiss marital records that included a description of Ramona as “legitimate daughter” of Pantaleón Gaitán and Manuela de León. He proposed a degree of indifference among those watching as to whether such identification was accurate for someone who could only be taken as such, especially since the couple did not have any children of their own at this time. Here again, Canal exploited the potential ambiguities arising out of the incorporation of non-biological children into the home to introduce doubt into the accusation of incest.

It will be recalled from Chapter 3 that *Las Siete Partidas* defined incest as sexual intercourse between individuals who *knew* they were relatives. The importance of knowledge of kin ties in incestuous crime also surfaces in the case against Domingo and Dolores. According to Canal, “The truth is that if [Domingo] Morales lived in doubt that he was truly María [Dolores’s] brother-in-law...it certainly cannot be argued that Morales committed incest even when convinced that he had an illicit dealing with María,”¹⁹ which both denied. As support, he cited the love note from Domingo, which demonstrated that he “effectively was not in the belief that she was his sister-in-law *en realidad*.”²⁰ Similarly, Don José Ballesteros, *procurador de pobres* who represented Dolores, argued that “if they knew that they were relatives, they have in their favor the presumption of honesty. If they took themselves as *libres de parentesco* [‘free of kinship’], there is no

such incest, especially not having proved coitus.”²¹ The use of ignorance of kin ties as a defense in the courtroom speaks to a certain acknowledgment on the part of those employed in the legal realm that confusion about relatedness was indeed a real-world problem. In the end, Domingo and Dolores were ordered to cease communication with one another.

Overall, this case reveals how people could be organized along a kinship spectrum in which some individuals more closely approximated “real” kin while others moved in the direction of metaphoric (or qualified) kin. The former carried more weight when marriage and incest were on the table. Ignorance of such “facts,” while unable to erase them, could free someone of a crime intimately linked to them. Kinship was something inalienable on the one hand, yet flexible and susceptible to human error on the other. This resonates with the observation by Strathern (2005: 69) that for English-speakers,

One fact about being a kinsperson...is that information about kin is not something that can be selected or rejected as *information* (cf Strathern 1999). Information already bestows identity...One has no option over the relationships; any subsequent selection or rejection implies selecting or rejecting those who are already one’s relatives or else revealed not to be relatives at all.

In colonial Guatemalan incest cases, such information (and knowledge of it) was all that mattered from a legal standpoint and alleged misunderstandings could alleviate culpability in the courtroom. The following sections will examine other ways in which colonial Guatemalans used kinship and expectations of kin in strategic ways during criminal proceedings and outside of them.

Kinship as Innocence in Incestuous Crime

Within the legal arena, accused persons and their allies were regularly under pressure to convince authorities of their innocence and employed various strategies to do so. In the context of incestuous crime, individuals might use kinship itself as a means to introduce doubt regarding the actuality of incestuous relations. For example, in defense of Marcos Maquín, accused of father-daughter incest with his legitimate daughter, the *procurador de pobres* pointed out not only the *calidad* of his client (Indian) and the lengthy imprisonment that he had suffered during the trial but also that this was a crime “whose perpetration one cannot wrap their head around as nature itself opposes it” (Case 59).²² Beyond this, there was no evidence to prove it and his client had not admitted to it. Thus, part of the defense attorney’s strategy to free his client relied on underlining the unlikelihood of this type of crime happening in the first place. (See also Case 11 for mother-son incest, as discussed in Chapter 4).

A similar strategy is found in the 1802 incest case against Simón Hernández, tributary Indian and *maestro de coro* in the church of Chiquimulilla accused of incest with his daughter, Josefa de la Cruz (Case 33). Though the nature of the kin tie between Simón and Josefa would be contested during the trial, when Simón’s wife came to his defense, she emphasized the parent-child relationship between the two. Speaking to the *alcalde mayor*, Simona Bautista stated that the accusation that her husband had *ilícita amistad* with her daughter was false and stemmed from the ill will of the *alcalde segundo* (a *cabildo* official) and his wife. Simona recounted how on one occasion the *alcalde*’s wife, after “seeing the Love that my Husband has towards his Children, as a Father after all, told me that it seemed to her that my Husband was or dealt illicitly with my daughter,

I responding to her that it could not be, that he was always like that, that he was loving towards all his children.”²³ Clearly concerned that her husband’s affections towards their daughter had been misunderstood or misconstrued, Simona intended to clarify that they were nothing out of the ordinary, that Simón was behaving like any normal father would. In other words, his very identity as Josefa’s father made his behavior towards her natural and called into question any accusation of incest.

In contrast, María Grageda, the woman who allegedly expressed these concerns to Simona, suggested the opposite. Following her testimony, Simona had shared with her evidence of Simón’s special treatment of Josefa in relation to Simona and his other daughters. For example, Simona allegedly told her about how she had not eaten for several days because Simón had made a key to the kitchen and gave it to Josefa, telling her, “You are who [fem.] rules here, and not that one [Simona].”²⁴ Asking Simona if she believed Simón was dealing illicitly with Josefa, Simona confirmed she was suspicious because he frequently made Josefa’s husband and another daughter of his (also named Simona) leave the house, and then, sitting in a hammock together, Simón would light a cigar and give it to Josefa, telling her, “This is Simona [the cigar], this is you [his middle finger].”²⁵ The *dedo de en medio* (“middle finger”) was also commonly referred to as the *dedo del corazón* (“finger of the heart”) because it was believed to have an intimate connection with the heart (see *Diccionario de Autoridades* 1726-1739). In associating Josefa with this finger, Simón was suggesting that she had a special place in his heart compared to his other daughter. Further, Simón would tell Josefa that if someone were to leave the house, it would be María Luisa (presumably another daughter) and not her. María Grageda’s testimony complicates the image Simona Bautista presented of a man

merely expressing fatherly love because it sets his affection towards Josefa apart from that towards his other daughter(s) and positions her as the (female) head of the household. In the end, Simón was released, Josefa was to be reunited with her husband, and they were to maintain separate residences going forward.

The above examples show how some individuals chose to stress kinship and kin norms to undermine an accusation of incest while others highlighted abnormality in kin relations to make a case for it. The former seems paradoxical when the criminal category of incest alone suggests an acknowledgement of its potentiality, but obviously some hoped to benefit from assumptions of its rarity. The following section will examine the ways in which colonial Guatemalans could emphasize relatedness (or refute it) in the context of sexual intimacy or rape.

References to Kinship in the Context of Sexual Relations

Guatemalan incest cases reveal how references to kin ties could also surface in the context of sexual relations, at least as they were presented in court. In these instances, an individual might choose to stress or reject certain forms of relatedness depending on their subject position. This is especially apparent in rape cases such as that against Vicente Fuentes, an Indian tributary and farmer from Mixco, for the rape of his daughter-in-law, María Rosalía Surqueah (Case 64). During the trial, Rosalía recounted the moments surrounding the rape. Vicente was telling her “that she was a bitch, that he was not her Father, and she was replying that it did not matter, that something would happen to him, [and] that he was answering to everything that she not be afraid.”²⁶ Thus, it is apparent that Rosalía hoped that referring to Vicente as a father would help protect her from the forced sexual act. It was a weapon of sorts, but when he rejected such identification, he

disarmed her. She then tried to convince him that there would be repercussions regardless, but he was not convinced.

Vicente's alleged statements and execution of the rape together suggest that he believed the act was justified. Indeed, the *procurador de pobres*, one of Vicente's legal representatives, argued that Rosalía would have known what Vicente meant in calling her a "bitch" and claiming that "he was not her Father," and he contended that the incest would not have happened if she actually resisted. In other words, it was not rare for the rejection of kinship identification to imply subsequent sexual intercourse, and knowing this, Rosalía had plenty opportunity to refuse him if she had wanted.

Rosalía's second legal representative, Juan José de León, phrased the encounter in similar terms. He recalled how Rosalía had reminded Vicente (during their *careo*) of "the words that she uttered to extinguish the ardor of passion that consumed him and the answers that he gave her [which were] intended to soften her persistence."²⁷ Hence, even though in different ways, both Rosalía and Vicente utilized their understandings of kinship to support their aims during the violent conflict between them. While Rosalía underlined particular kin ties, Vicente undermined them. His refusal to accept identification as Rosalía's father implies that he did not find relatedness through first degree affinity restrictive in terms of sexual relations in the same way as that through first degree consanguinity. This again speaks to a greater tolerance for affinal as opposed to consanguineous incest as discussed in the previous chapter.

Similar themes emerge in the trial against Miguel Caixon, a tributary Indian of San Miguel Totonicapán who was accused of living incestuously with his stepdaughter, Juana Velasco (Case 21; see also Chapter 4). Speaking through an interpreter, Miguel

denied any sexual involvement with Juana. While Juana (also through an interpreter) initially denied sexual relations with her stepfather as well, she later verified the accusation. She recounted how one night about eight years prior Miguel had come home tipsy while she was there alone. He lay down next to her and solicited her. He proceeded to beat and rape her “even though she resisted, asking him, ‘If he did not understand that they thought of him as a Father?’[and] ‘How could he want to do those things being married to her Mother?’”²⁸ When she scolded him about it the next morning, he told her that because he was drunk he had not realized what he had done and for her to stay quiet about it and not tell her mother. However, he continued to pursue her without her mother’s knowledge. From Juana’s rendition of events, it is clear she hoped that pointing out her stepfather’s role as a father figure and his relationship with her mother would discourage him. But like Rosalía, Juana failed to convince him. Ironically, the fatherly roles of Vicente and Miguel that these women chose to emphasize had made them vulnerable to an abuse of patriarchal authority in the first place.

It should also be briefly noted that Juana’s mother, Antonia Sic, was charged with being a *consentidora* (“consenter”) to the crime and as such she was equally on trial. In her defense, her legal representative pointed out that Antonia had “complete confidence in her husband because he had raised Juana even since she was little and, for this reason, considered her a daughter, as she reciprocally treated him, in the absence and presence of the mother. This faith was great enough to not suspect the slightest malice.”²⁹ In other words, Antonia’s trust in her husband to behave in accordance with the norms governing father-daughter relations should free her of charges of complicity to the crime. This argument again highlights the use of kin norms as a legal defense and demonstrates how

individuals who were otherwise able to aid female kin subject to sexual assault could be blinded to it.

The strategic use of kin ties was not limited to sexual encounters between father-types and daughter-types. It is also found in an 1803 incest case involving two Indians from Jocotenango, José Hernández and Anica Lantán, the former's stepmother (Case 40). According to José, his relationship with his stepmother began after the death of his father and at her request. Anica disagreed, claiming that José had solicited her and even forced her "to sin" with him. In fact, she had wanted to marry a man named José Simeón after her husband died, but her stepson asked her why she was going to marry this man and told her to marry him instead since *no era su madre* ("she was not his mother"). During a *careo*, Anica testified in a similar manner, stating that the first time they sinned José had come home drunk telling her "that she was not his mother, that they were quite able to sin."³⁰ The words of José in this rendition of the story suggest that while stepmothers and mothers may have been conceptually parallel, they remained distinctive from one another. And like Vicente Fuentes above, José emphasized this difference in order to persuade Anica to submit to him sexually and even marry him.³¹

Analogous events surface in the 1805 criminal proceedings against a Spanish man named Don Apolinario Rivas who was accused of incestuous *amancebamiento* for his sexual involvement with Doña Isidora (or Decidora) Bocanegra and her sister, Doña Teodora Bocanegra (Case 46). Following trial records, Apolinario and Isidora had been involved with one another for quite some time. When Apolinario had first been apprehended for the *ilícita amistad*, he explained that he was taking the necessary steps to marry Isidora. He was then ordered to marry her within the period of fifteen days.

However, the aunt of the Bocanegra sisters informed the authorities that he could not actually marry Isidora because of the impediment that resulted from his involvement with Teodora, a claim substantiated by the man who was to be in charge of Apolinario's custody until the marriage was executed.

Teodora recounted the sexual encounter between her and Apolinario. She had ridden with Apolinario to a fiesta during the year of 1803, and since they arrived late, Apolinario looked for a room. They slept there with various other people in the room and separate from one another,

...but after they blew out the candle, [Apolinario] Rivas came to her to force [i.e. rape] her, and even though [she] resisted with the reflections that he had taken communion that day, that he had *amistad* with her sister, and lastly, that it was not her desire, Rivas answered her that he did not want to marry her sister, and even though she ultimately revealed to him the ugly thing that his person was to her, Rivas achieved his indecent desires, as she did not consider it appropriate to avoid them [by] screaming because she feared to scandalize those who were sleeping there and that her honor would suffer from it.³²

Thus, Teodora used various observations to dissuade Apolinario from raping her, including his relationship with her sister (compare with Case 56). However, he rendered her defense ineffective by arguing that he did not aspire to marry Isidora anyway.

For his part, Apolinario denied the incident. He claimed he was so drunk that night that, to his knowledge, he did not even get undressed. He admitted that on one occasion when Isidora was pressuring him to affect their marriage he had declined, telling her he had an impediment. However, during a *careo* with Isidora, Apolinario said he did not explain the nature of the impediment to her. Isidora, on the other hand, maintained that after she pressed him to clarify the matter he told her about his sexual relations with her sister.

Regardless of what actually happened and the motivations behind it, this case reveals the strategic use of kin ties in a couple of ways. First, like in some of the cases above, we see a woman trying to discourage a man from engaging with her sexually by referencing kin ties. What also becomes apparent is that an undesired marriage, or pestering to affect one, could be avoided by creating (or feigning) impediments to marriage derived from sexual relations with a relative of a proposed partner. Indeed, in her analysis of dispensation trials from the Archdiocese of Mexico, Jaffary (2007: 104) mentions that reluctant grooms may have encouraged denunciations of matrimonial impediments. Similarly, Georges Duby (1983 in Hérítier 2002 [1994]: 95, 99) notes that Christian kings and lords might commit incest or accuse themselves of incest in order to annul a marriage they no longer wanted. And Rodríguez Jiménez (1988: 57) suggests that women in colonial Medellín may have used their knowledge of the dispensation system to remove themselves from an oppressive relationship.

One last example of the emphasis of kin ties in the context of rape comes from the case against Josef Teodoro Juárez Coronado (alias Masate) for the *estupro* of his wife's niece Cecilia (Case 20, also mentioned in Chapter 4). María Engracia Mangoche, Cecilia's aunt and Josef's wife, reported that she had suffered at the hands of her husband for a long time and hoped that with care she could curb her husband's behavior. "But far, Señor [the *alcalde ordinario*], from observing in him Christian behavior, his infamy has gotten to the point that, without fearing God, the Law, nor me, he has violently deflowered a few hours ago a girl, my niece, that lives under my care."³³

Engracia described the incident in more detail in her statement the following day.

She testified that while she was on the patio her husband shut himself in the house with Cecilia and a scream followed. She heard Cecilia

...telling her husband, 'Let go of me, don't be shameful, for the sake of Holy Mary, know that I will tell your wife about it, as I am *doncella* [a virgin] and niece of your Wife,' to which he was telling her, that even so, once he puts his foot in the mud, he knows how to get it out, and that if she told [her aunt], he would kill her.³⁴

Because her husband had tried to injure her in the past, and due to these new threats, Engracia did not attempt to obstruct the *estupro* "even though the door was open and her Husband with her Niece in the bed."³⁵ In her own statement, Cecilia similarly mentioned how she told Josef to let her go in the name of the Virgin Mary and that she would tell her aunt about the attack. Cecilia also clarified that Josef had not threatened to kill her aunt if she told her about the deed but rather threatened to kill her.

Based on the above testimonies, Cecilia hoped that mentioning things beyond herself (e.g. the Virgin Mary, her aunt) would discourage her political uncle from continuing with his assault (see also Case 30 discussed in Chapter 4). This suggests she felt powerless on her own to impede him. Cecilia's use of the formal 'you' form with Josef could also be an indication of a power imbalance between them, but because Josef's responses to Cecilia were not quoted, it is unclear how he addressed her. Cecilia's defensive strategy alludes to the mobilization-of-female-alliances strategy discussed by Stern (1995). It also adds another dimension to it, that of a perceived otherworldly female ally rooted in Church doctrine. Despite Cecilia's attempts, her approach was ultimately unsuccessful due to her uncle's confidence in getting away with the crime and his threat of murder. In the end, Josef was released from prison on a general royal pardon and instructed to not live or communicate with Cecilia in the future.

In the cases above, men tended to overlook and understate relatedness with female kin with whom they wished to have sexual relations, whereas women exhibited a greater degree of hesitation and even stressed kin ties to defend themselves from unwanted sexual engagement. This discrepancy makes sense in the context of physical rape or intimidation where these men represented the aggressors. However, criminal records also suggest that women could conceal relatedness in the context of (consensual) sexual relations.

In 1806 Nueva Guatemala Vicente González was accused of incest with his “whole sister” by his wife, Juana Balladares (Case 50). During her testimony, Juana shared some of the alleged dialogue between Vicente and his sister Manuela during their sexual activity together. Listening from outside the room, she heard Manuela say, “Hurry, before your mother and your wife come.”³⁶ Vicente then told her to turn to one side, but she replied “that she did not want [it] like that but rather for him to get on top of her.”³⁷ Since Vicente and Manuela apparently shared a father *and* mother in accordance with the “whole sister” designation, the choice of “your mother” as opposed to “our mother” is noteworthy. Such use glosses over their relationship to one another, which may have been intentional in the context of an illicit sexual act between relatives. This contrasts with the aforementioned use of the term *tata* to address a husband. The difference may lie in the fact that the husband above was presumably not a (real) father-type in relation to the woman, whereas Vicente was supposedly Manuela’s “whole” brother.

In sum, the preceding cases have been chosen to demonstrate the ways in which colonial Guatemalans could emphasize or downplay relatedness depending on the actor’s

goals. This was as true for negotiating the courtroom setting as it was for sexual relations with kin. The following section will continue to explore this concept in other situations.

Reclassifying Kin

Concealing certain forms of kin ties was not limited to sexual encounters. The 1815 incest case against José María Díaz (alias Cantarillas) and his sister-in-law Agustina suggests that kin could be relabeled to prevent potential public scandal (Case 71). The pair lived together, and some people believed they were romantically involved. One witness named Pedro Sorzo stated that he had heard José María fighting with a woman by the name of Manuela Villeda and that he spoke with her afterwards about it. Upon going to the home of José María and telling him to leave Manuela alone, Agustina jumped up and said “that her Father had not been [home] at the time that [Pedro] had seen him.”³⁸ She then remonstrated José María, reminding him how she had ordered him not to go to those houses and asking him what he had gone looking for. Considering her suspicion and jealousy, Pedro promised

to put her in the Casa Nueva [women’s prison] because he [José María] was not her Father but rather her Brother-in-law, and that it is absolutely evident to him that they live together like husband and wife and that their store is a Sodom because of the liquor and comingling that is there to the detriment of the Royal University.³⁹

Manuela Villeda testified in similar terms, saying “that Agustina tells the public that Cantarillas is her Father, and as he is an older man and she very young with respect to him, some people could believe it.”⁴⁰

The testimonies of Pedro Sorzo and Manuela Villeda suggest that Agustina referred to José María as her father to hide that they were brother- and sister-in-law and romantically involved. This cover-up indicates that a father and daughter living together was less likely to incite scandal than a brother- and sister-in-law doing the same and

demonstrates how kin labels could be modified to dispel suspicion of an illicit relationship. Ultimately, José María and Agustina were ordered to separate their residences and abstain from the illicit sale of alcohol because it causes “the gathering together of people of both sexes.”

Concern that someone could hide a sexual relationship through the attribution of kin terms also surfaces in an 1815 report from Nueva Guatemala (Case 72). The *alcalde de barrio* had apprehended several people when he was making his rounds, one of whom was Josefa Martínez. She and a man she identified as her nephew Lucio had been out riding on a horse together with her seated in front of him. During questioning, she explained that she was uncertain about his surname. Asked if she was with him because of an *ilícita amistad* since she would surely know his surname if he were a relative, she denied it and said, “that in reality they are not relatives; rather, he calls her ‘aunt’ because of the affection that he has for her.”⁴¹ Thus, the potential for someone to disguise a lover as a relative was a real concern for law enforcement.

Sometimes colonial Guatemalans used analogy to cast a relationship in a different light. This is seen in an 1821 incest case against Rosalío Yescas and María Ramona Álvarez Román, brother- and sister-in-law (Case 77). Neither Rosalío nor Ramona admitted to a sexual relationship with the other. In dismissing this type of relationship with Ramona, Rosalío said that “he has never had such *amistad*, as he has always treated Ramona and his other sisters-in-law the same, as sisters.”⁴² By comparing his behavior towards sisters and sisters-in-law, Rosalío attempted to alleviate suspicion between him and Ramona. In so doing, he revealed an assumption that sexual relations between close consanguineous kin were less likely to occur than between affinal kin.

Analogy was also employed by Domingo Alvez, a tributary Indian from San Francisco el Alto who was accused of incest with his two daughters-in-law in 1710 (Case 2). Through the aid of interpreters, Domingo initially contested the accusation. Instead, he argued that “he is fearful of God and knows quite well the gravity of the sin that he is accused of, and he has never had illicit dealing with either of his two daughters-in-law in deeds nor in words because he has always viewed and looked after them like his own daughters.”⁴³ Further, should he have wanted to insolently engage in some indecency with one of them, he would have justly feared that they might divulge it to their husbands, mother-in-law, or relatives. In the end, he admitted to the crime with one of his daughters-in-law, and as punishment, he was paraded through his town and given two hundred lashes.

The above criminal records reveal how colonial Guatemalans could relabel kin (or non-kin) or compare them with other kin to dispel suspicion on the part of neighbors and legal authorities of illicit sexual activity. Such strategies were apparently linked to assumptions that relatives through blood were less likely to engage in illicit sexual activity than relatives through marriage. The position of spiritual kin on the spectrum of individuals most or least likely to have sexual relations together is discussed below in addition to its usefulness as a hindrance to sexual relations.

Compadrazgo as an Impediment to Sex

Using concepts of incest as a framework, some colonial Guatemalans attempted to create new kin ties to modify particular behaviors of their own or others. For example, the institution of *compadrazgo* (or *comaternidad*) could be repurposed to ensure marital fidelity. On April 13, 1763, Manuel Arias put forward a complaint against Pablo García

claiming he had “perturbed” his marriage to Manuela Vásquez, a twenty-six-year-old Spanish woman (Case 6). In fact, Manuel stated he had needed to reprehend his wife on several occasions, but she had never listened to him because she had an “indomitable nature.” Concerned about their reputation, Manuel made Pablo his *compadre* “so that, in this manner, correction would be had with the contracted *parentesco*.”⁴⁴ In other words, Manuel believed he could utilize *compadrazgo* to rectify the situation between his wife and Pablo. However, it was apparently unsuccessful. Manuel alleged that Pablo continued his misbehavior even after becoming a *compadre* (and following various other measures). From Manuel’s accounting of events, it appears that he and Pablo viewed *compadrazgo* differently; Manuel felt it conflicted with certain forms of intimacy, whereas Pablo supposedly did not. Like the cases above, appealing to kin norms to discourage sexual relations was only fruitful if all parties were willing to oblige them.

Manuela’s story was different from that of her husband. When she was brought in for questioning, she denied any illicit involvement with Pablo. She said he “is her *compadre* and he would hardly be able to commit such [a thing].”⁴⁵ Hence, contrary to the allegations of her husband, Manuela insinuated that she and Pablo shared his sentiment that sexual relations between *compadres* and *comadres* would be inappropriate and this sentiment testified to their innocence.

Manuel’s form of strategizing also appears in a case from 1806 Quetzaltenango against Cosme Rivera, a *mestizo* blacksmith accused of *concubinato* with Doña Crisanta Pardo, a local shop owner (Case 52). In her testimony, Cosme’s wife, Elorencia Gertrudis Monzón, explained the various reasons she had to suspect that something was going on between them. These included the amount of time Cosme spent at Doña Crisanta’s store,

the physical contact between them, and Cosme's detachment towards and later mistreatment of her (Gertrudis). In order to see if with "honorable cause" she could impede the involvement between Cosme and Doña Crisanta, Gertrudis told her husband that she wanted Doña Crisanta to be their *comadre*, having her take the child with whom she was pregnant to baptism. Like Manuel Arias above, Gertrudis thought entering into *compadrazgo* with Doña Crisanta could put an end to her husband's infidelity.

Cosme refused to make Doña Crisanta a *comadre*, even allegedly telling his mother-in-law that "the devils would carry him off before he would do such [a thing]." Ironically, in his mind, having Doña Crisanta involved in their child's baptism would give further credence to his wife's (and mother-in-law's) suspicions of an *amistad* with her, a relationship that he denied. Following their statements, Gertrudis and Cosme were working with different assumptions about *compadrazgo*. Gertrudis viewed sexual relations and *compadrazgo* as opposed to one another, while Cosme was apparently concerned that one could imply the other. Yet, both approached the potential creation of such ties in a strategic manner.

Compadrazgo surfaces in a similar manner in an incest case from 1788 Petapa in which Eusebio Barillas accused his brother, Josef Félix Barillas (a *mulato* farmer), and his wife, María Jacoba Suárez (a seamstress and cigarette vender), of *illicita amistad* (Case 12). Initially, María Jacoba admitted to the *amistad*, stating that they carried it out at her parents' house. She went on to say that "in order to obviate this offense, she has urged the aforementioned [Josef Félix] that they become *comadre* and *compadre*."⁴⁶ Thus, María Jacoba (who was pregnant) seemed to think that entering into *compadrazgo* with her brother-in-law would make it less likely for them to continue their involvement

with one another. Considering they were already brother- and sister-in-law, her approach suggests that, at least for her, spiritual kinship could provide a more effective obstacle to sexual relations than affinal kinship.

Later, María Jacoba denied having admitted to the *ilícita amistad* with Josef Félix. She claimed she only testified to having asked her brother-in-law to enter into *compadrazgo* with her in order to alleviate her husband's jealousy, which stemmed from him having found her and her brother-in-law lying down together while she was naked. Even in her modified version of events, María Jacoba used a similar logic. Being connected in this new way would have automatically relieved suspicion of their involvement, as *compadrazgo* and sexual relations were apparently more incompatible than such relations between brothers- and sisters-in-law. For his part, Josef Félix stated that it was true María Jacoba encouraged him to become her *compadre*, but she did so because he had decided to marry her sister.⁴⁷

Using *comaternidad* in this way can still be found in contemporary societies. Héritier (2002 [1994]: 284-285) notes that women in Sicily will sometimes choose a male member of their husband's social network who is sexually attracted to them to be the godfather of their child. This creates a barrier between them at the same time as allowing for a continued intimacy with him. In colonial Guatemala, it was both women *and* men who used this form of strategizing.

Despite the absence of spiritual incest cases in the secular criminal record, the above cases reveal preoccupations with sexual relations between *compadres* and *comadres*. In fact, Case 12 suggests that spiritual incest could be viewed as even more unacceptable and improbable than affinal incest. Beyond this, these cases show colonial

Guatemalans using kinship as a tool to ensure marital fidelity. Of course, the success of such projects depended on a shared concern to maintain boundaries between spiritual kinship and sexual relations.

Kin as Scapegoats

Incest cases occasionally include arguments that a woman blamed her loss of virginity or pregnancy on a family member in order to protect a lover, avoid punishment, or prevent scandal. For example, when Vicente Fuentes (Case 64 above) was questioned regarding the rape of his daughter-in-law, he denied it. He suggested instead that she could have “mixed” with an Indian man from San Pedro Sacatepéquez who stayed in his house because a man named Alejo had told him he had seen her in the river and during the evenings with Diego Muc (or Cuc). “And now,” he said, “María Rosalía wants to put the blame on [him] in order to free Cuc.”⁴⁸

In the case against Francisco de Paula Guerra for the forced deflowering of the eleven-year-old niece of his deceased wife named Ciriaca, his defense counsel spoke in a similar manner and offered a logic behind it (Case 9). Francisco’s *defensor* argued that it was reasonable that, “if she is violated like her Mother says her to be, to have been another the doer, and said Girl, in order to save who it was (who could have been a person of her affection), to have condemned Francisco with the rumor that it was her uncle to escape the punishment from her Mother.”⁴⁹ In other words, by blaming her uncle, Ciriaca would not only protect the man responsible but herself as well. This argument suggests women and girls could have been held less accountable by their kin for sexual violence at the hands of a male family member. This resonates with how María

Josefa Dardón and her mother from Case 15 used the concept of respect to make the former appear less blameworthy for the sexual encounters with her father.

Likewise, María Josefa García was accused of falsely blaming her father for the loss of her virginity (Case 30). Despite María Josefa's father admitting to the crime, his legal representative proposed that she was not a virgin when it happened. First, he noted "the recklessness and temerity with which Josefa has wanted to make her Father the author of her deflowering and pregnancy."⁵⁰ He then suggested that "in order to conceal her fragility, she has wanted to incriminate her Father."⁵¹ However, María Josefa's mother had previously testified that she believed her daughter when she told her she was pregnant from her father because nobody came to their house. Her mother's statement hints at another reason why women might be considered less culpable for sexual violence executed by male kin; proximity to such individuals could not be avoided in the way it could be with outsiders.

False accusations against male family members for loss of virginity and pregnancy was apparently not an uncommon problem. This is implied by arguments in the case against Miguel Caixon for having lived incestuously with his stepdaughter, Juana Velasco, and having fathered her two sons (Case 21). Miguel denied the relationship and identified Lorenzo Ratzzal as the true father of Juana's children. Miguel had allegedly caught Juana and Lorenzo "in the act" and the pair begged him to punish them instead of alerting the authorities. Miguel's *defensor*, José Antonio Godínez, argued, "it would be more natural for her [Juana] to say to my client, 'My children are yours and not Lorenzo's,' crucial evidence that they are Ratzzal's, who confesses his illicit dealing, not [Miguel's]."⁵² The "naturalness" to which Godínez referred is

suggestive of a cultural environment in which male relatives were assumed to be at risk of blame for a non-virginal status or pregnancy among female kin.

Pinning a pregnancy on a relative was not necessarily malicious. It will be recalled from Chapter 2 how Bernardo Quachita, an Indian cart driver from Ciudad Vieja, supposedly pretended that he had impregnated the sister of a woman he was involved with to protect her from any dishonor that might come from her involvement with a *ladino* man (Case 56). Nor was pinning a pregnancy on a relative always on a woman's own initiative. This is alluded to in Case 68 when María Basilia García argued that her father-in-law had told her to blame her stepfather for her loss of virginity in order to cover up his own sexual relations with her.

Following these examples, using male kin as a scapegoat for a loss of virginity or pregnancy was one more way colonial Guatemalans were able to use kin ties in strategic ways. What is especially intriguing in these cases is that this was considered a viable option even when blaming male kin naturally implicated both parties. The potential benefits must have outweighed any social costs.

Conclusion

In conclusion, Guatemalan criminal records reveal the malleable nature of kinship among the colonial population. While the exact nature of kin ties may have been relatively insignificant in ordinary life, especially considering that some individuals were apparently unaware of the ways in which they were connected to others, accusations of incestuous crime required that such ties be clarified. It was in these contexts that notions of “real” and other kin surfaced in significant ways. Because the courtroom forced such distinctions to be made, it ultimately contributed to their ongoing significance.

The malleable nature of kinship could be exploited when it came to formulating a defense for incestuous crime, and this chapter has explored the various ways colonial Guatemalans used kinship and kin norms in strategic ways both in and outside the legal arena. Individuals might choose to stress, reject, compare, or disguise certain forms of kinship identification depending on what a context demanded. Some colonial Guatemalans even created new kin ties through *compadrazgo* in order to curb adulterous behavior or at least the perception of it. In short, criminal records demonstrate the subjective and relative nature of kin relations in which colonial Guatemalans made decisions to suit particular ends. The following chapter will examine one more tool available for negotiating accusations of incestuous crime: claims of “Indianness” and ignorance.

CHAPTER 6

EN QUIEN LA IGNORANCIA Y RUSTICIDAD CAMINAN JUNTAS: INDIANNESS, INCEST, AND CRIMINALITY IN LATE COLONIAL GUATEMALA

While the previous two chapters looked at colonial Guatemala as a whole, this chapter will examine how concepts of “Indianness” intersected with the crime of incest and notions of criminality.¹ Focus on colonial discourses related to *calidad* allows for a more nuanced examination of how the culturally-informed attitudes of Spanish magistrates, legal advisors, and defense counsel conditioned their reactions to individuals who knowingly or unknowingly, willfully or not, failed to conform to Spanish laws governing kin relations.

Francisco Antonio de Fuentes y Guzmán is perhaps best known among the colonial chroniclers for his reflection of Spanish attitudes towards the indigenous people of colonial Guatemala. As Robert M. Hill (2002: 24) notes, “Like other *criollos*, Fuentes saw the Indians as a race to serve their conquerors, and he fully expresses all the stereotypes of Indians as lazy, drunken, only partly Christianized, and thus untrustworthy, which his class used to justify their exploitation” (Hill 2002: 24). In his *Recordación Florida*, Fuentes y Guzmán (1883 [1690] vol. 2: 101-102) argues that the Indians of Jilotepeque became sick and injured one another from their continual drunkenness. Further, the men were not restricted to “licentious union” with their wives and concubines; they also had sexual intercourse with their daughters, mothers, sisters, sisters-in-law, daughters-in-law, and girls of eight and nine years of age. Such behavior,

Fuentes contends, was not uncommon among those who lived outside of town away from the authorities and Catholic doctrine.²

The cases analyzed here reveal stereotypes of Indians as ignorant of the criminal nature of incest and as having a tendency to commit it. These generalizations began early in the colonial period and continued to be reproduced through the early nineteenth century. Even when indigenous plaintiffs and defendants demonstrated a clear understanding of the crime of incest, stereotypes, though derogatory, became a useful tool for the various actors involved in incest trials. As Philip J. Deloria (2004: 4) notes in terms of Native North Americans, expectations have created and continue to reproduce social, political, legal, and economic relations that can be extremely asymmetrical. The ways in which Indianness surfaced in colonial Guatemalan incest cases no doubt would have contributed to the Spanish colonial project.

Indianness in Incest Cases

In late colonial Guatemalan incest trials, it was not uncommon for Spanish legal professionals to draw upon a discourse of Indianness at least in part when formulating their arguments.³ *Ignorancia* (“ignorance”), often coupled with *rusticidad* (“rusticity”), formed a core component of Indianness. Ignorance had an important role in the criminal context because individuals viewed as ignorant were considered to have acted with less ill intent, and therefore, they could be treated more leniently by Spanish authorities.⁴

The discourse of Indianness is exemplified by the 1803 incest case against Anica Lantán and her stepson, José Hernández, who maintained a sexual relationship after the death of José’s father and had a child together (Case 40). As part of her defense, Anica’s legal representative, Don José María Pozo, cited “the rusticity and ignorance of the

Indians, especially of the Women” and how “for this reason there is not in those of this sort the same ill intent and malice as in those of the other [*ladinos*] to commit crime.” He continued, “in conformity with that laid out in Law, the same penalty should not be imposed on the Indians as on the *ladinos* but rather they should be judged with *equidad* [fairness] and not with the rigor that these same Laws allow to be considered for these [*ladinos*].”⁵ In other words, Indians should be treated with a degree of leniency and not with the full rigor of the law.

José’s legal representative drew upon similar themes, but in more colorful language. In discussing how Anica allegedly went to José’s bed during the night to make him “fall” with her, Don Mateo de la Canal said,

Thus an extraordinary force and movement out of the goodness and power of God was necessary to sustain Hernández in a provocation as singular as this, and especially living together, where he was unable to resist the pleas and tears of a jealous and afflicted Stepmother who even denied him going to Mass because she thought that he was going to look for another Woman. What then could be expected of a poor Indian *en quien la ignorancia y rusticidad caminan juntas* [“in whom ignorance and rusticity go hand-in-hand”]? The greatest saint would have fallen with such provocation.⁶

These characterizations were used despite the fact that both Anica and José testified that they understood the impediment that prevented them from marrying one another (and presumably the illicit nature of their relationship). In the end, they benefited from a general royal pardon and were ordered to cease communication with one another.

Sometimes the alleged ignorance of Indians was qualified. This is seen in the comments of the *asesor* to the *alcalde mayor* in an 1806 case against Guillermo Lázaro and María Andrea de la Cruz, “political siblings” (brother- and sister-in-law) who had sexual intercourse together on three occasions (Case 48). Like defense counsel in the 1803 case, Licenciado (lawyer) Don José del Valle initially argued that it seemed the

otherwise serious crime of incest “should be viewed with some *equidad* when it is committed by Indians, whose ignorance establishes in their favor the presumption of not acting with malice that is assumed in those of other *castas* [i.e. *calidades*].”⁷ He cited as precedent Book VI, Tit. 1, Law IV of the *Recopilación de las Leyes de los Reynos de las Indias* (1680) in which it is stated that Indians were not supposed to be punished for bigamy, a crime more severe than incest, prior to two warnings.⁸ Still, he claimed, the Indians of his day should not be viewed with the same degree of *equidad* as prescribed in the laws of those past centuries because “it should be assumed their civilization [is now] more advanced (at least with respect to Christian Religion) than right after the Conquest.”⁹

The notion that Indians did not understand the gravity of incest seems to have translated into a stereotype that individuals so identified tended to commit it. This is reflected in the comments of Fiscal Silva in an 1806 case from Las Monjas against Domingo Mariano Mejía and Juana Crisostoma Bajal, “political uncle” and “political niece,” whose sexual involvement may have begun prior to the former’s marriage to the latter’s aunt (Case 47). In forwarding his legal opinion of the case, the *fiscal* said that “the indecency of the Indians and indifference with which they regularly view the crime of incest makes them fall into it when the occasion presents itself.”¹⁰ He pointed out that because Crisostoma’s aunt regularly had her take Mariano his lunch in the countryside he had the opportunity to deflower her. Taking advantage of her “foolish trust” in him and foregoing the gravity of adultery (combined with incest), Mariano’s involvement with Crisostoma continued until his (by then) wife discovered the incestuous adultery. Ultimately, the *fiscal* took into consideration “the rusticity of the Indians and the few

scruples with which they commit crimes of this sort”¹¹ and the forgiveness by Mariano’s wife when suggesting a sentence.

This sentiment is also seen in the 1815 criminal proceedings against José María Gómez and María Baltazara Gómez for father-daughter incest in Canales (Case 69). Don Vicente Arrazola, defense counsel for the father, stated,

It has been said that the delinquents are Indians, with which is said everything regarding the matter, befitting the manner with which they comport themselves in relation to sex, with which Ovid sang of other peoples very similar to our natives, among whom Fathers “mixed” indifferently with daughters and sons with mothers.¹²

In the end, the pair was released on behalf of a general royal pardon and María Baltazara was to be kept away from her father.

Based on the case sample for this study, Indians do in fact represent a significant proportion of the individuals who were involved in incest trials when analysis is limited to actors whose *calidad* was identified. Out of the eighty-two individuals whose *calidad* was recorded, forty-four were Indian, or approximately fifty-four percent. However, population estimates for the late colonial period suggest that Indians constituted around seventy percent of the total population (see Lovell and Lutz 1994: 135), making the greater number of Indian defendants in these cases reasonable and not necessarily indicative of a greater tendency for Indians to engage in incestuous crime. Further, legal professionals chose to use stereotypes of Indians even in the face of their contradiction, a process which will be explored below.

*Challenges to and Reinforcements of Colonial Discourses:
An 1810 Incest Case from Mixco*

Since an ignorance defense theoretically had the power to aid the accused, it potentially worked against Indian plaintiffs using the legal system to seek justice for

incestuous crimes. A case involving an Indian (probably Poqomam Maya) family from Mixco provides surprisingly deep insight into this dynamic (Case 64; briefly discussed in Chapter 5). In 1810 Vicente Fuentes was accused of sexual violence against his daughter-in-law by his son and her husband, José Rumualdo Fuentes. Appearing before the *alcalde mayor*, José said,

...even though he is my father, he will not for this reason get away with the deed, as it would not be Christian, nor would we profess the faith of Jesus Christ, on behalf of which I plead against Vicente Fuentes for having annulled my marriage and his, having come to have forced [sexual] act with my wife on two occasions, because of which, in merits of Justice, I request exile for his whole life...proceeding I to not join her in any way because there is no reason for I myself to seek that salt country. The Señor General knows well the crime that it is, as he is my father, and I would not be a Christian if I did not do so, and in merits of Justice I request that they banish him for his whole life to a *castillo* [fort or prison] ...that I, being him [here], will not join her even though they may carry out on him the punishment that the Señor General would order...¹³

Through his petition, José indicated that his Christian identity took precedence over any loyalty towards his father, and he clearly viewed his father's incestuous actions as incompatible with this identity, a state that ultimately provided the impetus for filing a complaint. In fact, he elsewhere described the deed as having "offended God and me."

Despite not explicitly using the term "incest," José demonstrated a clear understanding of the special nature of the crime, including the need for married couples to maintain a degree of separation (i.e. abstain from sexual intercourse) after an incestuous encounter until measures had been taken to absolve the sin and "habilitate" the marriage.¹⁴ Knowing that he would be committing a sin should he behave otherwise, he phrased his decision to abstain from his wife in terms of avoiding "that salt country." While salt can have positive connotations in Christian texts, it can also have negative ones. For example, Montenegro (1771[1668]: 317) mentions in his *Itinerario para*

párrocos de indios that eating too much salt is a mortal sin because of the ill affects it has on one's health.¹⁵ In order to ensure no further risk to himself, José wanted his father banished so that it would be impossible for him to violate his wife again.

In later testimony, José described how he learned about the rape of his wife. He had been absent from home for a period a time and after returning he learned his wife was pregnant. Because the timing did not line up in terms of when he had last been with her, he questioned her about it, “thinking she had mixed carnally with another *hombre extraño* [“unfamiliar man”], and it turned out that his own Father...Vicente Fuentes, was who committed this crime, for which he came to the Authorities so that he be disciplined.”¹⁶ From his statement, it is clear that José automatically assumed that a non-relative was at fault for his wife's pregnancy and that he was surprised when he discovered the contrary. Thus, like Spanish authorities, he viewed sexual intercourse between his father and his wife as extraordinary and criminal, and he looked to the legal system to enact justice.

María Rosalía Surqueah, José's wife, elaborated on the nature of the sexual violence from her father-in-law, and similar to her husband, she emphasized her unwillingness to sexually engage with him. Rosalía claimed the first incident occurred when Vicente offered to accompany her on errand so that she would not get lost. After following him for a distance, he grabbed her against her will in a milpa and penetrated her. He was slightly tipsy at the time. On another occasion, when Vicente was sober, he had signaled to her with his hat for her to go to him, but she did not comply. He then followed her to a ravine where she was doing laundry and raped her a second time. After the incidents, she allegedly found herself pregnant, though this was later disproved.

Vicente initially denied the accusation, making it necessary for the court to convene a *careo* between him and Rosalía. As discussed in the previous chapter, Rosalía took this opportunity to remind her father-in-law that when he had forced himself on her he had told her “that she was a bitch, that he was not her Father”¹⁷ and how she had responded that there would be consequences anyway. Her initial *curador*,¹⁸ Don José Baucello, elaborated on this interchange, calling attention to how

...she tried to persuade her father-in-law to contain his drive, making him understand that she was his political daughter and that such behaviors were for the *irracionales* [“irrationals”] and are not observed among Christians...but despite this, Fuentes did not heed such natural assurances, and on the contrary, insisted that she not be afraid.¹⁹

Hence, Rosalía apparently understood the illicit nature of sexual relations with one’s father-in-law among Christians and tried to discourage her father-in-law by reminding him of their relationship and professed religion. Vicente, on the other hand, deemphasized the nature of their kin tie and rejected the warning about the negative repercussions for sexual intercourse with her. In fact, even though Rosalía had initially claimed that she did not know what sin she and her father-in-law had committed, after being pressed following the *careo* (which suggested otherwise), she admitted to being aware of it.

Following Rosalía’s remonstrations during the *careo*, Vicente admitted to having learned of his crime following the two sexual encounters, and consequently, he told his daughter-in-law to stay quiet about them. Still, Vicente maintained that at the time of the crime “he did not know what was done nor the gravity of the sin that he was committing, and he asked to be viewed with compassion.”²⁰ Thus, in contrast to his son and daughter-in-law, Vicente insisted on his ignorance of the criminal nature of his actions (at least at the time he committed them).

Like Vicente, his initial *curador*, Don Félix de Salazar, drew on assumptions of ignorance. However, the latter linked it directly to *calidad*. He argued that if Vicente had been a *persona de algún cultivo* (“person of some cultivation [i.e. refinement]”) he would have deserved the suitable consequences of the crime, but his client was no such person. While conceding that the incest was proven, he argued that the violent nature of it was not, because if Rosalía had not been willing the first time, there would not have been a second time. She could have removed herself from the situation or reported her father-in-law. “But,” he continued, “what do we want from uncultured, stupid peoples without fear of nor respect for God? As it is said that the Indians, no matter how much effort their priests put into instructing them, are until now yet to be conquered.”²¹ In other words, Salazar contended that both Vicente and Rosalía were willing parties in the incest, but as Indians, they did not understand its criminal nature and so should not be subjected to rigorous penalties.

The *procurador de pobres* and second legal representative for Vicente, Joaquín Eduardo Mariscal, made arguments similar to those of the first. He asserted that his client, “being deficient in rational principles, was resolved to sin,”²² and like Salazar, Mariscal contended that Vicente would not have been successful in the act if his daughter-in-law had resisted him. He then went on to say,

Even though Vicente [is a] rustic Indian and lacks the requisite lights of religion, after his crime was committed, he understood it and inferred its gravity, and because of this, he imposed perpetual silence on his daughter-in-law, believing that with this everything had been finished and buried, and that in not returning to solicit her further, he would comply with God and with the loyalty that he should have towards his son. Such are the simple and never malicious sentiments of the Indians of this area, as in them the lights of religion and charity do not glow, which in the *cultos* [learned, civilized individuals] move believers to commiseration.²³

In short, Vicente did not know that what he was doing was sinful until after the fact, and once knowledgeable of its criminal nature, he desired to rectify the situation albeit incorrectly. Thus, both of Vicente's legal representatives argued that he and his daughter-in-law were consenting parties to the incest and that the authorities should excuse such behavior with stereotypes of Indians as ignorant of and lacking in Christian virtues, completely ignoring how other members of Vicente's own family situated the crime within a Christian framework.

While Vicente and his legal counsel used ignorance as a defense strategy, Rosalía's defense counsel attempted two different approaches. As alluded to above, Baucello advocated for her innocence by highlighting her knowledge of Christian concepts and her employment of them to discourage her father-in-law. He omitted discussion of her *calidad*, which becomes significant when compared with the strategies of her second legal representative.

Juan José León initially argued in a parallel fashion to Baucello. He focused on evidence that suggested Rosalía was an unwilling party in the act of incest, knowledgeable of its deviant nature, and innocent of any wrongdoing. Regarding her chastity, he rhetorically asked, "How many examples are read in stories of women who, having cared extraordinarily about purity, have fallen in the end into the cunning traps of a licentious man? And who does not note that, even though their bodies were stained, their virtues have become more admirable?"²⁴ Further, Rosalía's repugnance towards her father-in-law's behavior was evidenced by her having told him "that the corporal union between Fathers and daughters was the most monstrous, seen only among animals."²⁵ León also pointed out that one could only imagine how surprised and afflicted she would

have been as a result of “the unexpected movements of her father-in-law,” “the strange inclination of which he was possessed,” and “the improper solicitation of her Father.” In arguing that Rosalía would have been caught off guard by such behavior, León implied she was aware that such behavior was abnormal and inappropriate. Thus, like Baucello, León initially stressed how Rosalía’s understanding of kinship norms was in accordance with those deemed proper under Spanish law, and here again, there was no mention her *calidad*.

However, León explored two hypothetical scenarios in case it was to be determined that Rosalía did consent to the act. In the first, Rosalía showed no resistance to Vicente despite not wanting to have sex with him. In the second, she gladly obliged him. It is in these two hypothetical scenarios that León utilized the ignorance defense for the first time and demonstrated its intersection with *calidad*.

In the case of the first scenario, León contended, “The respect for her Father and the fear of not raising a hand to him would have prevented her from making the possible efforts in her defense, just like when a child, unjustly scolded by their Father, does not dare to contradict [him] nor make use of their rights for fear of committing an offense.”²⁶ He went on to argue, “It should not be doubted either that Rosalía Surqueah is imbued with the common error of idiotic peoples that Fathers should be obeyed even in sinful commands because their condition and principles of governance do not allow for anything else.”²⁷ The source of León’s confidence in her ignorance is better articulated in his discussion of the second hypothetical scenario.

León argued that Rosalía should be treated leniently, even if she happily committed adultery with her father-in-law, which he found unlikely since he was a “decrepit man” with respect to her (he was 39, she was 18). He argued,

...sensuality is the passion that is the most difficult to overcome, for which reason I will assert, without fear of erring, that it is the most trying form [of passion] for the *justos*,²⁸ who continually drill their bodies with harsh penitence, and that it has been the cause of confusion among learned minds...And causing so much harm and in such People, what can be expected of a rustic Indian without principles of religion, who does not have other prescript to act than her own will?²⁹

In the second scenario, then, Rosalía’s *calidad* constituted an essential component of León’s defensive strategy.

Overall, León took two distinctive approaches in defense of his client. First, he omitted discussion of Rosalía’s *calidad* and focused instead on her moral uprightness and unwillingness to engage sexually with her father-in-law. It was only when he entertained the idea of her showing no resistance to her father-in-law either out of fear or consent that he used stereotypes of her *calidad* and rusticity to excuse her behavior. In other words, if she had been afraid of offending her father-in-law by not obeying him, her cultural status linking her to “idiotic peoples” was at fault; if she had wanted to have sexual intercourse with him, who could blame an *india* from the countryside when even the most pious and educated individuals struggled with sensuality?

The arguments from the respective defense counsels of Vicente and Rosalía demonstrate how negative stereotypes of Indians as ignorant were tactics for alleviating blame in crimes of incest. It was not until a second appeal (following a reduced sentence) that Mariscal admitted that “it is well known that among the Indians there are some who have more malice than others,” but he of course suggested that his client was one of the latter.

Comparisons between defense strategies reveal that discussion of Indianness had no advantage when an accused person behaved in a manner consistent with norms laid out by Spanish legal and ecclesiastical authorities. Indeed, when portrayed in this fashion, Rosalía's *calidad* was ignored, almost as if it would have been incompatible with such a depiction. According to Deloria (2004: 5), "To assert that a person or an event is anomalous cannot help but serve to create and to reinforce other expectations." Even though Rosalía was not explicitly identified as an Indian anomaly by her defense counsel, she was implicitly portrayed in this fashion, reinforcing the association between Indianness and incest in the process.

Severo Martínez Peláez (2009 [1970]) notes a similar phenomenon in his analysis of Fuentes y Guzmán's *Recordación Florida* referred to at the beginning of this chapter. He finds a divergence between the *criollo* author's opinions on Indian matters and the actual information contained within the text, contradictions which he attributes to class prejudice. According to Martínez Peláez (2009 [1970]: 126),

A social class will construct its own prejudices while engaged in the historical process of struggling with other social classes. That class gradually becomes convinced that the prejudices it holds are absolute truths, and eventually is unable to adopt a rational viewpoint on the matters in question, or fails to see the fallacies inherent in them.

Portrayals of Indianness in the case against Vicente Fuentes (and others) contrary to the actions of Indian actors reflect the attitudes of the *criollo* and *peninsular* Spanish legal professionals who seem to have been generally unable to recognize (or at least acknowledge) similar values and attitudes between Indian defendants and themselves. There surely would have been many who wanted to maintain distinctions between Indians and non-Indians for the purpose of justifying exploitation or otherwise. As Deloria (2004: 45) noted of assimilation policy in the United States, "many white

Americans...found the prospect of a too close similarity between Indians and non-Indians disquieting.”

Even though portrayals of Indianness in incest cases was especially negative, their use in legal defenses suggests they theoretically had the ability to aid a defendant or undermine a plaintiff. Significantly, this type of discourse was not limited to the Spanish individuals who staffed the colonial courtrooms. It could also be employed by members of the same marginalized class.

Self-Description and Indianness

In critiquing James C. Scott's (1990) work on domination and resistance, Don Kulick (1996) discusses how transgendered sex workers in Brazil (*travestis*) use hegemonic notions of gender and sexuality (in which they are denigrated) to their own advantage. In order to force heterosexual males (who represent the dominant group) to give them more money for their services, a *travesti* might draw public attention to their sexual encounter in order to shame him to cede to her demands. Such “scandals” are effective because if a Brazilian man performs oral sex on or is anally penetrated by another man he is no longer considered to be a (real) man. In such instances, *travestis* “appropriate the language of the dominant and use it to draw the dominant into the despised realm of the dominated.” Even though this form of resistance reproduces the structures that subordinate *travestis*, it is still a means to survive and even prosper in a society where they are marginalized.

Appropriation of the language of the dominant appears in colonial Guatemalan incest cases as well. For example, during the aforementioned legal proceedings against Vicente Fuentes, his wife, Andrea Sotoc, petitioned for his sentence of four or five years

of imprisonment at Omoa (in present-day Honduras) to be converted to public works.³⁰ According to her plea, she feared that he would die there because of its harsh reputation, and that as a result, she and her children would suffer. To further support her request, she pointed out “the lack of education and less malice that ordinarily or generally is observed in those of our kind.”³¹ In so doing, Andrea employed the same concepts of Indianness as her husband’s legal representatives in the hope of having his sentence commuted. However, in the end, Vicente’s sentence was not commuted beyond the four years of imprisonment at Omoa and twenty-five lashes.

In another case related to the alleged involvement of one man with two sisters, Indian defendants from Ciudad Vieja (Almolonga) utilized the ignorance defense (Case 56). According to María de los Angeles Sánchez, when Bernardo Quachita solicited her,

...even though she told him she knew he was in *ilícita amistad* with her sister [María Germana] under *palabra de casamiento* [verbal promise of marriage], Quachita responded that it did not matter, that if she turned out pregnant, he would take the child to be raised at his house, and for this reason she fooled around with him from which she has become pregnant.³²

In her *confesión*, she explicitly blamed Bernardo for the incest since he continued to pursue her even after she reminded him about his relationship with her sister (compare with Case 46). And despite her apparent hesitation to engage with him, she testified that, “because of her ignorance, she did not comprehend the crime that she committed nor that it would be cause for the marriage that Quachita had proposed to his sister to be impeded.”³³

Bernardo responded in like manner when he was charged with committing the “enormous crime” of having had “*concubinato incestuoso* with the two Marías...knowing that they are sisters”³⁴ and scolded that “such excesses are only seen

among the irrationals.” He responded, “that as a fragile man and without these Christian sentiments, he did not gauge the enormity [of the crime] that he was committing in these excesses of which he is charged.”³⁵ Despite these admissions of guilt, both Bernardo and María de Los Angeles ultimately denied ever having had sexual intercourse together. While Asesor Zelaya was not convinced of their innocence, he suggested that they be released since, “because of their *calidad* and ignorance, is greatly lessened its criminality and gravity.”³⁶ The *alcalde ordinario* presiding over the case took his advice.

Reference to a deficiency in Christian principles appears in the case against José María Gómez and his daughter María Baltazara, Indian residents of Canales, as well (Case 69). The accusation had been brought forward by another daughter named Juana Josefa who was identified as “very *castellana*.” She was not sworn in prior to formalizing her accusation “because of not being instructed in the Christian Doctrine.” Juana Josefa claimed her father had been involved with her sister for a year and she had caught them fornicating together on three occasions, once in the stubble field and twice behind their home. Being “fearful that her Father would do the same with [her]...she told the *alcalde* of the area, not having done it sooner because of lack of instruction, and she is at present placed in another house where they are teaching her the catechism, as her Father was not doing it.”³⁷ It was important for Juana Josefa to clarify why she had not informed authorities immediately about her father’s sexual activity with her sister to avoid a charge of being an accomplice or *consentidor(a)* (“consenter”) to the crime. Thus, the plaintiff of this case, like the defendants above, used the ignorance defense to protect herself during her encounter with the authorities. Paradoxically, when Juana Josefa’s father initially

denied the crime, he argued that “he would have to be a brute to have committed such a sin, that his Parents raised him and educated him with the fear of God.”³⁸

Two Indian defendants called themselves *tontos* (“fools”) during their trials. The first was Andrés Victorio, a widower who in 1794 was reported for having lived in a marital fashion with his sister-in-law, María Anastacia Vásquez (Case 18). According to Andrés, he had been involved with María Anastacia under the pretext of getting married and they had two children together (one of which survived). However, when the priest told him he could not marry her (presumably because of the affinal impediment), he separated from her. Asked what *parentesco* he had with María Anastacia, he said “that [there is] none, that she is *hermana de madre* of Petrona Martel, who was his legitimate wife, but that they were daughters of distinct Fathers”³⁹ (compare with Case 41). Remonstrated as to how he could say he did not have *parentesco* with her when she is *hermana de madre* of his wife, he responded “that like [the] fool that he is, he does not know.” Charged with living with his sister-in-law in *mala vida* [literally “bad life”], he replied “that he did so with the objective of getting married, and as a fool, he did not know what he was doing.”⁴⁰ Don Mateo de la Canal, legal counsel for both Andrés and María Anastacia, followed suit. He said that their ignorance regarding their *parentesco* was apparent in their testimonies, which should not be surprising “if is considered the Idiocy that is so characteristic of those of their kind and *calidad*.”⁴¹ The pair was accused of incest again in 1797.

Juana Crisostoma Bajal described herself in the same manner as Andrés Victorio (Case 47). After being charged as guilty of *ilícita amistad* with her (political) uncle, committing incest and making him commit adultery, she said “that it is all true, but that

as she was a fool, she did not know the ill that she was doing until now that they have told her.”⁴² The “fool” label used by Andrés Victorio and Crisostoma Bajal would have played right into stereotypes of Indianness.

Importantly, presenting oneself as ignorant of incest, whether sincere or not, was not a viable defense for everyone. For example, when Manuel Aldana (Case 45), a *mestizo* from Cobán living in Nueva Guatemala, claimed he did not realize he was committing incest through his sexual involvement with two “carnal” sisters (i.e. whole sisters), he was remonstrated that

...he cannot be ignorant of it, for it is well known even among the most coarse peoples that the indecent involvement of one man with two carnal sisters is another crime in addition to that of simple fornication, and in him, considering his circumstances of knowing how to read and write and having been around people, the ignorance that he feigns cannot be assumed.⁴³

Thus, Aldana’s urban lifestyle and education betrayed him. His identification as non-Indian, and *mestizo* in particular, also likely worked against him since he was neither Indian nor of African ancestry (see Chapter 2).

Overall, when legal advisors, defense counsel, and/or defendants utilized the ignorance defense, whether in terms of general ignorance or a matter more specific to the crime of incest, over half of the individuals were identified as Indian.⁴⁴ Two-thirds of male defendants (12 of 18) accompanied by an ignorance defense were Indian and two-thirds of *indios* (8 of 12) used ignorance in their own defense (See Table 6.1). Sixty-five percent of female defendants (13 of 20) associated with an ignorance defense were Indian and seventy-seven percent of *indias* (10 of 13) used ignorance as their own form of defense (See Table 6.2). While this defense had the potential to benefit an accused

Table 6.1. Male defendants and the ignorance defense.

Case Number	Male Defendant	Calidad	Agent
2	Domingo Álvez	<i>indio</i>	defense counsel
18a	Andrés Victorio	<i>indio</i>	self; defense counsel
24	Hipólito Cojulum	<i>indio</i>	defense counsel
30	Josef Eustaquio Garcia	<i>indio</i>	self
40	José Hernández	<i>indio</i>	defense counsel
47	Domingo Mariano Mejía	<i>indio</i>	self; <i>fiscal</i>
48	Guillermo Lázaro	<i>indio</i>	self; <i>asesor</i>
56	Bernardo Quachita	<i>indio</i>	self; defense counsel; <i>asesor</i>
64	Vicente Fuentes	<i>indio</i>	self; wife; defense counsel; <i>fiscal</i>
68ab	Josef Silverio Ampérez	<i>indio</i>	self
68b	Manuel Cornel	<i>indio</i>	self
69	José María Gómez	<i>indio</i>	defense counsel
45	Manuel Aldana	<i>mestizo</i>	self
39	Patricio de León	<i>mestizo/mulato</i>	<i>asesor</i>
3	Pedro Monzón	n/a	self
38	Mariano Donis	n/a	defense counsel
61	Felipe Gil	n/a	self
10	Esteban Quiñones	<i>pardo libre</i>	defense counsel

Table 6.2. Female defendants and the ignorance defense.

Case Number	Female Defendant	Calidad	Agent
3	Francisca de Escudero	<i>española</i>	self (through defense counsel)
65	Doña María Salomé Soto	<i>española/criolla</i>	self
1	Madalena Velasco	<i>india</i>	self
2	Isabel Matul	<i>india</i>	self
18a	María Anastacia Vásquez	<i>india</i>	self; defense counsel
40	Anica Lantán	<i>india</i>	self; defense counsel
47	Juana Crisostoma Bajal	<i>india</i>	self; <i>fiscal</i>
48	María Andrea de la Cruz	<i>india</i>	<i>asesor</i>
56	María de los Angeles Sánchez	<i>india</i>	self; defense counsel; <i>asesor</i>
56	María Germana Sánchez	<i>india</i>	defense counsel
64	María Rosalía Surqueah	<i>india</i>	self; defense counsel; <i>fiscal</i>
68a	María Basilia García	<i>india</i>	self
68b	María Leandra Ampérez	<i>india</i>	self
68b	María Manuela López	<i>india</i>	self
69	María Baltazara Gómez	<i>india</i>	defense counsel (for male)
50	Manuela Antonia González	<i>mestiza</i>	self
31	Josepha Mejía	<i>mulata/parda libre</i>	self; <i>fiscal</i>
45	Doña Feliciano Rivas	n/a	self
61	Petrona Alvarado	n/a	self
67	Alejandra Vidal	n/a	self

person, it also served to perpetuate a colonial discourse that reinforced hierarchical structures in colonial society.

To the extent that this approach succeeded, it also worked against indigenous plaintiffs and victims of sexual violence. In cases where the ignorance defense intersected with sexual violence or intimidation, eight out of eleven cases involved an Indian man and an Indian woman (See Table 6.3). This suggests that cases carried out in Spanish courts could contribute to an environment in which indigenous women in particular were at risk of sexual violence from male kin. That being said, only one Indian male actor accused of incestuous violence, Pedro Castellanos from Case 28, completely escaped penalty (pending more evidence) and the ignorance defense was not used in his case. And, as discussed in Chapter 3, Indian defendants in general had lower acquittal rates than other socioracial groups. Thus, the effectiveness of this form of defense seems to have been limited.

Table 6.3. Alleged incestuous rapists, their victims, and the ignorance defense.

Case Number	Male Actor	Calidad	Female Actor	Calidad
2	Domingo Álvez	<i>indio</i>	Isabel Matul	<i>india</i>
2	Domingo Álvez	<i>indio</i>	Isabel Cox	<i>india</i>
24	Hipólito Cojulum	<i>indio</i>	María Mercedes Quemé	<i>india</i>
30	Josef Eustaquio García	<i>indio</i>	María Josefa García	<i>india</i>
40	José Hernández	<i>indio</i>	Anica Lantán	<i>india</i>
64	Vicente Fuentes	<i>indio</i>	María Rosalía Surqueah	<i>india</i>
68b	Josef Silverio Ampérez	<i>indio</i>	María Leandra Ampérez	<i>india</i>
69	José María Gómez	<i>indio</i>	María Baltazara Gómez	<i>india</i>
39	Patricio de León	<i>mestizo or mulato</i>	Francisca de León	n/a
61	Felipe Gil	n/a	Petrona Alvarado	n/a
10	Esteban Quiñones	<i>pardo libre</i>	Secundina Hernández	n/a

Indianness as a Tool of Comparison in Incest Cases

Colonial concepts of Indianness also surface in incest cases as a tool of comparison. In these cases, comparisons of the defendants with Indians served as a tactic either to excuse the incestuous behavior of an accused person or highlight the especially deviant nature of it. The 1804 case against Patricio de León, a farm hand who was interchangeably identified as *mestizo* and *mulato*, serves as an example (Case 39). Patricio was accused of “having wanted to use his daughter indecently.” Juan José Pisabaj, an Indian man who was the only eye witness to the crime, testified that when he was returning from an errand he came across a man, drunk and in the posture of “sinning indecently” with a young child underneath him. This man asked the child, “Does it hurt you?”, and she responded, “Yes.” Knowing who they were, he interrupted by asking Patricio, “*Hombre*, what is this? We are Christians. As such, the Law of God is observed. As this is with your daughter.”⁴⁵ Patricio retorted that the girl was his wife and not his daughter, perhaps another example of how kin could be strategically relabeled as discussed in Chapter 5. When he tried to get Patricio to come with him to the resident priest, he refused and said, “You’d better make me a noose and hang me here.”

Indianness appears in the comments of the *asesor* of the case, Eusebio de Silva. Silva underlined Patricio’s *rusticidad* and how “among the Indians and those who are raised like them the crime of incest, just like inebriation (as Father Avendaño says and Mr. Solórzano makes note of), is not a sin of great gravity because they do not comprehend its malice.”⁴⁶ Here, stereotypes about Indians served as a point of reference for determining accountability in an incest case in which the accused was not himself

identified as Indian. That is, because of his supposed association with Indians, the *asesor* felt Patricio should be treated more leniently.

It is significant that this nineteenth-century *asesor* cited two seventeenth-century writers. Juan de Solórzano Pereira was a Spanish jurist who became a judge in the Audiencia of Lima in the early seventeenth century and wrote on law in the Western Indies (e.g. *Política Indiana* (1647)). Fray Andrés de Avendaño y Loyola was a Franciscan priest whose works include his *Relación de las dos entradas que hize a la conversión de los gentiles Itzaex y Cehachez* (1696) in which he describes his encounters with the Maya of the Petén in the seventeenth century. In referring to these writers, the *asesor* carried forward stereotypes of Indians and those associated with them into his own century. Simultaneously, he completely disregarded the fact that it was an Indian man who had reproached Patricio when he discovered him with his daughter and reported the crime to the authorities. Taken together, the actions of the *asesor* demonstrate how stereotypes of Indians could survive in the legal arena: generalizations from past centuries could be cited uncritically while information that contradicted them was ignored.

While the cases so far have shown how Indianness theoretically benefitted a defendant, records of incestuous crime also reveal how such discourse could work against them. In 1804 Verapaz, Manuel and Manuela Salvatierra, father and daughter, were charged with incest (Case 42). Their *calidades* were not explicitly stated, but they seem to have been Indian. According to the interim *fiscal*, “the incest committed by Manuel Salvatierra with his legitimate daughter is one of the most abominable crimes that can be counted among *lascivos* [‘lewd persons’], as even nature itself is horrified by them.”²⁴⁷ In

short, this form of incest was unnatural. Citing the aforementioned Solórzano and Montenegro, he asserted “that the sin of incest is almost as common among Indians as drunkenness. But that which is committed in the first degree of Father with daughter was viewed with repugnance even among the *indios gentiles*,”⁴⁸ a term used to refer to Indians in the past who had not yet been exposed to Catholicism.⁴⁹ Such fathers were cruelly punished, while the daughters were treated with great compassion because of their compromised ability to defend themselves from “a man who one should naturally respect and fear.”⁵⁰ In contrasting the incestuous behavior of the accused with that of *indios gentiles*, the *fiscal* underlined the particularly abhorrent nature of the crime, which was undoubtedly meant to injure the accused.⁵¹ Thus, allusions to Indianness could work for or against a defendant.

Alcohol and Ignorance

While ignorance and inebriation had strong associations with Indianness, inebriation was a tool available to the population at large to excuse one’s incestuous actions. Like the ignorance defense, inebriation spoke to one’s state of mind and influenced the perception of one’s criminal actions. Indeed, how could a person be blamed for something they did during a drunken stupor in which rational thinking fell by the wayside?

Occasionally, references to alcohol and drinking can be found in cases of incestuous crime. For their part, civil authorities were interested in the state of mind of someone who committed incest. For example, in the case above involving Vicente Fuentes and Rosalía Surqueah, the latter was asked whether her father-in-law “was drunk in terms of not knowing what he was doing”⁵² on the two occasions that he raped her

(Case 64). She said the first time he was slightly tipsy, but he was in his right mind on the second occasion.

Defendants also commented on their state of mind, or at least the state of mind required, during incestuous crime. When Vicente Fuentes initially denied raping his daughter-in-law, he said “he has not committed such crime unless he has done it drunk and not remembered” (Case 64).⁵³ In like fashion, Don Juan Manuel Dardón argued during a *careo* with his daughter that “he would [have to] be crazy or drunk” to have committed what she accused him of (Case 15). She countered “that he was never drunk, even though sometimes he drank liquor, and that he has never suffered from madness nor other lack of senses.”⁵⁴

Drunken confusion could allegedly lead to mistaken identification of kin. Josef Eustaquio García, the Indian bricklayer who had come home drunk one night and had sex with his daughter in her bed, claimed “that thinking she was his wife, he had carnal act with his daughter, for which he repented the next day”⁵⁵ (Case 30; compare with Case 39 above). In his defense, the *procurador de pobres* argued, “It is evident that García had a simple access with his daughter, but also that it was being outside himself or in terms that he did not know what he was doing because he was possessed of inebriation...which circumstance is sufficient in legal conception to excuse him from the ordinary penalty.”⁵⁶ This latter statement in particular highlights the legal import attributed to state of mind. But given that a drunken state was obviously relevant to criminality, authorities were cautious when it came to inebriation as an excuse. In Case 39, where there was also identification of a daughter as a wife, the magistrate alleged that Patricio de León only

admitted to inebriation, a crime in and of itself, to cover for the other one (incest with his daughter).

The 1798 case against Hipólito Cojulum for the rape and deflowering of his sister-in-law shows how an inebriation defense and an Indianness defense could be combined (Case 24). Initially, Hipólito admitted to grabbing and deflowering the girl, causing her to spill blood. However, he did so “because he was drunk and did not know what he was committing.” Later, through an interpreter, he said that even though he was drunk he now remembered the act was not violent but rather the girl had consented to his request. When questioned about the inconsistency in his statements, he said “that at the time of the incident, he was not completely drunk but rather half drunk, and because of that he remembers that the girl gave him word in that act [i.e. agreed to it].”⁵⁷ María Mercedes Quemé, on other hand, denied having consented to the act and argued that “she never would have been able to oblige, being that she did not know, because of his state, for what he could invite her.”⁵⁸ Thus, both Hipólito and María Mercedes used his mental state for their own defense.

Hipólito’s first *defensor*, Don Juan José Gutiérrez Marroquín, explained that the only arguments on which to base his defense were the *calidad* of his client and the (drunken) state in which he was when he committed the crime. He claimed that among Indians

...crude education does not remove them from but rather further establishes them in an idiocy of the first order that absolves them from the ordinary penalty of the Laws...which exclusion is preponderated in excesses of indecency [i.e. sexual crimes] in which fragility works in proportion to the little resistance that it finds with respect to the lack of education and recognition of religion and its sacred laws.

Further, Hipólito's inebriation was "the second stimulus for unintentional things and decreasing strength against the weakness and fragile resistance that is already assumed."⁵⁹ Hence, inebriation could act as a compounding factor on an individual already at risk for committing crime. Hipólito's second defense counsel compared his drunken incestuous behavior to the experience of Lot from the Old Testament who had sex with his daughters while drunk on wine. Hipólito's true crime, he maintained, was inebriation.

References to alcohol did not speak solely to one's state of mind during a sex act; some individuals used inebriation to argue they would have been physically incapable of having sex in the first place. This was seen in the case against Don Apolinario Rivas, who argued he was so drunk the night of the alleged rape of Doña Teodora Bocanegra that he did not even get undressed (Case 46). Therefore, he believed the accusation was unlikely.

Overall, use of intoxication to excuse incestuous behavior was not as strongly associated with concepts of Indianness as the ignorance defense. While inebriation could be presented as exacerbating an already "fragile resistance" to sexual crimes on the part of Indians, it was also a potential tool for colonial Guatemalans more broadly.

Conclusion

Filtering records of incestuous crime through the lens of Indianness reveals cultural assumptions on the part of colonial authorities and legal representatives that individuals identified as Indian (or Indian-like) were ignorant of what constituted incest and the severity of this crime. This, in turn, fueled expectations that such individuals would commit it.

While the ignorance defense was not wholly dependent on references to Indianness, they were often intertwined. Much of Indianness had its roots in the early colonial period, and these stereotypes continued to be employed by actors in the late colonial legal arena with little room for counter narratives. Since references to Indianness theoretically had the potential to aid defendants, it potentially worked against individuals (Indian or non-Indian) who felt they had been wronged and were seeking justice. Further, when Indians (and their ancestors) were used as points of reference in criminal proceedings related to incestuous crime, whether as a means to condemn or acquit a defendant, it again had the effect of linking this sector of the colonial population to this particular crime. Indeed, legal proceedings undoubtedly provided an arena for the perpetuation of colonial discourses that would only function to further cement the subordinate and marginalized position of indigenous people in colonial Guatemalan society.

CHAPTER 7

CONCLUSION

Guatemalan criminal records related to incestuous crime provide invaluable insights into social relations and cultural dynamics in the late colonial era. They contribute to the reconstruction of kin norms and challenges to Spanish regulations on sexuality and marriage. They reveal details on relations between kin and between kin and non-kin, especially in terms of interactions between men and women as they engaged in consensual and non-consensual unions in a cultural environment characterized by patriarchal authority. They also demonstrate colonial discourses on Indianness, a contradiction between the leniency afforded Indians in colonial law and patterns of sentencing, and a general inability on the part of Spaniards to reconcile similarities between themselves and individuals identified as Indian.

To some degree, incestuous crime confirms what might be expected in an atmosphere in which a culture of honor and Catholic doctrine promoted male dominance. There was the potential for an abuse of authority, and such abuse could manifest in the form of incestuous violence against women and girls by both consanguineous and affinal kin. As seen in Chapters 2 and 4, the majority of sexual violence against female kin was perpetrated by father-types (fathers, stepfathers, and fathers-in-law) and concepts like *respeto* could make women feel like they had no other choice than to give in to the sexual appetites of these men. Undoubtedly, many who experienced incestuous violence stayed silent out of respect for and fear of perpetrators. Some even feared sharing sexual

violence with other kin. Remember Ciriaca (no surname listed) from Case 9 who was afraid that if she told her mother her uncle had raped her she would punish her. Notably, the only victim of incestuous violence who denounced the crime to authorities on her own was Gregoria Gonzales (Case 4). In incest cases as a whole, the majority of plaintiffs were relatives of one or more parties.

For their part, Guatemalan colonial authorities seem to have taken sexual violence into some consideration during incest trials. Not only could the violent nature of an incestuous encounter be noted and condemned in court records, it also apparently influenced acquittal rates (understood as an absence of major penalties). As discussed in Chapter 3, there was a rise in acquittal rates for women when sexual violence or intimidation was involved, whereas men saw a decline under these circumstances.

One aspect unique to Guatemalan incest cases was the ways in which women and girls used kin ties in strategic ways during or prior to sexual violence. While female victims often articulated and stressed kin ties to discourage their rapists, their attackers chose to deemphasize or overlook such ties to justify the sexual encounter between them. One avenue for future research would be to examine instances of same-sex incestuous violence to see if similar themes emerge. Because *incesto* cases were restricted to male-female interactions, same-sex incestuous encounters do not appear in them.¹ Would men have responded to rape by a male relative like the women in Chapter 5? Or was emphasizing kinship a gendered response to unequal male-female relations?

Not all incestuous crime was violent. In fact, most of the cases analyzed here did not contain any suggestion of force or intimidation on the part of the male. Altogether, the overwhelming majority of incest cases involved affinal incest (through sexual

intercourse or formal marriage) and affinal incest was less likely to be associated with rape than consanguineous incest. These patterns suggest a higher level of cultural acceptance of the former over the latter among the colonial masses. This is compatible with the significance placed on blood ties in Western societies historically and alluded to throughout testimonies from the case sample. For instance, testimony shows expectations that individuals would be willing to falsely testify against someone who did not share a blood tie with them or in favor of someone who did.

Criminal records also contain explicit debate about whether certain forms of incest were more criminal or probable than others. They reveal differing expectations and valuations of incest depending on degrees of relatedness and whether the tie was through consanguineous or affinal kinship. Some individuals argued that the existence of a particular kin tie alone called into question an accusation of incest (e.g. Case 11, Case 59). Such debate is intriguing because it allows room for cultural and legal change, especially when taken together with the challenges posed by individuals who intentionally or unintentionally engaged in incestuous crime.

It would be worth investigating incest trials from the post-independence period to see what types of narratives emerge. In fact, there is evidence that prohibitions on marriages between relatives narrowed after independence. The *Código Civil de la República de Guatemala* (1877) includes a list of relatives between whom marriage was prohibited.² Book 1, Tit. 4, Article 119-120 forbade marriage with consanguineous relatives in the direct line *infinitum* whether or not such relatives were legitimate. Affinal relatives in the direct line were similarly prohibited. Prohibitions also applied to marriage between siblings and half-siblings and between adoptive parents³ and their adopted

children (*Código Civil* 1877:8). Thus, marriages between brothers- and sisters-in-law were apparently acceptable as well as those involving spiritual kin. This contrasted with developments in the Catholic Church where, for example, marriage to a sibling-in-law (following the death of a spouse) was prohibited until the late twentieth century (Héritier 2002 [1994]: 107).

Incestuous crime is a particularly fruitful arena in which to examine the malleable nature of kinship among colonial Guatemalans, including flexible usage of kinship terminology. Records show how non-biological children could be incorporated into kin networks so deeply that the exact nature of a kin tie was unclear. Yet, at the same time, these children (occasionally termed *pepes*) were set apart from the biological children of oneself or one's spouse. For some Guatemalans, "adopted" children were potential sexual partners. Felipe Gil from Case 61 courted his stepdaughter under the belief that she was a girl his wife had taken into her care (and not her daughter). Petrona Quintanilla from Case 4 insinuated that sexual violence against an "adopted" child was not as deviant as that executed by a father on his daughter. Thus, to the extent that incest law impeded sexual relations with biological and stepchildren, "adopted" children were more likely to be subject to sexual attention and violence than other children in the home.

The malleability allowed in kin networks could create problems in the courtroom because "real" kin ties were what mattered in incestuous crime. Recall the case against Domingo Morales and Dolores Gaitán (Case 41), where various measures were taken to determine whether Dolores and Domingo's deceased wife were (real) sisters. Yet, the malleable nature of kinship, or rather, the confusion that could ensue from it, was also beneficial in this case since ignorance of kin ties could eliminate culpability.

Undoubtedly, this potential was exploited during criminal proceedings where defendants and their defense counsel were desperate to make the former appear innocent before the magistrate.

As a whole, the courtroom environment would have contributed to the ongoing significance of “real” versus other kin and shaped perceptions of relatedness. It forced such distinctions to be made even though they may have been relatively unimportant in other contexts. Further, some colonial Guatemalans were apparently unaware of the “reality” of kinship even when there was no debate about genealogical origins. One cannot forget how widower Andrés Victorio (Case 18) erroneously stated (from the court’s perspective) that no kinship existed between him and the *hermana de madre* of his wife and the remonstrance that followed.

Criminal records show how kinship was a tool available to all colonial Guatemalans for their strategic usage. For example, they could use kin norms to change the perception of a relationship, reclassifying individuals as particular kinds of relatives as a means to conceal illicit sexual behavior. Perhaps even the way in which Manuela González from Case 50 reportedly glossed over a shared mother during sexual intercourse with her brother was significant to the moment between them. Rejecting particular forms of relatedness was certainly important in the rape cases discussed above.

Using kinship and incest as a framework, colonial Guatemalans also had the power to influence the nature of a relationship. Case 46 was suggestive in terms of how someone could use kin ties to prevent the realization of an undesired marriage. One only needed to create (or feign) an impediment to marriage that originated in sexual involvement with a relative of a future spouse. Various individuals tried to take

advantage of *compadrazgo* to curb actual or perceived adulterous behavior. Testimony from María Jacoba Suárez from Case 12 insinuates that spiritual kinship was more powerful in this regard than affinal kinship.

Despite the criminal nature of incest and the potential for all involved to be held accountable in the courts, women in incest trials were occasionally accused of falsely pinning a pregnancy or loss of virginity on a male relative. Blaming male kin could render a woman less culpable for her non-virginal or pregnant status. It could protect a lover, other male kin, or one's own reputation. No matter the motivation, the implication is that personal benefits outweighed any social costs from an alleged incestuous encounter, and the decision to use kin as a scapegoat was strategic.

While some patterns in incestuous crime and kin relations seem to have transcended colonial socioracial categorization, incestuous crime also played into colonial discourses on Indianness. Spanish legal professionals often assumed Indians were ignorant of incestuous crime and had a tendency to commit it. Indians did in fact represent the majority of defendants in incest trials (where *calidad* was recorded), but this most likely relates to Indians having constituted the majority of the late colonial Guatemalan population. Further, the language that surfaces in these cases was not so much an exercise in cultural relativism as it was an attempt to highlight Indians' inferiority to Spaniards, and thereby, excuse their behavior.

There was no correlation between Indians and general type of incest (affinal versus consanguineous). Both Indians and individuals of mixed race engaged more readily in affinal incest. Spaniards were evenly split between the two, but they represented such a small portion of the sample that it is difficult to make any strong

statements about their tendencies. Expanding investigation to include church records including dispensation trials might allow for more Spanish unions to be analyzed. An increased sample size could also be useful in illuminating whether specific types of incest (e.g. father-in-law/daughter-in-law) had any correlation with socioracial categories.

Indianness (particularly the ignorance aspect) was theoretically a tool in the courtroom since colonial law emphasized a greater level of leniency when it came to Indian defendants. This device was used by Spaniards working in the legal realm and by Indian defendants and witnesses themselves. Whether or not ignorance of incest was sincere, the ignorance defense was intended to aid defendants and ultimately contributed to the survival of negative stereotypes of Indians among Spaniards. Making comparisons between incestuous criminals and contemporary Indians or their ancestors for the benefit of or in detriment to a defendant further associated Indians with this crime.

Of course, Indian actors like Rosalía Surqueah and José Fuentes (Case 64) clearly conceived of incest in terms similar to colonial authorities, but such similarities were glossed over in various ways. Beyond this, Indians who were subjected to incestuous crime and went to the courts in search of justice were potentially disadvantaged when Indianness was utilized as a defense. That being said, the effectiveness of the ignorance defense may have been somewhat limited since Indian defendants had lower rates of acquittals than defendants of other *calidades*.

Overall, analysis of incestuous crime in colonial Guatemala adds further nuance and humanity to distant and seemingly two-dimensional historical actors by providing insight into social relations on multiple levels. It shows intimate interactions between kin as they managed a cultural environment in many ways favorable to patriarchal authority

and Spanish regulations on sexuality. It demonstrates the subjective and relative nature of kin relations and the ways in which kin norms could be manipulated as colonial Guatemalans strategically negotiated the legal arena and beyond. It speaks to the role of *calidad* and constructions of Indianness both within and outside the courtroom. And lastly, it reveals a dialectical process in which actors with different conceptions of relatedness and incest confronted one another creating the potential for cultural and legal change.

APPENDIX

1. AGCA A1 Leg. 2890 Exp. 26609

Year: 1682

Crime: [incest]; amancebamiento; [infanticide]

Participants:

Pedro Cardona: *indio*

Madalena Velasco: *india*

Basic Arguments:

It was reported that Cardona was *amancebado* with Velasco, his stepdaughter, and that he had had two children with her, which he killed and buried in an unknown location without having baptized them. Through an interpreter, Cardona denied any involvement with Velasco. However, Velasco (also through an interpreter) admitted to having been involved with Cardona in his milpa and said she did not think it was a sin. After having given birth, Cardona told her that he wanted to marry her and that it was not good for her to go with an infant in her arms. She claimed she married him and that she did not know where he dumped the infant. She added that the other infant was born dead. Other witnesses did not contradict Velasco.

Penalty:

Cardona was to be taken through the public streets on a horse with a town crier announcing the legal proceedings and crime, to receive one hundred lashes, to be banished twenty leagues from his town, and to be placed in a home with a shackle on his

foot “like a slave” for two years. He was to pay for his tribute, clothing, and court fees from what he received monthly.

2. AGCA A1.15 Leg. 3024 Exp. 29166

Year: 1710

Crime: incest; adultery

Participants:

Domingo Alvez (or Alvarez): *indio*

Isabel Matul: *india*

Isabel Cox: *india*

Basic Arguments:

D. Alvez was accused of “bad communication” with his two daughters-in-law, Matul and Cox, by his sons and their husbands, Francisco and Juan Alvez (or Alvarez). They claimed D. Alvez kept them separated from their wives, having their wives stay near the milpa while they watched over the sheep. When they had requested their wives from D. Alvez in the past, he refused to give them to them and threatened them with beatings and lashes. They stated that their father had had their wives as *mancebas* (“concubines”). (F. and J. Alvez eventually dropped their complaint, but the proceedings continued on official order.)

Through the aid of interpreters, Matul, wife of F. Alvez, said that she had committed “the sin of the flesh” with her father-in-law against her will. It happened three times when she was a *soltera* and four times after she got married. Out of fear, she did not tell her husband about what had happened with her now father-in-law when they got married. Matul also reported that one day after returning from a fiesta her mother-in-law,

Isabel Coz, was tearful and asked her if she would defend her if D. Alvez wanted to whip her as a result of her having caught he and Cox in the act. (However, Coz denied this and any knowledge of her husband having been involved with their daughters-in-law.) Asked how she could commit such a grave sin with her father-in-law, Matul answered that she was unaware of its gravity, she stayed quiet about it out of fear, she believed that the sin with her father-in-law was the same as with any other *hombre extraño*, and she reiterated that she was forced.

Cox, wife of J. Alvez, initially denied (through the aid of interpreters) any sexual intercourse with her father-in-law and claimed that he had always treated her with decency and integrity. Pressed, she admitted that he had raped her on one occasion when she was alone in the house a little less than a year before. Still, she said, she made a marital life with her husband, sleeping with him every night in a small shack separate from her in-laws, and denied that her father-in-law kept her from her husband.

D. Alvez denied (through the aid of interpreters) the crime at first. He said that he feared God and was well aware of the gravity of such a crime. He claimed he had never had illicit dealings with his daughters-in-law in deeds or words because he had always viewed them as and treated them like his own daughters. He argued that were he even to want to carry out such an indecency, he would be afraid they might divulge the matter to their husbands, mother-in-law, or relatives. Before changing his position and admitting to the crime, D. Alvez asked the judge if he should admit to what he was accused of considering his sons had raised the accusation against him. The judge reiterated that he should not lie under oath to appease his sons or agree with what they said, nor should he deny something that was true. D. Alvez admitted to having one sexual act with Matul

after she had gotten married and denied that it was forced. Rather, he told her he would not punish her for her “illicit communication” with an *indio forastero* (“Indian outsider”) if she would have sex with him, and she “consented.” He had repented and wept over his wrongdoing and had now left whenever he found himself alone with her. D. Alvez stated that he had never been involved with his other daughter-in-law, otherwise he would confess it as well.

Bartolomé de Arcos Pompa, defense counsel of D. Alvez, highlighted the remorsefulness of his client and argued that it was common knowledge that Indians often committed crimes out of ignorance. He suggested that Cox and J. Alvez had united with Matul and F. Alvez so as to free themselves from D. Alvez’s grip.

During a *careo* between D. Alvez and Cox, the latter conceded that her father-in-law in fact did *not* rape her. She said her husband had instructed her to include this in her testimony, and after she refused, he began to demonstrate a lack of affection and anger towards her. In the end, she gave in to make him more agreeable.

Penalty:

D. Alvez: paraded through the streets of his town and given 200 lashes accompanied by a town crier, a trumpet, and a drum

Matul: paraded through the streets of her town and given 100 lashes accompanied by a town crier, a trumpet, and a drum

Cox: absolved

3. AGCA A1.15 Leg. 2893 Exp. 26711

Year: 1730

Crime: incest; [adultery]

Participants:

Pedro Monzón: *español*

Francisca de Escudero: *española*

Basic Arguments:

Monzón and Escudero, uncle and niece, were charged with incest. Monzón blamed his ignorance. He contended that, if he had had the slightest idea about what would come from it and of the grave offense that it was to God, he would have tried to avoid it. He also pointed out his great poverty, how remorseful he was, and how it would not happen again.

Joseph de Santiago y Salzedo, *alférez* and defense counsel for Escudero, said Escudero told him that the only way she could defend herself was to point out the crass ignorance with which she committed the incest and her fragility as a poor woman with little to no resistance to the temptations of the Devil. Had she known the gravity of the crime, she would not have committed it in any form. She was remorseful and ready to make correction.

Penalty:

Monzón: warned that future communication with Escudero would result in two years of banishment with his wife and children; habilitation of marriage

Escudero: she was to move to Quetzaltenango; warned that future communication with Monzón would result in two years of *recogimiento* in the Casa Nueva

4. AGCA A2 Leg. 142 Exp. 2597

Year: 1749

Crime: incest; adultery; estupro

Participants:

Narciso Gonzales: *mulato libre*

Gregoria Antonia Gonzales: *mulata libre*

Basic Arguments:

G. Gonzales accused N. Gonzales, her father, of violently taking her virginity one day when his wife, Petrona Quintanilla, was gone. He was tipsy at the time and afterwards he warned her he would punish her if the deed was discovered. Her father repeated these acts with her many times over the period of three years. Then, Teodoro Ramírez and Joseph Mansilla asked her to be the wife of Nicolás Ramírez, T. Ramírez's brother. This was agreed to under the condition that G. Gonzales continue to reside with N. Gonzales, and the sexual deeds continued after her marriage. G. Gonzales argued that N. Gonzales fought with her husband out of jealousy even though he used the pretext that N. Ramírez had left Quintanilla in Quetzaltenango alone. Because he continued to fight with N. Ramírez following Quintanilla's return, T. and N. Ramírez went to the Señor Provisor to request for G. Gonzales to be placed in T. Ramírez's power. This was effected, and N. Gonzales was upset and threatened N. and T. Ramírez on multiple occasions. Then one day N. Gonzales sent for G. Gonzales, requesting for her to come and record some things for him because he did not know how to write. N. Gonzales interrupted the passage of G. Gonzales (and the individuals who accompanied her) to his farm. He managed to separate her from the others, taking her to another area off the road. He made her get off her horse and get on his, ordering her to "sit like a man" in front of him, and they rode off. Arrived at a new location, they dismounted, and he proceeded to undress her, tie her hands to her feet, and whip her from the waist down, putting his foot

on her face so she would not scream. He demonstrated jealousy of individuals she did not know including an Indian servant named Juan. Afterwards, he untied her and had another carnal act with her. Then he began to remonstrate her again regarding whether she had had an illicit dealing with another man, which she denied, and he tied her hands up and whipped her again. Then, he directed her to his farm where Quintanilla saw the lashes and returned her to T. Ramírez.

During his interrogation, T. Ramírez was asked why N. Gonzales brought an *indio tributario* named Juan Chamalec tied and severely lashed to him. He said that when N. Gonzales brought Chamalec to him he said that Chamalec was who took G. Gonzales's virginity and not him as was being said. N. Gonzales then untied Chamalec and ordered T. Ramírez's brother and wife to kiss his feet. When Quintanilla brought G. Gonzales back to him on the following day (after N. Gonzales had whipped her), he asked her why they had punished her. Quintanilla allegedly told him that her husband, upset that she was not under his authority, punished her in her presence and only gave her six lashes over her clothes.

Quintanilla claimed she did not know why her husband punished Chamalec. After she found G. Gonzales near a fence, who told her that her father had whipped her, Quintanilla feared her husband would do something else because she took him to be offended that G. Gonzales was no longer in his power. After she brought G. Gonzales back to T. Ramírez, she told him that the lashes were given in her presence so that G. Gonzales's husband would not be offended.

Francisco Orozco and María Victoria provided testimony that G. Gonzales was their daughter, who *como frágiles* they had had fifteen years before. Asked why they did

not raise her if she was their daughter, they said it was because she was birthed out of wedlock. Asked how G. Gonzales came to be raised by N. Gonzales and Quintanilla, María Victoria said that, because of the respect she had for her mother and the fear she had of her aunt, she allowed her aunt to give the child to them to raise her out of charity.

Quintanilla likewise claimed that she and her husband raised G. Gonzales, but they were not her parents. She complained about their assets having been confiscated by the authorities (who had been unable to obtain N. Gonzales), arguing that she had no way to maintain herself. She argued that the complaint had not only resulted in “the defamatory calumny against the upbringing that she owes us” but also in the dispossession of their small amount of assets. It was not evident to her that N. Gonzales took G. Gonzales’s virginity, but not being her father, the gravity was not as severe. She requested for the assets to be handed over and presented witnesses to support her claims that the assets actually belonged to her and not her husband. She also called into question any violence on the part of N. Gonzales if he had committed the *estupro*, finding it unlikely that G. Gonzales would have tolerated N. Gonzales for so many years against her will without telling someone about it. Additionally, Quintanilla found it favorable that G. Gonzales waited to complain about the abuse until after she got married.

Penalty:

N. Gonzales: n/a beyond initial sequestration of assets as he was never obtained

G. Gonzales: n/a

5. AGCA A1.15 Leg. 5405 Exp. 46063

Year: 1762

Crime: incest; [abuse of authority]

Participants (of the crime of incest):

Miguel Vásquez: *indio*

Basic Arguments:

Vásquez was said to have committed incest one time with a stepdaughter of his when he was drunk. Vásquez said that his deceased brother left him in charge of his assets and implied that some individuals had spoken ill of him so as to have better access to such assets.

This particular document deals primarily with the infractions of Miguel de Velasco, a priest who was said to have apprehended and punished Vásquez despite not having had the authority to do so.

Penalty (for the crime of incest):

Velasco originally sentenced Vásquez to 50 public lashes, but Vásquez got him to change it to 100 pesos. Velasco also obtained an additional 62 pesos, a large pot, and an untamed mule from Vásquez's wife. Everything was ordered to be returned to Vásquez.

6. AGCA A2.2 Leg. 147 Exp. 2719

Year: 1763

Crime: [adultery]

Participants:

Pablo García: *calidad n/a*

Manuela Vásquez: *española*

Basic Arguments:

Manuel Arias claimed that he had been suspicious of Pablo García's involvement with his wife for about four years. Arias said he made García a *compadre* to correct the

situation, but García persisted. He then reported it to the *alcalde*, but despite García being ordered to not communicate with Arias' wife, he continued to do so. Arias even found him hiding under his bed on one occasion. After catching them chatting together on another occasion, his wife fled and had been staying with her mother ever since. Arias wanted García captured and for his wife to explain why she did not want to have a marital life with him and to be placed in *depósito* in the house of a non-relative.

According to Arias' wife, Manuela Vásquez, she was living with her mother because her husband got upset with her one morning when she was chatting with García. When she returned home in the afternoon, Arias told her to go and ran her off. She claimed everything else was false. García was her *compadre* and he would hardly be able to commit such a thing. She stated that she had no reason to leave Arias.

Penalty: n/a

7. AGCA A2 Leg. 153 Exp. 2909

Year: 1773

Crime: incest; ilícita amistad; [adultery]

Participants:

Josef María Grajeda: *calidad* n/a

María Michaela Chinchilla: *calidad* n/a

Ana de los Dolores Tortola: *calidad* n/a

Basic Arguments:

According to Manuel de Valencia, Chinchilla, a married woman, was living in his house in *ilícita amistad* with Grajeda, who also intended to marry Chinchilla's daughter (Tortola). Valencia had taken Chinchilla and her daughter in after the destruction of

Antigua Guatemala because he was Chinchilla's relative and had never seen them do anything suspicious. After Grajeda was imprisoned, Valencia kicked the women out of his house, and he had since learned that Grajeda had also had *amistad* with Tortola.

Chinchilla's husband was allegedly unaware of the *amistad*, so the authorities decided it would be better to go in the middle of the night to apprehend Grajeda. Grajeda and Chinchilla were found sleeping naked in the same bed under the same blanket and Chinchilla had her arm under his head.

Tortola confirms that Grajeda had been involved with her and that she planned to marry him because he took her virginity and she was pregnant. However, she had never gotten the impression that Grajeda was involved with her mother.

Penalty: n/a

8. AGCA A2.2 Leg. 153 Exp. 2914

Year: 1773

Crime: incest; adultery; ilícita amistad

Participants:

Benito Montes de Oca (or Benito Guerén): *mestizo*

María de la Concepción Palacios: *calidad* n/a

María Ignacia Palacios: *calidad* n/a

Basic Arguments:

Guerén was accused of *ilícita amistad* with two sisters, M. C. Palacios and I. Palacios. M. C. Palacios admitted to having been in *ilícita amistad* with Guerén, but she said she separated herself from it and made him a *compadre* (he was a sponsor for her

son's Confirmation). She suspected that Guerén had been involved with I. Palacios because he ran off with her from October to late November and she became pregnant.

I. Palacios admitted to having been in *ilícita amistad* with Guerén for about a month. She also said that she lost her virginity to him. She claimed she did not know that Guerén had been involved with her sister. She recounted him having fought with her sister, after which she asked him if what her sister was saying was true, but he denied it and told her to not believe it. Thus, she continued the *mala amistad*.

According to Ignés Gonzales, mother of M. C. and I. Palacios, she informed the authorities of the crime so that her daughter and Guerén would be punished in order to clear her conscience. Guerén's sister-in-law claimed that he told her he had been involved with M. C. Palacios when his wife was still alive and that it was *público y notorio* that he had ran off with I. Palacios, taking her "stolen."

Guerén said that he had *ilícita amistad* with M. C. Palacios for about ten or twelve days, but he married another woman after this because she did not want to marry him. He admitted to having *amistad* for about a month with I. Palacios while married, and after his wife died, he tried to marry her in order to depart from the *mala amistad*. Asked how he could have *amistad* with I. Palacios knowing he had had it with her sister, he said that when he was involved with M. C. Palacios he did not know if she had sisters and a mother. Questioned about his ignorance, considering I. Palacios had asked him how he could want to be involved with her after having been involved with her sister, he said that, at first, he did not know she was M. C. Palacios's sister. However, after discovering the truth, he continued the *amistad* and ran off with her. He blamed his crimes on being a "fragile man."

Penalty: n/a

9. AGCA A2.2 Leg. 154 Exp. 2976

Year: 1775

Crime: incest; estupro

Participants:

Francisco de Paula Guerra: *mestizo*

Ciriaca (no surname): *calidad* n/a

Basic Arguments:

Guerra was accused of forcefully deflowering Ciriaca, the eleven-year-old niece of his deceased wife, while her mother was out running errands. According to the man who ordered his arrest, Flora Cortés (Ciriaca's mother and the original plaintiff) begged him to not let her husband find out about it because he would blame her. In fact, she later testified to having dropped the complaint.

According to Ciriaca, her uncle raped her in the kitchen while her mother was gone and she was unable to escape him. Her mother only learned about the rape three days after the incident because she saw blood stains on her clothes and asked her what they were from. She did not tell her mother about it immediately out of fear of being greatly punished.

Guerra denied the rape. Instead, he argued that Ciriaca had offered herself to him on two separate occasions, but he did not give in. Joseph Manuel de Cárdenas, Guerra's defense counsel, suggested that Ciriaca may have blamed her uncle for the loss of her virginity in trying to protect someone she could have affection for and to avoid being punished by her mother. If her uncle had raped her like she said, surely, he contended, her

mother would have found her scared, crying, and ill upon her return. Instead, it was not until an inquiry into the blood stains three days later that Ciriaca told her mother what happened. Further, Ciriaca's mother should have had her inspected by someone after the rape and checked with neighbors to see if they had heard anything.

Penalty:

Guerra: time served; one month of public works; fees

Ciriaca: no penalty

10. AGCA A1 Leg. 159 Exp. 3122

Year: 1784

Crime: incest; adultery; estupro

Participants:

Esteban Quiñones: *pardo libre*

Secundina Hernández: *calidad n/a*

Basic Arguments:

Quiñones was accused of having taken the honor of his stepdaughter (Hernández) against her will. Quiñones stated that he remembered that on two occasions when he had been drinking he had “a spilling out of the natural vessel” with Hernández, but that he did not believe he took her virginity. He claimed that human fragility combined with a drunken state could have led to what he did, and he had greatly repented. However, Hernández claimed that she was not aware nor did Quiñones appear to be drunk.

Quiñones's defense counsel, Marcelo de Rivera Córdova, argued that Quiñones's inferior *calidad* should be taken into consideration, because of which one could assume he did not know the gravity of his error. Further, the crime should be attributed to

fragility since it was out of lust, and given that Hernández was a relative by affinity and not consanguinity, the incest was not as bad. In the end, the only crime he committed was being drunk.

Quiñones's wife, Luisa Hernández, pardoned him.

Penalty:

Quiñones: 50 lashes at an exterior post of the prison; 3 hours of *argolla* with a sign stating his crime; 6 months of service in the royal prison; habilitation of marriage

Hernández: no penalty

11. AGCA A2.2 Leg. 160 Exp. 3162

Year: 1785

Crime: incest; adultery

Participants:

Josef María Santa Cruz: *mestizo*

Manuela Antonia Hernández: *mestiza*

Basic Arguments:

Hernández and Santa Cruz, mother and son, were accused of “the most abominable incest” by their neighbor, Roque Jacinto Flores. According to Flores, upon leaving his house one afternoon, he ran into his neighbor, María de los Dolores Benítez, who was scared and shaking all over. When he asked her what was wrong, she signaled towards Santa Cruz's quarters. Out of curiosity and in order to discover what frightened Benítez, he neared the dwelling and saw Santa Cruz “in actual coitus with his own Mother.” Possessed by the same horror as Benítez, he informed the authorities for the correction of such a “detestable wrongdoing.”

Benítez claimed that Hernández had come to her house the day of the alleged deed complaining about Santa Cruz. Having arrived home somewhat drunk and not finding something to eat, he became insolent with his mother and wrecked all her stuff. Hernández stayed with Benítez until her son calmed down. Benítez cautioned Hernández not to leave and to allow her son to sleep, suggesting that her presence might agitate him and he could disrespect her again. Hernández left anyway, Benítez believing she was also somewhat drunk. Shortly after, Benítez went to see if Hernández and her son were asleep, and she found them “sinning indecently.” In disbelief, she called to Hernández, who raised up to look at her, but did not answer her. So horrified and bewildered, she left trembling, and unable to tell her neighbor what she had seen, she signaled towards Santa Cruz’s quarters. After Benítez entered her home, she did not try to learn more.

Pedro Nolasco Hernández, *indio ladino*, claimed that upon seeing the door of Santa Cruz’s home partially fallen he was inspired to look inside. Like the previous witnesses, he also saw Santa Cruz and Hernández sinning indecently. He could not tell if they were drunk. He told a neighbor what he had seen, and this man sent him to inform the owner of the dwelling so that he would witness what was happening.

Santa Cruz admitted to becoming upset with his mother about food when he arrived home drunk that day, but he said he would like to think that he had more reason than this for having remonstrated her. After his mother left the house, he laid down, and he stated he did not remember anything else that happened prior to the *ministro* waking him up. He denied the incestuous adultery, saying that he had never, even in his imagination, had the slightest insolence with his mother in this regard. In addition to being an older woman (60 years old), he had always duly respected his mother to which

she would attest. He said that he slept separately from his mother, and he had never experienced with her the slightest action that indicated something indecent. She had always comported herself with the greatest modesty and composure in front of him.

Hernández recounted how the morning of the alleged crime, she drank some *agua dulce* shortly before midday and became indisposed. She didn't remember fighting with anyone, only that her son had come home somewhat drunk, and upset about not having found something to eat, he had some words with her and wrecked everything in his path. She scolded him for his discomposure and left, returning when he had fallen asleep. Being slightly drunk herself, she laid down to sleep and was awoken by the *ministro* who took her to prison. She denied the adulterous incest, saying that she did not remember committing it, neither at the request of her son nor much less through her encouragement. She had never committed such a crime even in ill thought, and she would not consent to it in any way, as her age did not allow it and she was Christian and not ignorant of the Law of God. In fact, she had difficulty imagining who would accuse her of such a crime. She stated that she had slept separately from her children since they were small, and she reported "that she has in no way experienced in her son the slightest insolence regarding indecency, as she would have already punished him for it and informed the Authorities."

Don Manuel Hernández Córdova, defense counsel for Santa Cruz, contended that his party and Hernández were innocent. He claimed indecent dealings between an aunt and nephew or between cousins causes "natural horror," let alone that between mother and son. Further, Hernández was sixty years old, and "it was not possible for them to have overcome in one fell swoop this natural resistance." A continuation of affectionate actions would have to precede, such that, even though with much difficulty, such natural

horror could be overcome. However, no crime had predated this one. Córdova called into question the credibility of the testimonies of neighbors because of their tendency to harbor resentments. However, if Santa Cruz and Hernández in fact committed the incest, they would have been drunk at the time, not only from alcohol but also from the fight they had, which assuredly was a good antecedent for the carnal act, especially considering such act was opposed to nature. Thus, he argued, they should only be punished for inebriation.

Marcelo de Rivera y Córdova, defense counsel for Hernández, also argued that intoxication would exempt his party and her son from the penalty of the crime. However, it was apparent that there was no such crime considering Hernández's advanced age and the unlikelihood and unnaturalness that such crime would take place for more than an hour as was alleged. He also mentioned Hernández's inability to remember the crime.

According to the *asesor*, incest was a crime of such severity that the *Ley de Castilla* equated it to heresy. The penalties of such crime should be imposed on the accused without dispensation, and evidence regarding whether or not they were drunk at its execution should not interfere. Considering their lack of criminal history in this vein and their inebriation, it was likely that the accused would only participate in this crime the one time without full deliberation and knowledge of its ugliness.

Penalty:

Santa Cruz: six months of service in the San Carlos prison of Nueva Guatemala

Hernández: freed, considering the time she spent in prison as time served

12. AGCA A1 Leg. 2934 Exp. 27550

Year: 1788

Crime: incest; adultery; concubinato/ilícita amistad

Participants:

María Jacoba Suárez: possibly *castiza*

Josef Félix Barillas: *mulato*

María de los Santos Suárez: *calidad* n/a

Basic Arguments:

Eusebio Barillas claimed he found his brother, J. F. Barillas, and his wife, M. J. Suárez, sleeping in the same bed on various occasions and his brother naked in his house one night. M. J. Suárez initially admitted to the *ilícita amistad* with her brother-in-law and said she had urged for them to become *comadre* and *compadre* in order to obviate the offense. Later, she denied the *ilícita amistad* and claimed she asked her brother-in-law for them to become *comadre* and *compadre* so her husband would no longer be jealous. Regarding the night that her husband found his brother naked, she said the latter had requested clean clothes from her and his cloak in order to lie down; he was in a bed that was empty, distinct, and separate from hers. She acknowledged that her husband found them lying on a bed together once, she being naked at the time.

Antonio Suárez, father of M. J. Suárez, mentioned that his suspicion of the relationship between his daughter and J. F. Barillas was based on the insipidity of his daughter toward her husband, her detachment from her kids, her fondness for J. F. Barillas, and her desire to go to whatever fiestas were available. María de los Santos Suárez, sister of M. J. Suárez, was also said to have been involved with J. F. Barillas, and he abducted her with the intention of marrying her.

J. F. Barillas denied the *mala amistad* with M. J. Suárez. He admitted that his brother found him in the same bed as M. J. Suárez, but that this was at her request. He said that while it was true that he had lied down with M. J. Suárez on occasion, nothing happened that would cause offense to his brother. He confirmed that M. J. Suárez wanted them to become *comadre* and *compadre*, but he attributed this to his decision to marry one of her sisters. He claimed the affection he had for M. J. Suárez was licit given that she is wife of his brother. He also admitted to the *trato de casamiento* with M. S. Suárez and to having taken her from her house to marry her. (M. S. Suárez was labeled as an accomplice in the crime of incest committed by J. F. Barillas, one man with two sisters.)

E. Barillas pardoned his brother.

Penalty:

J. F. Barillas: court fees totaling 38 pesos and 4 reales; avoid communication with M. J. Suárez as much as possible

M. S. Suárez: no penalty

13. AGCA A1.15 Leg. 5475 Exp. 47033

Year: 1791

Crime: incest; theft; consentidor; concubinato; escape from prison

Participants (in incest):

Manuel Arriaga: *calidad* n/a

Dominga Estrada: *calidad* n/a

Basic Arguments:

Manuel Arriaga, Dominga Estrada, Luciano de León, Pedro Arriaga, Dolores Estrada, Marcos Arriaga, and Petrona Escobar were accused of theft and incest.

According to the *oidor fiscal*, Manuel Arriaga and Dominga Estrada were aware of the impediments to their marriage and disregarded admonishments from the authorities regarding their illicit involvement. He argued that the parents of Manuel Arriaga should be punished for being *consentidores* in the vices of their son. The *oidor fiscal* also mentioned that if someone steals out of necessity, they should be shown some compassion, but if they do so purely out of a perverse inclination, they should be treated with rigor.

Penalty:

Dominga Estrada: two years of reclusion

Manuel Arriaga: n/a

14. AGCA A1.15 Leg. 4070 Exp. 32149

Year: 1791

Crime: incest

Participants:

Don Manuel Inocencio Rodríguez: *calidad* n/a

Paula Rodríguez: *calidad* n/a

Basic Arguments: M. I. Rodríguez and P. Rodríguez were accused of incest.

Penalty: n/a

15. AGCA A1.15 Leg. 2910 Exp. 27017

Year: 1793

Crime: incest; adultery; concubinato; estupro

Participants:

Don Juan Manuel Dardón: *español*

María Josefa Dardón: *calidad* n/a

Basic Arguments:

J. M. Dardón was accused of a long term *concubinato* with his daughter, M. J. Dardón, by his wife and her mother, Doña Micaela Antonia Sermenio. Sermenio said that one night about ten years prior J. M. Dardón got drunk, they had a fight, and then he got out of their bed and went to sleep in their daughter's bed. The girl was nine years old at the time. Even though M. J. Dardón "was incapable of perfect coitus because of her impotent age," there was malice on the part of her husband, "as immediate touch of the 'shameful parts' made him come." She caught him doing the same thing three months later and he had had repeated acts of indecent passion with their daughter. She believed that for seven years he only used his daughter "in touches." However, three years ago he took her virginity. Sermenio said that M. J. Dardón was not agreeable to her father's indecencies, but she gave in to them out of "fear, terror, and respect." She always told her mother about what happened in hopes she would remedy it, saying that "she was condemned and against her will was going to hell." Sermenio tried to correct the situation with discretion. However, once he deflowered their daughter, she complained to a priest about the *estupro* and incapacitation of their marriage. Despite plans to remove the girl from the house, this was not realized, and J. M. Dardón's indecent behavior continued. At the time of her testimony, he wanted to use the girl with the knowledge and tolerance of Sermenio, sleeping one night with her and the next with their daughter. After having slept with their daughter for five consecutive nights, Sermenio made a formal accusation against her husband to a priest, who informed the Provisorato and put the girl in *depósito*.

M. J. Dardón said that she had always taken J. M. Dardón to be her legitimate father and that there was no reason to doubt it. The first time her father had *polución* with her, he had taken advantage of *halagos de padre* and her innocence and rubbed himself on her legs and the area external to her uterus. He was drunk at the time, but not completely out of his senses. At one point in time, he was running so wild that he was practically using her in front of her mother, joining her in bed and leaving her mother in theirs. About three years prior, he tried to have sexual intercourse with her, but he was unsuccessful because her screaming worried him. Less than a month later, he deflowered her against her will. She gave in out of fear and respect. He carried out many acts with her for the next year, but they were never “inside the vessel.” Even in the last few days, he was sleeping in the same bed as her while her mother slept with the other children in their bed. Asked if she had done anything to avoid the persecution by her father, she said that even when she was young and her father told her not to tell her mother what happened she always would, asking her to remedy the situation. She argued that her young age, parents’ counsel, fear, respect, and lack of insight denied her all faculty to make decisions beyond telling her mother about what happened. Her mother did not have greater authority than she did, the former wanting to resolve the issue with discretion and the complaints she made to authorities.

According to J. M. Dardón, he suffered from periods of dementia and did not remember when or why his wife left him. He argued that she had only complained about him in the past because of his drinking and consequent dementia. He said that the charges against him were completely false and stemmed from the crazy jealousies of his wife. In

fact, he had attempted on various occasions to marry his daughter off, but her mother had gotten in the way.

During a *careo* with his daughter, he said that he would have to be crazy or drunk to have committed the crimes of which she accused him. She retorted that he was never drunk on the occasions, even when he had had a drink, and he had never suffered from craziness or other loss of his senses. Further, the only reason her mother rejected the proposed marriage to Ramón Velásquez was because she knew she was already a *soltera* as a result of her father's excesses.

In a later statement, J. M. Dardón argued that he was not married and had no children because the woman who had been caring for him for a time left and took the children. He claimed M. J. Dardón was Sermenio's daughter, not his, because a daughter would not go against her father in this way. He then went on to say that M. J. Dardón was considered Sermenio's daughter, but she was not, because otherwise she would not try to separate her father from the side of her mother knowing that they were married. Therefore, she was not a daughter, but rather a *pepe*. He believed M. J. Dardón had been advised to testify to the alleged crimes and pointed out the difficulties of proving that she had been a virgin considering factors like her age (20-24 years), her past dealings with men, etc. Only God, she, and her confessor could be certain of it. He repeated his point of trying to marry M. J. Dardón off and added how he placed her with someone so she could learn to weave and get out of the house. However, her mother did not allow her to stay more than three months, saying she was alone with much work to do. He also took measures to place her somewhere else, but this was again obstructed by her mother. He questioned why no child had been born from the alleged relationship, considering he is a

“competent man.” Further, if the *polución* was “outside the vessel,” he would not have contracted consanguineous kinship that would impede the use of the marriage. He talked about how Sermenio and M. J. Dardón had tried to kill him in the past. He wanted M. J. Dardón to say where she obtained the necessary absolution if what she said was true. He also suggested that the girl and her mother were to an extent prostituting themselves to maintain themselves. Regarding the accusation that he was sleeping in M. J. Dardón’s bed, he argued that when he got out of his bed he was merely checking up on her because she would sneak out after everyone was asleep. Also, her bed was bigger and there was a young baby who cried during the night, making it difficult to sleep. (Later, J. M. Dardón denied that the written document including these arguments was from him.)

Penalty:

J. M. Dardón: n/a, he escaped from prison

M. J. Dardón: n/a, but to be removed from *depósito* to be treated for an illness and then returned

16. AGCA A1.15 Leg. 4293 Exp. 34344

Year: 1793

Crime: injuring one’s wife

Participants:

Francisco Román: *indio*

María Agustina Vásquez: *india*

Basic Arguments:

Román was charged with injuring his wife (Vásquez) with a knife. According to Vásquez, Román had stabbed her in the early morning when no one else was present

besides two small sleeping children. She did not know what provoked her husband to do it. Her husband had lied down away from her and she began to call to him affectionately, saying, “Come here daddy, don’t stay over there.” Seeing that he did not want to get up, she went to lie down next to him. Shortly afterwards, he sat up, took her blanket from her, and stabbed her with the knife below her chest. He left her bathed in blood and she went to the house of her brother-in-law completely naked. Her husband had injured her on two other occasions as well.

Román admitted that he injured his wife on all three occasions. Regarding the most recent incident, he said he had no reason to stab her; he just felt like it. In fact, they had been content. Even though he had drunk some alcohol that night, he had not become drunk from it. However, he had been the two other times when he injured his wife.

Penalty:

Román: 25 lashes at the whipping post; two years of imprisonment at Trujillo

17. AGCA A1 Leg. 4301 Exp. 34446

Year: 1794

Crime: incest; adultery; ilícita amistad; abuse

Participants:

Ana María Turcios: *calidad* n/a

Tomás Castellanos: *calidad* n/a

Mariano Castellanos: *calidad* n/a

Basic Arguments:

Turcios was accused of adultery and incest with T. and M. Castellanos, father and son. T. Castellanos accused M. Castellanos of *mal vivir* with Turcios. Valentina and

Sabina Castellanos accused their father, T. Castellanos, of physically mistreating them, throwing them out into the street, having *mala amistad* with Turcios, and allocating resources to Turcios while neglecting his children. They also confirmed indecent actions between Turcios and M. Castellanos. V. Castellanos claimed to have seen T. Castellanos and Turcios sleep in one bed on more than one occasion, that T. Castellanos spent a lot of time at Turcios's place, and to have seen Turcios hugging and kissing M. Castellanos one time.

T. Castellanos claimed that Turcios had cared for his family after he became a widower, even living in his house for some time. T. Castellanos claimed that he had punished his daughters for misbehaving, one having been impregnated by a married man, and they were trying to avenge themselves. He also clarified that he had only wanted to keep M. Castellanos away from Turcios's place because her landlady sold alcohol and not because of Turcios herself.

M. Castellanos denied the *ilicita amistad*, saying that V. Castellanos was avenging herself because he had accused her of dealing illicitly with a man and his father punished her for it. He also said he was unaware of such *amistad* between T. Castellanos and Turcios.

Turcios denied any crime, saying that when she was found in the house of T. Castellanos she was there out of neighborly obligation, she having been aware that he was ill at the time. She expressed concern about the future of her marriage should her husband learn about her imprisonment in the Casa de Recogidas, mentioning it could be incentive for him to ask for a divorce.

Penalty:

Turcios: She was to be sent to the location of her husband. The authorities were to keep an eye on her conduct, she was to make a marital life, and she was not allowed to go to Nueva Guatemala without permission from the tribunal of the Real Audiencia.

T. Castellanos: He was responsible for paying the fees of the case which totaled 23 pesos and 7 reales.

18. AGCA A2 Leg. 175 Exp. 3475/AGCA A2.2 Leg. 183 Exp. 3652A

Year: 1794/1797

Crime: incest; concubinato/amancebamiento/ilícita amistad; escape from prison; adultery[?]

Participants:

Andrés Victorio: *indio*

María Anastacia Vásquez: *india*

Basic Arguments:

1794: Victorio and Vásquez were accused of being incestuous. They had lived like they were married and even had some children together despite having *parentesco de afinidad* in the first degree (they were brother- and sister-in-law). Victorio suggested that the accusation came from a woman who wanted revenge for a fight she had with Vásquez, which he had nothing to do with.

Vásquez also presumed that she had been arrested due to a fight. She admitted that in the past she had *mala amistad* or *concubinato* for about six months with her brother-in-law, he being a widower at that time. However, since the Padre Cura told her she did not have permission to marry him, she left him and had not been involved with

him for two years. She denied having children with Victorio, for which she was remonstrated and reminded that the night of her arrest it was said that Victorio had children with her and called her “Second Wife.” She was charged with living as if married with her brother-in-law, scandalizing those who knew about it and offending “her own blood” with such crime. In response, she said that Victorio was not around much during the six months, she left him after the priest said they could not get married, and that their crime was only known within their household. She later admitted to having had two children with Victorio, explaining that she had denied this out of fear. Vásquez claimed she was *hija legítima* and *de legítimo matrimonio* of Lucas de los Reyes and Antonia Vásquez and that Petrona Martel, Victorio’s legitimate (deceased) wife, was *hermana sola de madre*. Her mother told her that Martel was from her first marriage to Antonio Zelada. According to Victorio, Martel was the daughter of Antonia Vásquez and Matias Zelada, who were married. However, he claimed Lucas de los Reyes never married Antonia Vásquez, so (M. A.) Vásquez was not *hija de matrimonio* but was *hermana de madre* of Martel.

Victorio admitted to having had *mala amistad* with Vásquez for about three years with the intention of getting married, and he had even taken various steps with the notary in order to do so. However, because the Padre Cura said this could not be, he retired entirely from her for the past year. (Vásquez attributed contradictions in her and Victorio’s timelines to her lack of memory.) He said he had two children with her, one of which was alive and a little over a year old. Asked what *parentesco* he had with Vásquez, he said he did not have any. She was *hermana de madre* of Petrona Martel, but they had different fathers. Questioned as to how he could say he did not have any *parentesco* with

her if she was *hermana de madre* of his wife, he said that “*como tonto* that he is, he does not know.” Charged of living with his sister-in-law in *mala vida*, causing a bad example and offending his deceased wife with a sin so great, he replied that he did so with the objective of getting married and that “*como tonto*, he did not know what he was doing.”

Don Mateo de la Canal, defense counsel for both Victorio and Vásquez, argued that their ignorance in terms of the aggravating circumstance that established the *parentesco de afinidad* with which they are affiliated was apparent in their testimonies. This should not have been surprising considering “the Idiotism that is so characteristic in those of their sort and *calidad*.” He also pointed out they should not be charged of an *ilícita amistad* that they had under the belief that they could get married since it had been a year since they ended it after learning they could not get married.

Penalty:

1794: Victorio: six months of public works; Vásquez: six months of reclusion in the Casa de Recogidas

1797: Victorio: no communication with Vásquez even in licit things (He was to be turned in to the Indios Justicias of Ciudad Vieja, putting them in charge of looking after his conduct and keeping him from communicating with his sister-in-law.)

19. AGCA A1.48 Leg. 2759 Exp. 23893

Year: 1796

Topic: Request for contraction of marriage.

Participants:

Doña Margarita Portillo: *española*

Don Vicente Portillo: presumably *español*

Basic Arguments:

M. and V. Portillo, niece and uncle, wished to get married. M. Portillo wanted to prove that she was *hija natural* of her parents, who recognized her as such, raised her, and had the freedom to marry at the time they had her. She also wanted to demonstrate that her father had continued to support her after her mother's death and even during his appointments in Omoa and Mexico. She contended that she went to live with her uncle, V. Portillo, after the death of her previous guardian following the request of her father. Further, she wanted to verify that her mother was *española, limpia de toda mala raza*, as was her father, "as native of the Kingdoms of Spain."

Decision: Permission for the marriage was granted.

20. AGCA A2.2 Leg. 181 Exp. 3594

Year: 1796

Crime: [incest]; estupro; violación; concubinato; [dar mala vida a su mujer]

Participants:

Josef Teodoro Juárez Coronado (alias Masate): *mulato*

María Cecilia Mangoche: *calidad* n/a

Basic Arguments:

María Engracia del Rosario Mangoche, wife of Masate, accused him of the *estupro* of her niece, María Cecilia Mangoche, who was under her care. He also had not provided for her, had treated her and behaved poorly, and had even tried to kill her. M. E. Mangoche said she heard the violent deflowering of her niece who was saying, "Let go of me, don't be shameful, for the sake of Holy Mary, know that I will tell your wife, as I am *doncella* and niece of your wife." He told her that even so he knew how to get off clean

and he would kill her aunt if she said anything to her. M. E. Mangoche did not interfere because she was afraid of her husband and concerned about the threats he made to her niece should she find out. Pressured by M. E. Mangoche, M. C. Mangoche told her about the rape, explaining that she did not tell her immediately afterwards because she was ashamed because he was her husband. M. E. Mangoche eventually dropped her complaint against her husband because the family was suffering in his absence. However, the case was continued *de oficio* because of the gravity of the crime.

Masate admitted to “playing around” with M. C. Mangoche on several occasions but not to sexual intercourse with her or even to soliciting her to this end. This “play” involved him throwing her around, hitting her, biting her, and her screaming at him to leave her alone. Masate said a man named Joaquín took M. C. Mangoche’s virginity without the use of force. Both M. E. and M. C. Mangoche denied this, saying that Joaquín tried to rape M. C. Mangoche but was unsuccessful. Joaquín said he only teased and played with M. C. Mangoche as he always had because she grew up in front of him. He also mentioned how M. E. Mangoche had thrown M. C. Mangoche out of the house when she learned about the regular “games” between M. C. Mangoche and her husband.

M. E. Mangoche later claimed that she learned that M. C. Mangoche was in no way her blood relative despite the latter (and her sister) treating her as such and the former taking her (and her sister) to be such. She suggested that this fact explained why M. C. Mangoche said Masate deflowered her even though it was false. If he did take her virginity, it was because she incited him to do so. The woman who knew M. E. Mangoche’s parents did not know why she carried this surname.

Don Francisco Xavier Paniagua, defense counsel for Masate, argued that M. C. Mangoche's *doncellez* had not been proven and pointed to testimony regarding her improper conduct. He also highlighted a physician's criticism of the criteria two midwives had used in assessing whether or not she was a virgin and when she lost her virginity.

Penalty:

Masate: included in a royal pardon and ordered to not to live nor communicate with M. C. Mangoche

The case was to be continued against M. E. Mangoche for perjury.

21. AGCA A1 Leg. 2914 Exp. 27094/AGCA A1.15 Leg. 4339 Exp. 35071

Year: 1797

Crime: incest; [adultery]; consentidora; concubinato/ilícita amistad

Participants:

Miguel Caixon: *indio*

Juana Velasco: *india*

Antonia Sic (or Chaclan): *india*

Basic Arguments:

Caixon was accused of living incestuously with his stepdaughter, Velasco. It was also assumed that her two sons were fathered by him. According to Don Felipe Porres, the *comisionado* who went to Caixon's home to investigate, Caixon had told him that Velasco was staying with some relatives. Upon entering a small dwelling, Porres had found Velasco's mother, Sic, lying down with a three-year-old child and she stated that only she and her husband slept there on the floor. However, noticing that the top part of

the sleeping area was raised (a custom which Indians did not observe), he pulled back the sleeping mat and found Velasco face down and naked.

In his testimony, Agustín Castro shared the rumor that Velasco's *depósito* prior to her marriage to her second husband (deceased) was on behalf of the *ilícita amistad* between her and her stepfather.

Speaking through an interpreter, Velasco initially denied any involvement with Caixon. She said that she had gone to live with her stepfather following the death of her first husband "on behalf of the love she has for her mother." Then, because her second husband was a lazy person, they moved in with her stepfather. She had lived with a relative since her second husband passed away and was only staying at her stepfather's house the night she was arrested because her mother had come to get her to help a relative who was receiving the *cargo* of the *cofradía*. She claimed she was in the dwelling with her mother because there were cockroaches in the other one they had, and she hid when Porres came because her mother told her to. She also testified that the father of her two sons was Lorenzo Ratztzal with whom she had been in *mala amistad* after being widowed the first time.

Sic was also questioned through an interpreter. Like her daughter, she maintained that the two boys were fathered by Ratztzal. In fact, her husband had found Velasco and Ratztzal together in a ravine and had whipped them for it. She claimed that her daughter hid under the straw (floor) of the dwelling (and not under the sleeping mat) out of fear and that she had never noticed anything illicit going on between her husband and her daughter. In later testimony, she mentioned how she did not have reason to be suspicious considering she saw her husband punishing her daughter.

Caixon required an interpreter for his testimony as well. Similar to his stepdaughter, he said that his son-in-law wanted to live with him and so he took them in despite having been warned by the Padre Cura to not live with Velasco. He denied any involvement with Velasco, claiming that the previous accusation was false. He also said Velasco's two sons belonged to Ratztzal and recounted how he had caught them "in the act." The pair allegedly begged for *him* to punish them and for the authorities to not find out about it. He admitted that Velasco was in his bed, but he pointed out that she was next to her mother so that she could share a blanket since they only had two.

Through the aid of interpreter, Ratztzal denied involvement with Velasco. However, he was punished by Caixon after he found him speaking with her. Because of the gossip and punishment resulting from the incident, his father-in-law sold Caixon the piece of land that he had next to his. Ratztzal requested for his three children and Velasco's two sons to be brought forward and examined to determine who they looked like. After the examination of the children, it was noted that Ratztzal's and Velasco's children did not look like one another and Velasco's boys looked a lot like Caixon in terms of coloring, facial features, and hair.

Velasco later confessed that she had been involved with Caixon. One night about eight years prior he had come home tipsy while her mother was away and solicited her. She resisted, asking him, "If he did not understand that they thought of him as [their] Father?" and, "How he could want to do those things being married to her Mother?" He beat and raped her. When she scolded him about it the next morning, he told her that because he was drunk he did not know what happened and for her to stay quiet about it. He had continued to pursue her without her mother's knowledge. Her second husband

had wanted to move in with Caixon because he owed money for their wedding, not being aware of what had happened between she and her stepfather.

Caixon continued to deny the affair and said, “if his daughter wanted him to suffer, he would suffer.” José Antonio Godínez, defense counsel for Caixon, claimed the initial accusation of incest made to the Padre Cura stemmed from the uncivilized nature of Indians in whom passion burned greater than Religion and Harmony. Also, Caixon had been *mayor* and so would not lack enemies and Sic would not have ignored something so strange. Further, Godínez argued that it would have been more natural for Velasco to say to her stepfather that the children were his rather than Ratztzal’s. He suggested that her last testimony was born from the punishment her stepfather gave her and Ratztzal and the malice between her and Ratztzal.

Don Agustín Arriola, defense counsel for Juana Velasco, argued that she was threatened and scared by the anomalies of her stepfather, “who according to the maxims of the Indians, she would recognize as [her] Father.” Because of such recognition and her inability to sustain herself or to have a separate residence, she was forced to give in to his indecent endeavors, especially considering his use of violence. Further, her mother’s regular absence from home as a street vendor left her exposed to the “wicked nature” of Caixon, and their isolation in the scrubland meant no neighbor could come to her aid when she was attacked. Even if she consented, her presence and communication in the house was necessary because of these circumstances and the natural love for her mother.

Juan Josef Henríquez, defense counsel for Sic, first argued that Sic was unaware of what was going on between Caixon and Velasco. He then conceded that it was possible that she consented to the relationship since among Indians it was common for

wives to ignore their husbands' wrongdoings. In fact, one rarely found a *concubinato* that was not of this nature. However, Henríquez maintained that Sic would have trusted her husband and not suspected the slightest malice since he had raised Velasco since she was little, and for this reason, he would have considered her a daughter and vice versa. He also pointed out how Sic had punished Velasco so harshly after discovering that she was pregnant that her husband had to take her away from her, telling her to forgive Velasco, that she was a woman and her daughter, after all, and to not reproach her for something common to all.

Penalty:

Caixon: fifty lashes at the whipping post and one year of public works in the *cabecera* of San Miguel Totonicapán

Velasco: one year of reclusion in the Casa de Recogidas in Nueva Guatemala

Sic: freed

22. AGCA A2.2 Leg. 188 Exp. 3810

Year: 1797

Crime: injuries

Participants (of past incestuous crime):

Francisco Solano Pacheco: *indio laborio*

María del Rosario Chapa: *calidad n/a*

Notes:

This case deals with the injuries that Pacheco gave to Josef Florencio Gonzales. However, references to past incestuous dealings between Pacheco and his sister-in-law also surface. The *alcalde de barrio* said that Pacheco “is a great rogue, as after he was

widowed, the neighborhood was saying that he had *ilícita amistad* with his sister-in-law, María del Rosario Chapa.” In fact, he had personally banished Pacheco from the area where the two were living at the time. Even though there was a request for the names of witnesses who might have known about the incest, no witnesses were presented regarding it. Later, it was ordered for the incestuous aspect of Pacheco’s criminal activity to not be investigated further because the court looked into it and found it unlikely.

23. AGCA A1.15 Leg. 5495 Exp. 47259

Year: 1798

Crime: incest; adultery; concubinato/ilícita amistad

Participants:

Gerónimo Chávez: *indio*

Catalina Soltano (or Solórzano): *india*

María Francisca Trullo: *india*

Basic Arguments:

Chávez was charged with consecutive *concubinatos* with Soltano (who was married) and Trullo, mother and daughter. He was said to have had children with both of them. The *calidad* of the accused persons was mentioned as being in their favor by the *fiscal*.

Penalty:

Chávez: public works (four years), lashes (50) at the public post with sign in front announcing his crimes

Soltano: service in church of San Marcos (two years)

Trullo: service in church of San Marcos (two years)

24. AGCA A1.15 Leg. 5495 Exp. 47260

Year: 1798

Crime: incest; estupro; adultery; abortion

Participants:

Hipólito Cojulum: *indio*

María Dolores Quemé: *india*

María Mercedes Quemé: *india*

Basic Arguments:

María Dolores Quemé claimed that her husband, Hipólito Cojulum, violently violated the virginity of her thirteen-year-old sister, María Mercedes Quemé, in her absence. M. D. Quemé had fled from her house because her husband was drunk, fought with her, and grabbed a machete to hit her. She said her husband also caused her to abort two times from the blows he regularly gave her when he came home drunk and that both *criaturas* were born dead without opportunity to baptize them. The second *criatura* was presented in the *cabildo* and Cojulum was lashed and imprisoned for a short time. She said that both *criaturas* looked completely human and both showed signs of the blows. She eventually pardoned Cojulum.

María Mercedes Quemé said that Cojulum caused her to spill blood after deflowering her and that there had been no prior request for *amores* nor had she shown him affection.

Cojulum initially admitted he grabbed with violence and deflowered M. M. Quemé, but he said he did this because he was tipsy and did not know what he was doing. Later, he still claimed that he was drunk, but, in contrast to his previous statement, that he

had requested M. M. Quemé “to sin” and she acquiesced. He denied that he was *causante* of the *abortos*, claiming that the first *aborto* was a month and half after he and M. D. Quemé’s mother physically punished her for being jealous. During the second *aborto*, he was in prison for fighting with another sister-in-law, his wife had gotten sick from natural birth, and he did not know what caused the *aborto*.

Defense counsel for Cojulum, Juan Marroquín, blamed the crime on Cojulum’s *calidad* and the drunken state in which he was at the time he committed it. He stated that the unrefined education of the *indio casta* absolved them of ordinary penalties of the Law and they were instead to be punished with arbitrary penalties. Such exclusion was even greater in excesses of indecency, where fragility worked in proportion to the little resistance that stemmed from lack of education and examination of the Religion and its sacred laws.

M. D. Quemé and others mentioned that the *abortos* could have been caused by something other than blows from her husband, such as her becoming ill, and that the *estupro* of M. M. Quemé had been remedied through her marriage.

Penalty:

Cojulum: For incest: 25 lashes at the *picota* and six months of service in the public works of that *cabecera* (He was absolved of the crime of *abortos*.)

M. M. Quemé: no penalty

25. AGCA A2.2 Leg. 187 Exp. 3765

Year: 1798

Crime: [incest]; [adultery]; *estupro*

Participants:

Manuel Matute: *mulato*

Eusebia Escalante: *calidad* n/a

Basic Arguments:

The *alcalde ordinario* of Nueva Guatemala, Don Cayetano Pavón, said Manuela Oliva complained to him that Matute carried out *estupro* on E. Escalante, her granddaughter and *prima hermana* of Matute's wife. In her testimony, M. Oliva said that she had heard from a woman known as La Monja that Matute "had forcefully used" the young E. Escalante and she had helped free her from him. Asked how the girl was related to her, she said she was not, but that she raised the girl's father as a *pepe* and for this reason the children called her "Grandmother." M. Oliva also said that the girl was not related to the wife of Matute; she only called her "Cousin" because she raised her.

Per E. Escalante, Matute forced himself on her when they were returning home from the plaza one day. She claimed she did not know what he put in her private parts, only that it hurt a lot, and she found blood on her clothes when she went to wash them eight days later. A woman known as La Monja had come across them in the act, intervened, and taken her away from him. Eventually, the woman who raised her and who she considers a grandmother (M. Oliva) came for her. La Monja, María Lorenza de Gálvez, mentioned in her testimony how Matute begged her not to go to the authorities because he was recently married and it would be detrimental to his marriage.

Matute denied the *estrupe*. He claimed E. Escalante had run away from he and his wife because the latter had corrected her and gave her a smack on the head. He argued that M. Oliva and her daughter Bernabela had persuaded E. Escalante to report that he

had violated her out of revenge for some of his actions including he not having consented to some of Bernabela's *concupinatos*. La Monja was also trying to avenge herself for an encounter with him when he was on *ronda*. He suggested that if the girl was no longer a virgin, an old man named Luís who had lived in his house was the culprit.

It was reported that Manuel Matute's wife, Valeria Oliva, came forward saying that one night the aforementioned Luís Josef de Francia had wanted to sleep with her little sister and that Francia confessed to lying down with the girl, clarifying that he did not do anything to her. V. Oliva testified that she and her father told Francia that he would pay for the girl and that the father did not want to beat him to avoid causing a scandal. The girl affirmed that Francia came to lie down with her two times that night and that he did not do anything to her. She added that on three occasions beforehand he had told her that they were making an agreement in which he would go sleep with her and provide for her, but she told him that she would not be involved with him like he had been with involved with E. Escalante.

Francia admitted to having been sexually involved with E. Escalante and to having promised to marry her. He also said he had heard from M. Oliva that Matute had "sinned" with E. Escalante. E. Escalante initially denied involvement with Francia, but then she confessed to it. She said her accusation that Matute deflowered her was at the advice of La Monja. She still maintained that Matute had known her carnally when La Monja came across them, which Matute denied.

Penalty:

Matute: freed with time served and to split the fees with E. Escalante

E. Escalante: four months of reclusion because of perjury

26. AGCA A2.2 Leg. 191 Exp. 3873

Year: 1799

Crime: incest; amancebamiento/ilícita amistad

Participants:

Francisco López: *indio*

Manuela Boche: *india*

Basic Arguments:

López and Boche, stepfather and stepdaughter, were accused of being *amancebados* and were found together in a *temascal*. López denied the relationship at first, but then he admitted to being involved with Boche for two months. Boche also denied the relationship at first, saying she was Christian and how could she commit such a wrong with her Father, but later she admitted to being involved with López a little less than three months.

López claimed Boche came looking for him because she was destitute with an infant that she was raising. Because they had nothing to cover their flesh, he took Boche in to cover her with his *chamarra* and as a result he fell in the *fragilidad*. Boche claimed she had the child with a *mozo* she was going to marry but who left her.

The *calidad* of López and Boche and the advanced age of López figured into the sentencing.

Penalty:

López: six months of service in public works

Boche: six months of reclusion in the Casa de Recogidas

The *alcalde* was to take care that after these *reos* completed their sentences they separate

from one another so that they not commit the crime again, putting Boche in a *casa de honradez*.

27. AGCA A1.15 Leg. 5538 Exp. 47872

Year: 1800

Crime: [incest]; estupro

Participants:

Feliciano Calito: *calidad* n/a

Ildefonsa Timotea Calito: *calidad* n/a

Basic Arguments:

F. Calito was accused of violating his eight-year-old daughter, I. T. Calito, by Josefa Vásquez, *madrino* of I. T. Calito. F. Calito's defense counsel claimed that the *estupro* of an eight-year-old would likely exhibit some form of evidence, that Vásquez made the accusation because the girl's parents did not want her to take her to Esquipulas, and that one witness contradicted I. T. Calito and her mother. Midwives confirmed that I. T. Calito was indeed *corrupta* ("corrupt," i.e., not a virgin).

Penalty:

F. Calito: not enough evidence so he was absolved and freed

I. T. Calito: no penalty

28. AGCA A2.2 Leg. 194 Exp. 3962

Year: 1800

Crime: incest; [adultery]; estupro

Participants:

Pedro Atanacio Castellanos: *indio tributario*

Josefa Mata: *calidad* n/a

Basic Arguments:

Castellanos was accused of *estupro incestuoso* with J. Mata, his sister-in-law, by Josef Polonio Mata, his brother-in-law. J. P. Mata stated that he learned about the incident from his wife, who J. Mata had told about the deed. One afternoon, four or five months prior, Castellanos had found J. Mata alone at her quarters and deflowered her against her will. She was worried about informing anyone of the occurrence because her brother-in-law told her afterwards, and whenever he saw her, that he would kill her if she said anything to her brother or parents. It was not until J. P. Mata's wife noticed that she was pregnant that she revealed what happened. (Two midwives confirmed that J. Mata was five months pregnant and one of them said she appeared to have been violated.)

According to J. Mata, Castellanos tried to force her into her house by taking ahold of her arm, and when she resisted, he grabbed her by the braids, took her towards an awning within, pushed her on the bed that was underneath it, put a knee on her belly, clasped her throat so she would not scream, and lifted her underskirt. The act took about fifteen minutes, and she bled a great deal for more than two days afterwards. She said he had attempted the same thing on four other occasions and threatened to kill her if she said anything to her sister, Apolonia Mata, or her parents.

Castellanos denied the *estupro*. He claimed that it stemmed from the ill will that his siblings-in-law had towards him, as even though he went to J. Mata's house and set about playing with her, he did not commit such crime. He declared that a *mozo* named Santiago visited the house of J. Mata and suggested he could be to blame.

Don Mateo de la Canal, defense counsel for Castellanos, argued that the whole case was based on the word of J. Mata and therefore lacked evidence. Further, he said that she and the witnesses were from a family nicknamed “the wanderers” because of their untruthfulness and lack of etiquette. Thus, “being of this sort,” there was no doubt that J. Mata wanted to blame Castellanos for what someone else did.

Penalty:

Castellanos: released pending further evidence

J. Mata: no penalty

29. AGCA A1.15 Leg. 5423 Exp. 46273

Year: 1801

Crime: incest; concubinato; portación de armas

Participants:

Manuel Hércules y Canales: *calidad* n/a

Sabina Villegas: *calidad* n/a

Basic Arguments:

Hércules y Canales was accused of and admitted to *concubinato incestuoso* with Villegas. There was a greater willingness on the part of the *fiscal* to grant two years of public works instead of imprisonment because “the *parentesco* between the two originated from illicit copulation” and the charge of carrying arms outside the house was not proven. (The way in which they were related to one another was not mentioned.)

Penalty:

Hércules y Canales: two years of public works

Villegas: deceased

30. AGCA A2.2 Leg. 199 Exp. 4085/AGCA A1.15 Leg. 4381 Exp. 35730

Year: 1801

Crime: incest; estupro

Participants:

Josef Eustaquio García: *indio*

María Josefa Canuto García: *calidad n/a*

Basic Arguments:

J. E. García was accused of having violated/“lost” his daughter, M. J. García, and she was three or four months pregnant. Gorgonia Nicolasa Valensuela, mother of M. J. García, claimed her daughter went to live with her sister so as to escape mistreatment from J. E. García. It was when M. J. García was living there that her mother discovered she was pregnant and M. J. García confessed that her father had caused it. Valensuela substantiated this claim saying that no other person would have had access to M. J. García.

M. J. García said the night of the *estupro* her father had come home drunk and gotten on top of her when she was asleep. She called to her mother, who did not hear her, and then she stopped out of fear that her father would hit her. She claimed she had not had sexual intercourse prior to this event and she was pregnant from it. She had been living in the house of her aunt in the company of her mother yet separate from her father.

J. E. García argued that, being drunk, he lied down in the first bed he found. When he woke up, he found M. J. García asleep by his side, at which moment he lamented what had happened. He then got up and remonstrated his wife about leaving him to sleep in his daughter’s bed. He claimed he had a carnal act with his daughter

because he thought she was his wife. He said he did not understand the excesses he was committing by keeping silent about the deed. He would accept whatever punishment he deserved.

Defense counsel for J. E. García argued: 1. M. J. García wanted to incriminate her father so as to cover up no longer being a *doncella*. 2. Had M. J. García been a *doncella*, she would have protested more than she did. 3. J. E. García's drunken state excused him from the ordinary penalty.

M. J. García was not exempt from punishment because she was thought to have consented to the act.

Penalty:

J. E. García: two years of public works, habilitation of marriage

M. J. García: n/a, proceedings were to be carried out once she had the child

31. AGCA A1.15 Leg. 4385 Exp. 35825

Year: 1802

Crime: incest; concubinato/ilícita amistad

Participants:

Josepha Mejía: *mulata* or *parda libre*

Bartolomé Monterroso: *mulato* or *mulato blanco*

Manuel Monterroso: *mestizo*

Josepha Alcallaga: *mulata* or *parda libre*

Basic Arguments:

J. Mejía was placed in the Casa de Recogidas at the request of her mother for having run away from home. According to the *alcalde de barrio* (Antonio Sobrevilla),

she confessed to having *ilícita amistad* with M. Monterroso and to spending several nights in the company of M. Monterroso, Alcallaga, and Alcallaga's *concupino* Pedro. On their last night together, M. Monterroso bid farewell to J. Mejía and had B. Monterroso, his brother, join her in his stead. She slept and had two carnal acts with B. Monterroso to get back at M. Monterroso.

In her own testimony, J. Mejía said she ran away from home to escape the *mala vida* her father gave her in addition to the little food and clothing he provided. She became involved with M. Monterroso while away from home and their *amistad* lasted eight days during which they had no other home than the countryside and poor areas of town. During this time, M. Monterroso became aware that she was "corrupt" (i.e. no longer a virgin). J. Mejía said that after M. Monterroso departed from her on Holy Monday she cohabitated with B. Monterroso that evening (upon request) knowledgeable that they were brothers. She claimed this action was not out of revenge, and the aggravating circumstance of incest did not impede her because "she does not know about those things."

According to Alcallaga, the four days that the four of them were together, the men went to work during the day and then reunited with her and J. Mejía in the countryside in the evenings. She was already "corrupt" before having sex with Pedro (surname also Mejía), as she had actually lost her virginity to B. Monterroso a year prior under *palabra de casamiento*. At first, she did not realize that B. Monterroso had taken M. Monterroso's place with J. Mejía since they were brothers. Having already exceeded "the limits of rationality," Alcallaga tried to persuade J. Mejía to abstain from further relations with B. Monterroso by pointing out that B. Monterroso had taken her virginity and that she (J.

Mejía) had already slept with his brother. However, the two of them continued their “disordered intents.” Alcallaga requested marriage with B. Monterroso if he would be willing since he took her virginity. Lastly, she noted that she witnessed J. Mejía and B. Monterroso in the same bed together and, therefore, did not doubt the consummated incest.

B. Monterroso admitted to having had *amistad* with Alcallaga, from whom he was now separated, but not to taking her virginity. Initially, he said he knew his brother had been in *mala amistad* with J. Mejía and denied having been physically involved with her himself. Pressed, he confessed to having had “carnal act of material commixtion of blood” with J. Mejía, but he claimed he did not know his brother had known her in the same manner. Thus, his crime was not incest but rather simple fornication. He only denied his involvement with J. Mejía at first out of fear.

M. Monterroso initially denied any *amistad* with J. Mejía, but he later said that he had *amistad* with her for a couple of days. He claimed he did not trade places with his brother since he was young and it would have been totally repugnant. He believed that his brother would not have known about his own involvement with J. Mejía. M. Monterroso did not want to marry J. Mejía because she was not “to his satisfaction” in this regard.

In favor of J. Mejía and B. Monterroso, the *fiscal* (Piloña) pointed out their young age and alleged ignorance. He also mentioned the useful occupation of B. Monterroso, that of *peinero*.

Penalty:

J. Mejía: one year of reclusion in the Casa de Recogidas and 6 pesos and 5 1/3 reales in court fees

B. Monterroso: 6 pesos and 5 1/3 reales in court fees

M. Monterroso: 6 pesos and 5 1/3 reales in court fees

Alcallaga: return to her parents

32. AGCA A1.15 Leg. 4386 Exp. 35841

Year: 1802

Crime: [incest]; sensualidad; concubinato/ilícita amistad

Participants:

Luís Toscano: *calidad* n/a

Josefa Morales: *calidad* n/a

Máxima Morales: *calidad* n/a

Basic Arguments:

Antonio Sobrevilla reported that Toscano was in prison for having *ilícita amistad* with J. Morales for three years and for sleeping in the same bed as J. Morales and her mother, M. Morales, every night. He said Toscano's parents stated that he had always been bad about performing his occupation and obeying them, and despite taking measures to keep their son out of the house of the Morales women, they continued their ill conduct.

Matilde Toscano, mother of L. Toscano, said that she did not want her son to marry J. Morales because she was "old and tired from the world" and her son was young and inexperienced. She went to the authorities in the hope that they would obstruct the relationship and turn him over to his mentor. She said he was her only son and not of ill conduct or conviction. She hoped he would be released from prison, perhaps placed in the home of his mentor or another suitable candidate, with a warning.

Penalty:

Luís Toscano: to be freed and handed over to his mentor prior to getting married

J. Morales: to be freed and to take the necessary steps so she and Toscano could marry

M. Morales: released

33. AGCA A1.15 Leg. 5425 Exp. 46287/AGCA A1.15 Leg. 5426 Exp. 46305

Year: 1802

Crime: incest; amancebamiento/concubinato/ilícita amistad; dar mala vida a su mujer

Participants:

Simón Hernández: *indio*

María Josefa de la Cruz: *india*

Basic Arguments:

Following the report of the *alcalde mayor* of Escuintla, Don José de Ballesteros y Navas, Hernández was accused of being incestuous by the *governador de indios* of Chiquimulilla, Don Lucas Morales. This accusation occurred when the *alcaldes indios* brought Simeona Bautista, Hernández's wife, before Ballesteros y Navas on behalf of a complaint she made that her husband gave her *mala vida* because of a daughter he took in. Morales said that Hernández had a relationship with Magdalena Alonso, the sister of his first wife, before and after the latter's death (elsewhere she was described as *cuñada concubina*). His first wife never complained about the relationship because she was frightened by the *mala vida* Hernández gave her. From this relationship was born a daughter, Cruz, and it was suspected that Hernández had been involved with this daughter as well. Morales claimed that the *alcalde del gremio de ladinos*, Juan Ramón Cobar, and his wife, María Grageda, told him that Bautista wanted Cobar to tell Morales

about the *mala vida* that Hernández gave her. Reportedly, Bautista believed the *mala vida* stemmed from Hernández having been carnally involved with Cruz. Allegedly, Hernández directed all his affection to Cruz and all his discontent and verbal and physical abuse towards Bautista (unless Cruz was absent), would kick Bautista out of the house and stay alone with Cruz, and would go with Cruz to the woods under the pretext of hunting.

According to Cobar, Bautista's suspicion that Hernández was involved with Cruz also related to Cruz's involvement with the handling of money and the management of the household. Bautista had told Cobar about such issues so he would report it to Morales, which he did, but Morales forgot about it. Bautista later returned to Cobar, telling him how things were fine between her and her husband while Cruz was out town, but he had begun to mistreat her again following her return. Cobar reported this to Morales once again. Cobar also mentioned the disrespect that Cruz had towards Bautista and how Hernández did not want to receive food from Bautista. Cobar testified he heard Hernández say he would kick all the women out of his house and only stay with Cruz.

Grageda reported how Bautista had told her she had not eaten for three days because Hernández gave a key to the kitchen to Cruz and told her, "you are who rules here, and not that one [Bautista]." Later, when Hernández returned from his trip to the woods with Cruz, he asked Bautista to eat, but she refused to feed him. Then he hit her and told her he did it because she did not work. Asking Bautista if she was suspicious that Hernández was dealing illicitly with Cruz, she told her she was because he regularly made his *hija carnal* named Simona and Cruz's husband leave the house, and sitting in the hammock with Cruz, he lit a cigar and gave it to her saying, "this [the cigar] is

Simona, this is you,” pointing to his middle finger. And other times he told Cruz that if someone were to leave the house it would be María Luisa and not her. Asking Bautista if Cruz was not Hernández’s daughter, she confirmed that she was, but clarified that she was not his legitimate daughter.

Miguel Chávez, *cantor menor* of the Church, said that in the past Hernández had intimated to him that he was not doing well because his wife was upset with him over Cruz’s presence in the house and her suspicion of illicit dealings between them. He added that sometimes he had heard Hernández and Bautista fighting, during which Bautista had publicly yelled at her husband that she would tell the authorities how he mistreated her because of his involvement with his daughter. Chávez stated that Hernández and Cruz would openly go to the woods together to hunt or attend the milpa. Asked why Cruz’s husband, Pedro Martir, had left, he said it was because Hernández kept him as an exile in his milpa and would not let him communicate with Cruz when he came to town because he was *amancebado* with her.

Following the testimony of Bartolo López, during every fight between Bautista and Hernández the former would yell how he mistreated her because of Cruz and how during silent hour he would get out of bed and smoke a cigar with Cruz in the hammock. From hearsay, López knew that Martir complained that his father-in-law would not let him *usar de su matrimonio* because he made him stay at the milpa and would not let him speak with Cruz when he came to the house. Cruz did not want to speak with him anyway, and Martir eventually left. (José Marroquín clarified that Martir was appointed as a guardian of the milpa.)

Hernández denied everything. He suggested the accusation stemmed from the *alcalde mayor* and *governador* being upset with him for not signing a document that would take away the rations and services given to the Padre Cura. He alleged that the *governador* tried to convince Bautista to report that he was involved with her sister. Not being successful, the *governador* made the complaint himself. Hernández claimed he was put in prison in order to injure the Padre Cura, as it was believed that he (the *maestro de coro*) and the other cantors were partial to him. Hernández said the *governador* had a history of abuse of authority and taking out revenge on those who stood up to him. (According to the *alcalde mayor*, Hernández was being untruthful. He said he did not request him to sign the document that he mentioned, as it was not necessary for him to do so.) Hernández also mentioned potential prejudices of some of the other witnesses. He said Chávez wanted his job as *maestro de coro*. In addition, he believed Cobar had longed after his wife and he had to tell him not to come to his house anymore. He claimed that Cruz was the daughter of Sebastian Gonzales (who was married) and Magdalena Alonso, Hernández's sister-in-law. This was well known since Alonso sued Gonzales for recompense following the birth of Cruz. Hernández discussed how his family suffered while he was in prison, and when requesting that he not be kept in prison while his case was being investigated, he mentioned the especially merciful attitude towards "helpless Indians."

Bautista denied Hernández having *ilícita amistad* with her daughter, which was likely a reference to Cruz. She argued that the accusation boiled down to the ill will that Cobar and his wife, Grageda, had towards them. She recounted how upon seeing the love that Hernández had towards his children "as a Father, after all," Grageda told her that she

believed that Hernández was dealing illicitly with her daughter. Bautista responded that it was not possible, Hernández was always like that, and he was loving towards all his children. Bautista alleged that this couple joined up with the *governador* and had caused their accusation to become true (i.e. by putting the charge out there, it was then taken seriously). Additionally, Cobar had been trying to convince Bautista to have *amistad* with him. He would come to her when her husband was at Mass and try to persuade her to confirm the accusation of incest so that Hernández would be put in prison and they could be together. Initially, Bautista said she had not consented to Cobar, and she asserted that he wanted to cause her husband harm. Later, she admitted to being involved with Cobar and blamed this relationship for Cobar's counsel to complain that Hernández was guilty of various excesses that were not actually true. She also believed López testified against Hernández because he wanted his position in the Church. She claimed Hernández provided for her and that her family did not have the means to support themselves in his absence. She asked to be forgiven and for her husband to be freed.

According to Ballesteros y Navas, he eventually handed the case over to Don José Antonio Sánchez, who released Hernández from prison temporarily because he was ill. Upon seeing that Hernández was still ill, the *governador* suggested that they allow him to continue to recover at home before incarcerating him again. Therefore, Ballesteros y Navas argued, the *governador* was not Hernández's enemy. Ballesteros y Navas also discussed how Hernández and his family fled while he was out of prison and pointed out that Bautista directed blame towards the *alcalde segundo* while Hernández blamed the *governador*. He argued that it was unlikely that the *alcalde segundo ladino*, his wife, and the *governador indio* would be in cahoots together considering it was well known that

Indians and *ladinos* were not very united and that *alcalde segundo* in particular was an apparent enemy of the *gobernador*. Ballesteros y Navas also denied the excesses attributed to him and the *gobernador*. He claimed that Hernández and the rest of the cantors from the Church believed they were independent from the jurisdiction of their *gobernador* and *alcaldes* and that they would slander him if he punished them for their excesses.

Cruz said that her parents were Sebastian Morales [Gonzales above] and Magdalena Alonso (both deceased). Alonso had told Cruz who her father was, and she had met him because she was no longer little when he died. S. Morales was married to another woman at the time and Alonso got married after having Cruz. She was unaware of her mother having been involved with Hernández and denied any involvement between Hernández and herself. She claimed Bautista created these lies and that she and Bautista fought because she was not prompt about feeding her *tata* (“dad or daddy”). Cruz said her husband left because he wanted to take her from the house of her Tata Simón and she did not want to go.

Penalty:

Hernández: time served and freed

The *alcalde mayor* was to make sure that Cobar did not deal with Bautista. Martir was to be found and reunited with Cruz, and they were to live separately from Hernández.

34. AGCA A2.2 Leg. 203 Exp. 4147

Year: 1802

Crime: [incest]; concubinato/ilícita amistad; aborto

Participants:

Teodoro Rebolorio: *mulato libre*

Cornelia Váldez: *calidad* n/a, but her brother was mulato

Basic Arguments:

Rebolorio was accused of *concubinato* with Váldez and suspected of trying to make her abort with *bebidas*.

Váldez denied living illicitly with Rebolorio. She said she was pregnant from a married man who she had illicit communication with for a month and claimed the *bebidas* and ointments she was given were for treating detention of blood (mentioned here as associated with cholera). She admitted that she told her brother that Rebolorio was the author of the pregnancy, but that this was a false statement.

Rebolorio denied the *ilícita amistad*, claiming that his brothers-in-law accused him of such because he is executor of their mother's estate and they wanted to squander her assets.

Penalty:

Rebolorio was freed and warned to avoid communication with Váldez when possible. Váldez and her brothers were jointly sentenced to the fees of the case for the reckless nature of their conduct. (However, it may have been Rebolorio who ultimately had to pay the fees.)

35. AGCA A1.15 Leg. 4391 Exp. 35952

Year: 1803

Crime: incest; consentidora; amancebamiento/ilícita amistad

Participants:

Gregorio Solórzano: *mulato* or *pardo libre*

Lucía Ansuetto: *calidad* n/a

Eustaquia Betanso: *mulata libre*

Jasinta Lambur: *mestiza*

Basic Arguments:

Solórzano was accused of being *amancebado* with Betansos after having been previously involved with her daughter, Lucía Ansuetto. Lambur, mother of Solórzano, allegedly consented to their relationship.

Solórzano denied being in *mala amistad* with Betansos. He said that he had been going to her house because he intended to marry her daughter, but that he changed his mind after seeing disorder in the house. He did not take her virginity. If he had gone there a few times since this courtship, it had only been because he owed Betansos and her (deceased) husband many favors. Therefore, he had not been incestuous and his mother had not covered for him.

Lambur claimed that the accusation made against her was a “terrible calumny.” She had lived with honor and fear of God. She said Betansos had been living with her only because she wanted to rent out her own house since it was deteriorating. Her daughter Lucía was in the Casa de Recogidas at the time. Lambur had always considered Betansos a good Christian, and the “bad and incestuous *amistad*” that was attributed to her and Solórzano was impossible. She had not consented to such an abomination, as it had never even occurred to her. Lambur knew her son intended to marry Lucía, but changed his mind. Any “illicit communication” between them had not been evident to

her, for, “as a mother,” she would have tried to remedy the situation. Also, Betansos lived apart from her three daughters because she had secured their residence elsewhere.

Betansos similarly argued that the accusation against her was a “false calumny.” It was something “naturally repugnant” considering the age difference between her and Solórzano. She stated that she had loved he and his family for a long time, which was why they had communicated with one another. He also asked her for her daughter’s hand in marriage, which she granted, but then he changed his mind. Betansos claimed she placed her daughters in other households because she only earned one *real* a day. Further, she did not want them to live in Lambur’s house since she had three sons who might have threatened their honesty even though they were good people.

Penalty:

Solórzano: freed; court fees which totaled 13 pesos, 2 *reales*; no communication with Lucía Ansuetto even in licit matters

Lambur: freed

Betansos: freed

36. AGCA A1.15 Leg 5426 Exp 46332

Year: 1803

Crime: incest; [adultery]; estupro

Participants:

José Bernabé Polanco: *calidad* n/a

Juana de Dios Flores: *calidad* n/a

Petrona Polanco: *calidad* n/a

Basic Arguments:

Polanco and Flores, stepfather and stepdaughter, were charged with incest. All of the witnesses agreed that Polanco slept daily with Flores in the same bed under the same cover openly in front of the mother of the girl and wife of Polanco, María Caballero (*mulata libre*), who was covered in leprosy and slept separately. Polanco admitted to the *acto simple* (“innocent act”) of sleeping with her, but denied it going any further. Flores confessed to it. It was reputed that Polanco also committed *estupro* on his legitimate daughter, Petrona Polanco, which he denied but she confirmed. When sleeping with his stepdaughter, he made another girl brought in who laid between them and he also violated her against her will. After, he “mixed” with another *muchacha corrupta* (non-virginal girl).

Penalty:

J. B. Polanco: included in royal pardon; court fees, which he was unable to pay because

of his extreme poverty; habilitation of his marriage was ordered, but his wife had died

Flores: ordered to not live with her stepfather but rather with her most immediate relative, who would watch after her conduct

P. Polanco: no penalty

37. AGCA A1.15 Leg. 4392 Exp. 35971

Year: 1803

Crime: incest; [adultery]; amancebamiento/ilícita amistad; dar mala vida a su mujer

Participants:

Domingo Rodríguez: *mulato*

Antolina Castellanos: *calidad* n/a

Basic Arguments:

Rodríguez was accused of incest with his sister-in-law, A. Castellanos, by his wife, María Matías Castellanos. M. M. Castellanos initially reported that her husband gave her *mala vida* because he was *amancebado* with her sister. Because they all lived together, her husband did bad things during the night in her sister's bed. Her husband and sister would spend all day horsing around with one another, and when her sister would leave to run an errand, he would leave shortly after. On one occasion, M. M. Castellanos decided to leave too and found them chatting in the street, which further convinced her of their involvement. However, M. M. Castellanos later recanted her statement, saying that she only said what she did because she was flustered after having gotten in a fight with her husband. Despite her husband horsing around with her sister, she had never seen any malicious action and dropped her complaint.

A. Castellanos maintained that she had never had nor thought about having *mala amistad* with her brother-in-law. He also never made any insinuation of the sort, nor would he have considered it, since she was about to marry the man who impregnated her. Further, she was not ignorant of the great crime that it would be. Rodríguez also denied the *amistad* with A. Castellanos. Like his sister-in-law, he said he had never considered it, nor could he, since she was about to get married and he knew what an ugly crime it would be.

Penalty:

Rodríguez: freed and warned to not communicate with A. Castellanos for any reason

38. AGCA A1.15 Leg. 5427 Exp. 46342

Year: 1803

Crime: incest; concubinato

Participants:

Mariano Donis: *calidad* n/a

María Simeona Palacios: *calidad* n/a

María del Rosario: *calidad* n/a

Basic Arguments:

Donis was accused of having dealt carnally with María del Rosario and M. S. Palacios, mother and daughter. Jose Ballesteros, *procurador de pobres* and representative of Donis, tried to lessen the original sentence of six years of imprisonment by arguing that the sentence was excessive despite the gravity of the crime. This was apparent when taking into consideration that Donis was not yet sixteen years old when committed the crime and that the Law granted lighter sentences to those under the age of seventeen because their malice and sense was not yet completely formed. Donis was also “possessed of ignorance and rusticity, as [someone] born and raised on a hacienda...where they scarcely know some partial principles of our Religion.”

Penalty:

Mariano Donis: included in royal pardon; court fees

María Simeona Palacios: not allowed to live with her mother and was to be placed in a *casa de confianza y satisfacción*

39. AGCA A1.15 Leg. 3028 Exp. 29261/ A1.15 Leg. 5475 Exp. 47050

Year: 1803

Crime: incest; [adultery]; estupro

Participants:

Patricio de León: *mestizo* or *mulato*

Francisca de León: *calidad* n/a

Basic Arguments:

P. de León was accused of having wanted to “indecently use” his daughter, F. de León, who was between nine- and eleven-years-old. Gerónimo Tarazena, the *comisionado*, said that based on what he had been able to ascertain, P. de León did not penetrate F. de León, but he was about to considering that he threatened to kill F. de León if she did not please him, dropped her to the ground, and got on top of her. He suggested that F. de León not be given back to her father once he was free.

Juan José Pisabaj, the eye witness of the crime, claimed that when he was returning from an errand he came across a man, drunk and in the posture of “sinning indecently” with a young child underneath him. The man asked the child, “Does it hurt?” She responded, “Yes.” Knowing who they were, Pisabaj interrupted by asking P. de León, “*Hombre*, what is this? We are Christians. As such, the Law of God is observed. As this is with your daughter.” P. de León claimed that the girl was his wife and not his daughter. When Pisabaj tried to get P. de León to come with him to the Padre Cura, he refused and said, “You’d better make me a noose and hang me here.” Pisabaj claimed that once they were apprehended by authorities, F. de León did not want to tell the Padre Cura what happened at first, but she eventually admitted it. P. de León denied the crime until the Padre Cura said that his daughter had already confessed to it and then he kept quiet.

Initially, F. de León denied the crime and said that she only confirmed the crime before the Padre Cura and *alcalde primero* out of fear and so they would allow her to go home. In the end, she conceded that it happened. She recounted how she had gone out looking for her father on his way home from Sacaja. When she found him, he made her sit next to him, and after a short while, he grabbed her, laid her out, lifted her underskirt, undid his trousers, and laid on top of her. Scared, she began to cry, and her father scolded her and “peed” on her (or did something between her legs since she felt wet). When Pisabaj arrived, her father got up and sent her off. Asked if P. de León injured her or if she bled, she said the only pain she felt was from him pressing down on her. The midwife that examined F. de León testified that there was no injury to her virginity. Due to her young age, she would be gravely ill if a man had in fact penetrated her.

P. de León said that he was drunk when his daughter found him, and seeing him drunk, she stayed with him. He did not remember having touched her for any reason. Asked how he did not remember the excess, he said it tried him, as he has never thought about it, nor does he remember having touched her, and he was drunk. Accused of only confessing to inebriation as a means to overshadow the other crime, he maintained his position.

In defense of P. de León, Juan Josef Henríquez argued that his inebriation resulted in him not knowing what he was doing. P. de León thought he was with his wife and wanted to make use of the marital duty with his wife. If he had any of his senses, he would have anticipated or harmed the girl. Henríquez also reiterated how F. de León was still a *doncella*.

The *asesor*, Eusebio de Silva, claimed that this crime was so atrocious that one could not find in canon or civil law an explicit text that dealt with incest executed between father and daughter (in terms of texts related to incest and their penalties). It was a crime that was truly rare and repugnance towards it dated to the beginning of written law. Even Seneca the Elder [a Roman author], a Gentile, considered the abnormality of coitus between immediate relatives very criminal. In common law, such individuals were put to death, having force of law coitus with a stepdaughter, stepmother, niece, etc. Considering the alleged crime of P. de León was of greater gravity, the only option would be to have him hanged. However, proof of first degree incest required greater evidence than other crimes of the flesh since strong presumption had a greater place than positive evidence in the latter. Also, if P. de León was inebriated, he would deserve a lighter sentence than death. Silva also felt that consideration should be given to: the proof that F. de León was still a virgin; P. de León's *rusticidad*; and (citing Fray Avendaño and Señor Solórzano) how among Indians and those who were raised like them, incest and inebriation were not sins of great gravity because they did not comprehend their malice.

Though the initial words of the *fiscal* were crossed out, incomplete, and labeled as not executed, he mentioned the following in P. de León's favor: the compromised judgement of an Indian (Pisabaj); how a father should not be deprived of the gifts and services of his children which are owed him by Nature; and the somewhat advanced age of P. de León.

Penalty:

P. de León: six months of public works; twenty-five lashes at the *picota*

F. de León was noted as being with her godfather.

40. AGCA A2.2 Leg. 205 Exp. 4206

Year: 1803

Crime: incest; amancebamiento/ilícita amistad

Participants:

José Hernández: *indio*

Anica Lantán: *india*

Basic Arguments:

Hernández and Lantán, stepson and stepmother, were accused of incest, from which they had a daughter. One witness assumed the child of Lantán was the child of Hernández because no other father was known and Lantán and Hernández lived together.

Hernández admitted to the *ilícita amistad*, but he said that Lantán was who initiated it, coming to his bed one night, and he did not know for sure that the child was his. On the contrary, Lantán said that Hernández petitioned and pressured her to “sin.” He told her it was alright for them to “sin” together and for her to marry him since she was not his mother.

In his defense, the legal representative for Lantán made reference to how Hernández urged Lantán to sin, the lack of scandal, the weakness of women, and the rusticity and ignorance of Indians (especially the women). He mentioned how the law prevented Indians from being punished as severely as *ladinos*. Defense counsel for Hernández argued that it was difficult for men to turn down the desires and passions of a woman, especially male Indians who were ignorant and rustic.

Penalty:

They were included in a royal pardon and told not to communicate even in licit things. Officials were to keep an eye on their behavior.

41. AGCA A2.2 Leg. 205 Exp. 4188/ AGCA A1.15 Leg. 4391 Exp. 35964

Year: 1803

Crime: incest; amancebamiento/concubinato/ilícita amistad

Participants:

María Dolores Gaitán: possibly *mestiza*

Domingo Morales: *mulato libre*

Basic Arguments:

Morales was accused of incest with his sister-in-law, M. D. Gaitán, and they were said to be publicly *amancebados*. Sobrevilla, who arrested them, claimed that when he went to Morales's house they took a while to answer the door, which was suspicious. He also only saw one bed, over which hung the clothes of both Morales and M. D. Gaitán.

According to Antonia Rebolorio, Morales and M. D. Gaitán had been said to be *a mal vivir* even before Morales's wife, Ramona Josefa Gaitán, died. She had also heard that they wanted to get married. Manuel Banzas stated that he had imprisoned M. D. Gaitán four years prior because Morales's wife was jealous. Pablo Sánchez added that he heard that Morales and M. D. Gaitán wanted to prove that they were not siblings-in-law, and said that both tended to get drunk.

M. D. Gaitán denied the *amistad*. She said that when she was apprehended by Sobrevilla her clothes were on the bed and Morales's clothes were on the mat below where he was sleeping. She claimed that her sister was never jealous of her and the

reason she moved into Banzas's house was because she had intervened when Morales was drunk and wanted to hit her sister (his wife). After being examined by two midwives, M. D. Gaitán admitted to not being a virgin, claiming she said she was in her statement out of fear of Morales finding out the truth.

Morales admitted that he had been living with M. D. Gaitán, clarifying that a priest had entrusted her to him and his deceased wife. He said that he had gone to Father Cos to tell him the rumors that were being spread and to ask if he could marry M. D. Gaitán since she and R. J. Gaitán were not sisters, both being from unknown fathers, and he did not want to leave her helpless. Father Cos confirmed they could be married, but Morales claimed that, for lack of money, it did not come to fruition. Morales stated that M.D. and R. J. Gaitán shared a mother, making them *hermanas uterinas* (“uterine sisters”). Like M. D. Gaitán, he denied their clothes being on the same bed and R. J. Gaitán having been jealous of M. D. Gaitán. Morales believed M. D. Gaitán was a *doncella* because he had not known her to be involved with any man. He considered marrying M. D. Gaitán in order to stop the gossip. (Bernabela Morales, sister of Morales, testified that her brother cast M. D. Gaitán out several times because of the gossip, but that she would always come back to him.) Morales later explained that even though M. D. and R. J. Gaitán were thought to be *hermanas de madre* (“maternal half-sisters”), they were actually only *hermanas de leche* (“milk sisters”), R. J. Gaitán having been left at the doorsteps of the legitimate parents of M. D. Gaitán. He claimed that R. J. Gaitán had the same surname as M. D. Gaitán because the former was raised as a *pepe* in the house of M. D. Gaitán's father, Pantaleón Gaitán.

Don Mateo de la Canal, defense counsel for Morales, said that his client was not convinced that M. D. Gaitán was legitimate sister of R. J. Gaitán. Even though Morales thought for a time that R. J. Gaitán was *hermana de madre* of M. D. Gaitán, he later discovered that they were only *hermanas de leche*. He suggested that the reason R. J. Gaitán was identified as the older sister of M. D. Gaitán and daughter of P. Gaitán and his wife in Father Tomás Zapata's (or Barberena's) deposition could be explained by two factors: 1. *Expuestos*, just like legitimate children, called and revered as parents those who raised and maintained them. 2. *Expuestos* and legitimate children would view and treat each other as siblings. De la Canal also mentioned that R. J. Gaitán could have been listed as the legitimate daughter of P. Gaitán and his wife in her marital records because of a degree of carelessness on the part of those in attendance, with R. J. Gaitán being esteemed as a legitimate daughter, especially since the couple had no children at the time. Ultimately, he claimed that if Morales did not think he was truly M. D. Gaitán's brother-in-law, it could not be argued that he committed incest even when convinced of the *trato ilícito* that both denied.

Don José Ballesteros, legal representative of M. D. Gaitán, believed that M. D. Gaitán having been taken in by Morales and R. J. Gaitán for her own security worked in favor of the defendants. Ballesteros also argued that the clothes of M. D. Gaitán and Morales having been found on the same bed did not prove anything against her. Following the teaching of Antonio Gómez, discovery of relatives naked in the same bed did not provide evidence of copulation between them like it would with respect to *extraños* ("strangers") because of the presumption of honesty from shared *parentesco* ("kinship"). Additionally, Ballesteros pointed out how M. D. Gaitán knew that Morales

was ignorant about whether she was a *doncella* or not. Even though Ballesteros granted that Gómez opined that finding consanguines naked in the same bed should be sufficient evidence of incest, he said that Gómez specified this should only be the case when collateral relatives lie in bed secretly and occultly (as opposed to publicly). Thus, Ballesteros argued that if M. D. Gaitán and Morales knew they were relatives they had the presumption of honesty in their favor. If they took themselves to be *libres de parentesco* (“free from kinship”), then there was no such incest, especially not having proved coitus.

Penalty:

Morales and M. D. Gaitán were ordered to not communicate with one another. She was to be sent to her hometown and put under the care of her relatives. Morales was not to visit this town and M. D. Gaitán was not to visit the capital in which Morales resided.

42. AGCA A1.15 Leg. 5458 Exp. 46834

Year: 1804

Crime: incest; [adultery]

Participants:

Manuel Salvatierra: *calidad* n/a

Manuela Salvatierra: *calidad* n/a

Basic Arguments:

Manuel Salvatierra and his daughter, Manuela Salvatierra, were charged with incest. According to the *fiscal interino de crimen*, the incest between Manuel and Manuela Salvatierra was one of the most abominable crimes counted among lewd

persons, of which even nature was horrified. He cited Juan de Solórzano Pereira and Alonso de la Peña Montenegro when he said that the sin of incest was almost as common among Indians as drunkenness. However, even the *indios gentiles* viewed incest of the first degree between father and daughter with repugnance. They did not hesitate to punish such fathers cruelly, always treating the daughters with more compassion considering the little effectiveness they would have in defending themselves against a man who one should naturally respect and fear. The *fiscal* argued that María Vásquez (wife of Manuel Salvatierra) deserved a year of reclusion since she had heard from her daughter multiple times what was going on and did not report it to the authorities. *Temor de varón* (“fear of a man”) was not a proper excuse in a matter so severe of conscience.

Penalty:

Manuel Salvatierra: fifty lashes at the *picota* with a sign in front that read, *por incestuoso con su hija*; four years of imprisonment at Omoa

Manuela Salvatierra: attendance at the punishment of her father with another sign that said, *por incestuosa*; one month of reclusion in the prison; one year of service in her parish

María Vásquez: one month of reclusion for not having told the authorities

43. AGCA A1.15 Leg. 5427 Exp. 46349

Year: 1804

Crime: incest; amancebamiento

Participants:

José Benito Avila: *calidad* n/a

Basic Arguments: José Benito Avila was accused of *amancebado incestuoso*.

Penalty: included in royal pardon

44. AGCA A1 Leg. 5428 Exp. 46383

Year: 1804

Crime: incest; seduction of virgins with *palabra de casamiento*

Participants:

José Onorato Zamora: *calidad* n/a

Eustaquia Rivera: *calidad* n/a

Basic Arguments:

Zamora was accused of being incestuous and of seducing virgins under *palabra de casamiento*. His case was sent to the Real Sala del Crimen following an order for *vagos, ociosos, and malentretendidos* to be identified to this chamber with the goal of filling the armed services stationed at the border ports of the kingdom.

Penalty:

Zamora: included in the royal pardon; court fees totaling 14 pesos and 5 and a *quartillo reales*; no further communication with Eustaquia Rivera even in licit things

45. AGCA A2.2 Leg. 211 Exp. 4368

Year: 1805

Crime: incest; [adultery]; amancebamiento/ilícita amistad

Participants:

Manuel Aldana: *mestizo*

Doña Feliciano Rivas: *calidad* n/a

Doña Casilda Rivas (deceased): *calidad* n/a

Basic Arguments:

Aldana and F. Rivas were charged with incest. Don José Rivas, father of F. and C. Rivas and *padrino* (of marriage) of Aldana, put forward the complaint. According to J. Rivas, he had taken Aldana into his house about three years before because he was his godson and Aldana's wife had abandoned him. Aldana then engaged in *ilícita amistad* with C. Rivas, from which she became pregnant. She died in childbirth approximately two years prior, confessing to J. Rivas shortly before dying that Aldana was "father of the fetus" and had taken her virginity. Because of this, J. Rivas gave Aldana great lashings. Due to the death of C. Rivas, Aldana became involved with F. Rivas, with whom he had two children. On behalf of this, J. Rivas had given Aldana and F. Rivas various beatings in addition to taking other measures such as complaining to magistrates. Additionally, J. Rivas mentioned how Aldana had scandalized the neighborhood with his drunken spells.

F. Rivas confirmed the testimony of J. Rivas. She admitted to being in *ilícita amistad* with Aldana for two years, during which time she had two children that died. She and Aldana had been punished by her father for the *amistad*. Asked if she knew about the *amancebamiento* of Aldana with her sister, and if with such knowledge and awareness of the crime of incest, she dealt carnally with him, she admitted to being quite convinced of the *amancebamiento* prior to becoming involved with Aldana herself. However, she said that she did not realize that she was committing the crime of incest.

Aldana said that he had been imprisoned three times before, twice for fights with his wife and once for being insolent with his *padrino*, J. Rivas. He confessed that the accusation was true, saying that on behalf of C. Rivas's death he solicited F. Rivas and convinced her that she was *mujer corriente*. The two children he had with her died

(apparently so did the child he had with C. Rivas), and J. Rivas had punished them both over the past two years. Asked if he took the virginity of F. Rivas, he denied it and said she told him her cousin had taken it. F. Rivas was brought in and she argued that she had not known another man besides Aldana. Remonstrated by Aldana that she had told him how she gave in to her cousin after repeated solicitations and how Aldana was lucky because he did not have to go through all that in order to have *amistad* with her, she admitted to saying as much. However, she clarified that this was just something she said and not what really happened. Charged as guilty of the crime, Aldana blamed his *fragilidad*, and in terms of the incest, he claimed he was unaware that he was committing it. He was remonstrated that he could not be ignorant of the crime, as even among the coarsest peoples it was well known that the indecent relation of one man with two carnal sisters was a crime that went beyond simple fornication. And given his ability to read and write and his proximity to people, ignorance of it could not be assumed.

Considering the role of seduction that was always presumed in such crimes and the advanced age of F. Rivas's father, who likely needed her assistance, the *asesor* (Valle) suggested that F. Rivas be freed and handed over to her father. He also cited the unlikelihood of Aldana's ignorance, his continued relationship with F. Rivas despite remonstrations and correctional punishments, and his confession to the principal charge of the case as grounds for sentencing him to six years of armed service at Trujillo and the court fees.

Penalty:

Aldana: six years of armed service and court fees

F. Rivas: freed and handed over to her father so that he could keep a watchful eye on her conduct.

46. AGCA A2.2 Leg. 216 Exp. 4496/AGCA A2.2 Leg. 57 Exp. 1154

Year: 1805

Crime: incest; amancebamiento/concubinato/ilícita amistad

Participants:

Don Apolinario Rivas: *español*

Doña Isidora Bocanegra: *española*

Doña Teodora Bocanegra: *calidad n/a*

Basic Arguments:

Apolinario Rivas was accused of incestuous *amancebamiento/concubinato* with Isidora Bocanegra. He was said to have had a (forced) carnal act with her sister, Teodora Bocanegra, and, therefore, he was unable to marry I. Bocanegra as previously ordered.

Rivas claimed he had not married I. Bocanegra because his father disapproved of her because she had been abandoned at the doorsteps of a Doña Michaela and because he lacked the *facultades* for it (there were various references in the case to his shortage of money). He denied his involvement with T. Bocanegra, claiming he would have been too drunk the evening it allegedly happened to execute such a thing and he did not remember it happening. He admitted he told I. Bocanegra that there was an impediment to them getting married as a way to stop her from bothering him about it, but he did not tell her that it was because of being involved with her sister as she stated. He also claimed to have separated from I. Bocanegra prior to the arrest because the *cumplimiento de iglesia* was approaching, but that he continued to frequent I. Bocanegra's house because his food

was prepared and his clothes were cleaned there. He argued he did not join the artillery to get out of marrying I. Bocanegra and evade orders to marry her because he learned before joining that his participation did not obstruct the marriage.

I. Bocanegra claimed that she had been in *ilícitada amistad* with Rivas under *palabra de casimiento* and that she broke things off with him because she assumed he would not realize the marriage. However, she continued to prepare his food and clean his clothes because he told her he did not have anyone else to do it. She stated that Rivas told her that he could not marry her because of having been involved with her sister on one occasion. She claimed that her continued involvement with Rivas without marriage was because of his lack of money from previous judicial fees and the interment of family members and her perception that it was necessary to continue with him to see if he would eventually marry her and not leave her fooled.

Penalty:

Apolinario Rivas: six years of armed service

Isidora Bocanegra: six months of reclusion

T. Bocanegra: Doña Francisca Bocanegra and the *alcalde de barrio* were to keep an eye on her conduct and she was warned so she could correct her conduct in the future.

47. AGCA A1.15 Leg. 5387 Exp. 45675

Year: 1806

Crime: incest; amancebamiento/concubinato/ilícita amistad; adultery

Participants:

Domingo Mariano Mejía: *indio* (or *mestizo*)

Juana Crisostoma Bajal: *india*

Basic Arguments:

Mejía was accused of adulterous incest with his niece, Bajal. According to Bajal, following the death of her parents, she stayed in the care of her aunt, Paula María López, future wife of Mejía. López was sending her to take meals to Mejía at his work, and it was there that he took her virginity from her when she was twelve years old. Bajal claimed she did not realize that her aunt had *amistad* with Mejía, not learning about it until they were going to get married. Still, the *amistad* between Bajal and Mejía continued after the marriage. She had a five-month-old infant and said Mejía was the father. Asked why she did not stop the marriage between Mejía and her aunt, she stated that she was unable to at the time, she did not know what constituted an impediment, and she and Mejía had not contracted marriage. She said that while measures were taken to hide the *amistad* from her aunt, she had told Mejía he needed to go with his wife and confess before God. Her aunt found out about their *amistad* when she caught them together in her house in the act. She then threw Bajal out of the house. Bajal went to the house of Mariano Cascón, who, knowing about the situation, told her it could not stay like that and to go see the judge. They all went together. Even though she admitted to the incestuous and adulterous actions between her and Mejía, she claimed that, *como era tonta*, she did not know the ill she was doing until the authorities explained it to her.

López mentioned some of the same things as Bajal, claiming that they all went to see the judge together since he could remedy the situation once he knew about it. She also mentioned how she had asked Bajal if her husband had said anything to her or made any moves on her when she went out to see him, which Bajal denied. When López was asked if Bajal was her *legítima sobrina carnal*, she affirmed it, saying Bajal was the

daughter of her sister and she and her sister were legitimate daughters *de padre y madre*. López later pardoned her husband and requested for him to be freed.

Mejía also admitted to the *ilícita amistad* with Bajal, to having taken her virginity, and to having had a child with her. However, he argued this only occurred after he had been married for three years and not prior to it. Further, he had separated from Bajal two months prior to giving his statement. Accused of knowingly having *amistad* with the niece of his wife, Mejía blamed his great *fragilidad* and said he was unaware of what he was doing.

The *ministerio fiscal del crimen* mentioned how the indecency of the Indians and the indifference with which they generally view the crime of incest made them susceptible to it when the opportunity presented itself.

Penalty:

Mejía: six months of public works; no further communication with Bajal; an ecclesiastical judge also made him perform public penance to revalidate the marriage with López

Bajal: service in a *casa de honra*

48. AGCA A1.15 Leg. 5387 Exp. 45657

Year: 1806

Crime: incest; [adultery]

Participants:

Guillermo Lázaro: *indio*

María Andrea de la Cruz: *india*

Basic Arguments:

María Encarnación de la Cruz accused her husband, Lázaro, of illicit dealings with her sister, M. A. de la Cruz. She said that she had suspected something was going on between them for two months until one night she caught them in the act. She took her sister to the house of the priest and he sent them to the (secular) judge for justice to be carried out. She requested that her husband and sister be punished.

Lázaro admitted to *amistad* with M. A. de la Cruz, saying he had pursued her for two months before she gave in to him. However, he was only chatting with her the night his wife caught them together. He requested to be viewed with compassion because being a fragile man allowed him to commit the crime. He also blamed his wife's "impertinent jealousies" for the crime. He said he did not realize what a grave crime he committed nor that it would impede the use of his marriage.

M. A. de la Cruz also admitted to sleeping with her brother-in-law. She said Lázaro had pursued her for two months before she "fell" with him. It was true that her sister was jealous of her, and even though she left the town, she ultimately had sex with him three times. Like Lázaro, she maintained that they were only chatting the time her sister caught them together.

The *asesor* of the case, José del Valle, said that it seemed incest should be treated with some leniency when it was committed by Indians, whose ignorance suggested they did not behave with the same malice as those of other *castas* [i.e. *calidades*]. This inference was drawn from the legislation of the Indies which stated that Indians who committed bigamy, a crime of greater magnitude than incest, should only be punished after two warnings. Still, he argued, it should also be assumed that their civilization had

progressed since the Conquest, at least in terms of Christian Religion, and so they should not be viewed with the same degree of leniency dictated in the laws of those centuries.

Penalty:

Lázaro: six months of public works; habilitation of marriage

M. A. de la Cruz: six months of reclusion (fled from hospital where she was treated for illness and died before her capture)

49. AGCA A1.15 Leg. 5387 Exp. 45660

Year: 1806

Crime: dar mala vida a su mujer; amancebamiento; (past occurrence of [incest])

Participants:

Juan Zenón Bozareyes: *calidad* n/a

Basic Arguments:

María Anastasia Rosales complained about the ill conduct of her husband (Bozareyes), including how often he had beaten her. He had also been imprisoned for having *ilícita amistad* with and deflowering a sister of Rosales. Divorce proceedings were carried out afterwards in the ecclesiastical court. However, because people insisted that he would change, she got back together with him. Since then, his ill treatment of her had only become more severe. He was currently imprisoned for *amancebamiento*. She requested for the higher official to review her case and send her husband to a suitable location.

Rosales later complained about being imprisoned herself and not being informed of the reason for it. She suggested it could have been because of her mother-in-law, who had always covered up for her son and his insolences and sought to injure Rosales to

obtain such ends. She found her husband hopeless, which she said stemmed from him being “son of such [a] mother.” He had never known what it was to fulfill his obligations of maintaining his family. (The proceedings from the ecclesiastical court and the criminal records of Bozareyes’s crimes were said to be attached but are missing from the document.)

Penalty: n/a

50. AGCA A2.2 Leg. 219 Exp. 4575

Year: 1806

Crime: incest; [adultery]

Participants:

Vicente Martir González: *mestizo*

Manuela Antonia González: *mestiza*

Basic Arguments:

V. M. González and M. A. González, his “whole sister,” were accused of incest by Juana Balladares, wife of V. M. González. She no longer wanted to make a life with him. Recounting the incident, Balladares said that upon returning home one afternoon, she found her husband and M. A. González drunk. After eating, Balladares laid down with her husband for siesta, but she later got up to breastfeed her son, leaving V. M. González alone. M. A. González went outside still somewhat drunk and Balladares had to bring her back in. When Balladares came back into the house, she noticed that M. A. González was no longer in the parlor. She headed towards the bedroom where her husband was sleeping because she heard a noise in the bed that suggested he might be getting up. As she approached, she saw her husband quickly turn away towards the corner

and M. A. González face up with her underskirt raised. Balladares was in shock, especially when M. A. González told her, “It’s fine, that she was a *mujer corriente* and would not be afraid of anything.” She asked them for her shawl, but since it had been hidden away by her mother and she was not there, Balladares left to either borrow one or find her mother-in-law so that M. A. González would leave. After only walking a short time, her heart told her that the same excess was recurring, and when she returned, the door had been barred shut. Jumping the fence of a neighbor, she tiptoed through the parlor door to listen and heard M. A. González say, “Hurry before your mother and wife come.” V. M. González told her to turn to one side. M. A. González protested, saying she did not like it that way and to get on top of her. And this was how Balladares found them when she entered the room. She hit them both, scratched M. A. González’s “shameful part,” and left to tell her *comadre* and sister-in-law what happened. When she returned to gather her things, M. A. González apologized, and Balladares responded by smacking her, which she accepted patiently. Because they would not give Balladares her shawl, she stayed with her *comadre* until the next day when she tried to inform the priest. Not finding him, she went to confess with the coadjutor of San Sebastian, who told her to alert the Señor Provisor. He sent her to the Señor Alcalde. The same afternoon her husband asked for her forgiveness.

Asked what class of sin she was accused of and the circumstances surrounding the accusation, M. A. González said she did not know what it was called. She claimed the motivation for the accusation boiled down to Balladares having drunk *aguardiente* and fought with her husband on the day of Santo Domingo, given that she had already forgiven them for what had happened many days prior. According to M. A. González, the

alleged incident occurred about fifteen days before when she and her brother got really drunk. After waking up, she tried to leave, but being unable to find her shawl, she went to lie down with her brother in the bed he was sleeping in. Balladares found her there with her underskirt slightly lifted, which was a result of the bed being so deep, and her brother facing the wall. Upon this discovery, Balladares left. M. A. González denied any illicit involvement with her brother and that Balladares had hit V. M. González.

V. M. González also denied involvement with his sister. He recounted how the day of the supposed incident he got too drunk after he tried some *agua dulce* that was in the neighborhood for the first time, had something to eat, and then fell asleep. He awoke while his wife was absent and wanted to go out into the street, but his sister did not allow it, grabbing him and making him lie down. This was how his wife found them when she came in calling him an *indigno* (“despicable man”). Because she went out into the neighborhood, he thought she might use some *polvo* on him, which she had even mentioned to his sister. He did not remember whether Balladares hit him or not because he was very drunk and concerned that Balladares would get the wrong idea, for she was so *mala* and did not love his sisters much, especially M. A. González. V. M. González claimed the door was locked after Balladares went in search of a shawl for his sister because M. A. González had locked it to keep him from leaving. He claimed that Balladares’s accusation that she had found him on top of his sister stemmed from her ill will towards them and she could have even found it amusing. He admitted to asking his wife for forgiveness, but he clarified that he did so only because he learned about her misunderstanding. He stated that it was not until eight days prior, after he and his wife had a fight while she was drunk, that she went to make the accusation.

According to the *asesor*, the crime of the case was of the type that did not require eye witnesses. Rather, it only needed rational and founded circumstantial evidence, and such evidence was present in the case. It included: 1. Both accused individuals saying that Balladares found them in the same bed and in suspicious disposition with the underskirt of M. A. González raised. 2. The door being locked after Balladares left and M. A. González remaining in the same disposition. 3. V. M. González having asked for his wife's forgiveness.

Penalty:

V. and M. A. González were released. They were to pay fees totaling 19 pesos, 2 1/2 *reales*. They were warned to refrain from living alone together in the future. V. M. González was to seek a reunion with his wife.

51. A1.15 Leg. 5431 Exp. 46459

Year: 1806

Crime: incest; [adultery]; estupro

Participants:

Juan de Mata: *calidad* n/a

Juana Alvina Pineda: *calidad* n/a

Basic Arguments:

Mata was accused of violent and incestuous *estupro* of his stepdaughter, Pineda, who was about twelve years old. The *ministerio fiscal del crimen* cited the examination of Pineda and the inflammation from which she suffered as evidence of the incident. He claimed the injury would have been avoided if Pineda's mother had not had the "foolish

trust” to allow her daughter to leave the house with her stepfather. He also stated that Mata augmented his crime by escaping from prison with some other prisoners.

Penalty:

Mata: six years of armed service

Pineda: no penalty

52. AGCA A2.2 Leg. 219 Exp. 4574

Year: 1806

Crime: adultery; amancebamiento/concubinato/ilícita amistad

Participants:

Cosme Rivera: *mestizo*

Doña Crisanta Pardo: *calidad n/a*

Basic Arguments:

Rivera was accused of *concubinato* with Pardo. Rivera’s wife, Elorencia Gertrudis Monzón, included the following as evidence that something could be going on between him and Pardo: the amount of time Rivera spent at Pardo’s store, the physical contact between them, her husband having tried to cover up Pardo having hit him, her *criada* having noticed a bulge in the bed when she surprised Rivera one day, and Rivera’s detachment towards (and later mistreatment of) her. In order to impede this relationship, she told her husband she wanted to make Pardo a *comadre*, but he refused. Some witnesses mentioned that Pardo would throw *ocote* at Rivera’s store as a signal for him to come over and that sometimes the two went out together.

Pardo denied the *ilícita amistad*. She said the *ocote* she left at Rivera’s store was intended to let him know she had come by, as an order of his had arrived. She claimed

that if she had given him lunch, it was only out of hospitality. She said that the case was insufficient given the absence of three witnesses *de excepción* that accused her of wrongdoing.

Rivera also denied the *ilícita amistad*, but he admitted that Pardo gave him food sometimes. He substantiated Pardo's explanation of the *ocote*. He claimed he did not want to make Pardo a *comadre* because he thought it would give further credence to the supposed *amistad* with Pardo. He said he offered to help Pardo with her store because he was in her debt.

Penalty:

Rivera was freed and ordered to move his place of residence to a place very distant to Pardo. Both were warned against communicating in the future. Court fees totaling 49 pesos was divided between the two of them.

53. AGCA A1.15 Leg. 5430 Exp. 46449

Year: 1806

Crime: incest; concubinato

Participants:

Andrés Palomo: *calidad* n/a

Luciana Josefa Niño: *calidad* n/a

Basic Arguments: Palomo and Niño were accused of *concubinato incestuoso*.

Penalty:

Palomo: n/a

Niño: ordered to be freed because she was engaged to be married

54. AGCA A1.15 Leg. 5477 Exp. 47089

Year: 1806

Crime: incest; [adultery]; dar mala vida a su mujer; escape from prison

Participants:

Leandro Estrada: *calidad* n/a

Basic Arguments:

Estrada was accused of incest with his sister-in-law and escape from prison. According to the *alcalde mayor* of Totonicapán, Estrada had always been of bad conduct, had hit his wife without reason because of his drunken spells, and had been imprisoned various times for minor crimes. If he were to be sentenced to *grillete*, he would flee. Because of his great health and stature, he was suitable for the armed service, but the fact that he was married caused hesitation. However, his wife, who he had never attended to, could live with her parents during his absence. Estrada denied the allegations.

Penalty:

Estrada: eight years in the armed services

55. AGCA A1 Leg. 2959 Exp. 27999

Year: 1807

Crime: incest; amancebamiento/concubinato/ilícita amistad

Participants:

Pedro Martir Osorio: *calidad* n/a

Juana Bautista Sánchez: *calidad* n/a

María Macedonia: *calidad* n/a

Basic Arguments:

Osorio was accused of incest with a mother and her daughter, and he was said to have had a child with each of them. According to Isabel Barillas, the accuser, a woman had told her “to not find herself in the skin of Juana Bautista Sánchez.” Because of this statement and having seen the mother of Sánchez light candles to Jesus, Barillas asked Macedonia about it. Macedonia told her that she was raising a child of Osorio, and beyond this, he had carried off her daughter to “mix” with her. Macedonia had gone to look for them with two rocks in her hands, and finding Osorio, she asked for her daughter, but he claimed to not know her location. Not long after, she appeared by the Arco al Matazano.

Sánchez said that when Osorio found her alone (her mother being engaged in activities outside of their home) he tried to persuade her to give in to his “indecent intents,” offering her *casa y gasto*. Even though she resisted at first, she gave in, and Osorio was the man who deflowered her. Initially, Sánchez denied having known of her mother’s involvement with Osorio. She claimed that despite having seen the child being nursed by *su común madre*, it was not until the day she ran off with Osorio that she figured it out from some of his actions and words that she could not explain. Sánchez and Osorio had fled after she told him he had gotten her pregnant and to give her some money to hide herself and the pregnancy from her mother. She did not have sexual intercourse with Osorio while away from her mother. Remonstrated that she must have known about her mother’s *amancebamiento* when the child was already three years of age, and knowledgeable of it, she copulated with Osorio, she admitted to her awareness of it and claimed she had sex with Osorio out of fear of his threats.

Penalty:

Macedonia and Sánchez were released because the former was nursing and the latter was about to give birth. Osorio was also released.

56. AGCA A2.2 Leg. 223 Exp. 4723

Year: 1807

Crime: incest; amancebamiento/concubinato/ilícita amistad

Participants:

Bernardo Quachita: *indio*

María Germana Sánchez: *india*

María de los Angeles Sánchez: *india*

Basic Arguments:

Quachita was accused of being incestuous with the two Sánchez sisters. Both were allegedly pregnant from him. According to M. G. Sánchez, she had been *amancebada* with Quachita for about two years under *palabra de casamiento*. They had not yet married because he was the *mayordomo* of the Virgin at the time which made the execution of it difficult financially. She admitted that both she and her sister were pregnant from Quachita, only learning about her sister's pregnancy a few days before from her sister herself. She claimed M. A. Sánchez was aware that she had *ilícita amistad* with Quachita under *palabra de casamiento*.

M. A. Sánchez said Quachita solicited her when she went to serve as *molendera* at his house for his *cargo* as *mayordomo* of the Virgin. Despite telling him that she was aware of the involvement he had with her sister under *palabra de casamiento*, he told her “that it would not matter, that if she became pregnant, he would take the child to be

raised at his house.” For this reason, she fooled around with him and became pregnant, but she was not with him more than the month that she served in his home. Charged with committing the crime of incest, she blamed Quachita since she had warned him about the *ilícita amistad* he had with her sister and he continued to pursue her anyway. Because of her ignorance, she never comprehended the crime she committed nor that it would impede the marriage of her sister to Quachita.

Quachita admitted to *amistad* with M. G. Sánchez for the period of a year, stating that it was under *palabra de casamiento*. He had heard that she was pregnant, but he had not communicated with her for four months. He had not formally married her because her children did not like him and threatened to leave their mother should she marry him. He conceded that his *cargo* of *mayordomo* was also an issue. He said he was aware that the Sánchez women were sisters, but he was not sure if they were “whole or not.” He admitted to being involved with M. A. Sánchez for two months with no other reason than “to make bad use of her.” In defense of being charged with incest, he said that, “as a fragile man and lacking in Christian sentiments,” he was unaware of the great crime he was committing.

As the case progressed, the story changed. M. A. Sánchez said that she was actually pregnant before she went to serve in Quachita’s house from a man who had since died. She had never been involved with Quachita. She only testified that she had been because Quachita’s sister had told her to. Quachita also reversed his position, saying that he did not have sex with M. A. Sánchez. He only meant to say that he knew her, not that he knew her in an illicit manner.

Don Mariano Aguilar, defense counsel for the Sánchez sisters, argued that based on his knowledge of “the Indian nation” Indians tended to admit to crimes they were accused of because they believed they were more likely to be released that way. He reiterated the financial burden of the *cargo* and how Quachita would be unable to support his *cargo* in the *cofradía* if he also had to pay the expenses associated with getting married. Accordingly, Quachita wanted to delay the wedding so as to not lose his reputation, concerned about being viewed, “following the custom of those of their *casta*, as an irreligious and useless man by his town.” Being aware of the disgrace that would come from neglecting the expenses of the *cargo*, M. G. Sánchez agreed to wait to marry him. Fearful that the town would learn about her fragility, she retired to her home and refrained from seeing him. Aguilar contended that she should be freed since just reasons impeded their union, no scandal resulted from her *amistad* with Quachita, and she was ready to marry him. Further, Quachita only stated he impregnated M. A. Sánchez because the real culprit was a *ladino* and he knew that some in his town viewed “the woman who copulates with someone who is not of her *casta* as the most ‘lost’ and despicable woman.” Lastly, Aguilar argued that even if there was no doubt that the incest occurred, the law regarding bigamy among Indians in the *Recopilación de las Leyes de Indias* would be in his clients’ favor.

Don Juan José de León, the second defense counsel for Quachita, agreed that criminals of his “type” regularly confessed to things they did not do. Further, he argued that the accused persons were examined in Spanish, which he contended Indians rarely understood. With regards to testimony based on hearsay, he argued that the things that common people would say, especially in towns of Indians, were at risk of infinite errors.

Penalty:

All were considered as time served. No fees. Their local authorities were to keep an eye on them and ensure that the offense was not repeated.

57. AGCA A1.15 Leg. 4427 Exp. 36740

Year: 1807

Crime: incest; concubinato/amancebamiento/ilícita amistad; adultery; aborto; dar mala vida a su mujer

Participants:

Vicente Quintanilla: *castizo*

María Enríquez Gonzales: *calidad* n/a, she did not know it

Basic Arguments:

Cornelia Pedrosa, mother of E. Gonzales, accused Quintanilla of being adulterous and incestuous with her daughter and of having given E. Gonzales a drink that would cause her to abort. E. Gonzales and Quintanilla had been accused and imprisoned for the *ilícita amistad* five years before. E. Gonzales was of *estado honesta* and *al lado de sus padres* when Quintanilla solicited her. Further, they had *parentesco* of the second degree; they were first cousins. Concerned that E. Gonzales might become pregnant and the crime be revealed, Quintanilla gave her poisonous herbs that were only used to impede generation. These herbs left her “half crazy” and she still suffered many ills from them. The *amancebamiento* resulted in the separation of Quintanilla and his wife, Agustina Castro. Castro was abandoned with children, Quintanilla not contributing to their maintenance. For the short time that they were reunited after his imprisonment, he gave her very *mala vida*, which Castro confirmed. Castro told Pedrosa that her marriage was

forced and she did not love Quintanilla. Pedrosa said she knew that Quintanilla and E. Gonzales had rekindled their relationship based on three circumstances: 1. After the Padre Cura from the previous proceedings saw the two of them conversing together, he reprehended her to remedy the situation. 2. An Indian man who was repairing her fence while she was away told her that Quintanilla had been with E. Gonzales all morning. 3. Her own daughter had confessed that she communicated with Quintanilla.

Castro said that she went to the Ecclesiastical Curia to carry out proceedings for a divorce after the initial crime, during which Quintanilla admitted to his actions. Since he ultimately offered to make amends, she decided to not pursue the collection of evidence and he was released. They were reunited for ten months, but Quintanilla became suspect of her fidelity and left her, not providing any support to her or her children. He was even jealous of a priest who ordered her to be fed during his absence. During their temporary reunion, Quintanilla mistreated her *de obra y de palabra* and she had to work to feed and clothe him. Despite his treatment of her, Castro paid the fees to get him out of jail during the past year when he was imprisoned for other causes in order to see if he would amend his life and request their reunion out of appreciation. However, this failed, and he continued to get drunk and behave badly. Castro claimed that Quintanilla told her about his renewed involvement with E. Gonzales and she had also heard that Pedrosa had found Quintanilla in her house. She was willing to reunite with him if it was necessary, but one of the reasons she refused in the past was because he had sent word with a niece named Claudia that he would kill her out of jealousy. Also, even when they were happy, he kept a knife on the headboard of the bed, claiming he would kill her with it even if she was asleep. Macedonia Miranda corroborated this. She said when Quintanilla was drunk he

told her that his wife was very unfaithful, which impeded their reunion, and that he would kill her, of which she informed Castro. Later in the case, Castro was adamant that she did not want to reunite with her husband.

Manuela Ximenez Ramírez said that she found Quintanilla conversing with E. Gonzales late one night in her kitchen and reprehended them. She did not suspect *ilícita amistad*. They communicated with each other “like relatives,” and she only reprehended them for having conversed in secret.

E. Gonzales confessed to having had an *ilícita amistad* with Quintanilla five years before. She claimed that she gave into his requests knowing that they did not share any *parentesco*. According to E. Gonzales, her own mother had told her that she was not the daughter of José Gonzales, uncle of Quintanilla. She said that since the time they were imprisoned, they had only communicated with one another licitly. However, when they were in the kitchen of X. Ramírez, Quintanilla again solicited her for *torpeza* and she turned him down. She denied having become pregnant or having taken *agua de altamirón* to abort the fetus. She admitted to having known that Quintanilla was married when they were involved and blamed their continued involvement on her *fragilidad*, for which excess she was punished by the authorities.

Quintanilla similarly confessed to having been involved with E. Gonzales five years before, for which he served eight months in prison. He continued to communicate with her, but only in a licit fashion. He said that he knew she was his *prima hermana* prior to having sexual intercourse with her, but afterwards he learned that they did not have such *parentesco*. He also denied any pregnancy or use of an abortion drug during the relationship. He claimed he and his wife were not together because during their

reunion she did not want to prepare his food, do his laundry, etc. even though he provided for her financially. She would also throw him out into the street and continually mistreat him. Further, he had reasons to suspect her fidelity, which in combination with her unwillingness “to pay him the marital duty” made him bitter. Though he left her, he still gave her what he could to maintain her in his absence. While he and his wife had not communicated or been in love prior to their marriage, after they got married, they loved one another and had children. In reality, he had wanted to marry another, but he was persuaded to marry Castro because of her *calidad* (española) and circumstances. Even though he had gotten drunk following their separation, “seeing himself poor, dirty, alone, and bitter towards his wife,” these episodes had not been frequent. He was ready to reunite with his wife, from whom he had repeatedly asked forgiveness and who had promised to forgive him.

Francisco Albert, defense counsel for Quintanilla, claimed that the only two witnesses to whom the *generales de la ley* did not apply were not knowledgeable of the accusations of Pedrosa. The other two witnesses were E. Gonzales and Castro. E. Gonzales denied their recent involvement and their shared *parentesco*. While Castro reproduced the accusations she made against her husband five years before, Albert suggested that her own words and their temporary reunion was evidence that her prior claims did not have any merit. Further, his client was a husband who views everything with prudence. Thus, to cut off his wife’s finger would also injure himself. If necessary, he could prove that Quintanilla cared and provided for his wife.

Juan Hidalgo lived in Castro’s house for a time. It was evident to him that Quintanilla esteemed her and provided her with sustenance and the corresponding decent

clothing of her class. However, he was unsure how long this lasted. He believed Castro had not loved her husband because his understanding was that she was obligated or compelled to marry him. He assumed that she was at fault for their disunion. He thought Castro could afford a decent wardrobe with what she earned from working in the *carnisería*. He knew she also did needlework at night. Though Quintanilla maintained his wife when they were together, he had not during their separation.

Juan Gonzales Miñes, on the other hand, said that Quintanilla and Castro treated one another with love. Quintanilla comported himself like a good husband, without them ever lacking in necessities. He was *hombre de bien* and diligent in his work. He also believed their disunion stemmed from Castro's desires and not from those of Quintanilla.

Manuel Trinidad Gutiérrez claimed Quintanilla never let his wife lack a thing. He did not believe Castro earned enough to pay for the *decencia* of her clothing. He knew that Quintanilla was *hombre de bien*, diligent in his work, and had maintained and esteemed his wife. He, G. Miñes, and Hidalgo all stated that what they said was *público y notorio*.

Following the testimony of these men, Albert discussed how Quintanilla had lived like a Job in terms of his patience and suffering in the face of a wife who refused to live with him. He suggested that Castro's multiple slanders against her husband were a means to keep Quintanilla in prison, wishing him to be in prison for eternity without reason. He called into question the character of Castro by discussing her occupation in the meat industry, a "dreadful profession," and her refusal to reunite with her husband despite encouragement from high officials.

Penalty:

Quintanilla: released; court fees

Castro: imprisoned to encourage her to either reunite with her husband or continue the suit of divorce

M. E. Gonzales: no penalty

58. AGCA A1.15 Leg. 5390 Exp. 45730

Year: 1809

Crime: incest; [adultery]

Participants:

Felipe Gámez or Gómez: *calidad* n/a

Petronila Estrada: *calidad* n/a

Basic Arguments:

This document is a case fragment. Gámez was charged with incest in the second degree with Estrada. Both confessed to the crime. Gámez was married and had lived apart from his wife for over six years. Measures were to be carried out to ascertain the reasoning for this separation.

Penalty:

Gámez: two years of public works

Estrada: six months in service to the sick at the hospital

59. AGCA A1.15 Leg. 5390 Exp. 45725

Year: 1809

Crime: incest; estupro

Participants:

Marcos Maquín: *indio*

Aquilina Maquín: apparently *india*

Basic Arguments:

M. Maquín was accused of incest with his daughter, A. Maquín, by his wife and her mother, Catalina Samayoa. According to A. Maquín, she had three or four sexual encounters with her Uncle León as well after being deflowered by her father. M. Maquín maintained that his wife made up the accusation out of revenge because she had made him jealous with her (alleged) involvement with another man.

Juaquín Mariscal, legal representative of M. Maquín, argued that his client's *calidad* should be taken into consideration and discounted the accusation of Samayoa because of her sex, *calidad*, and status as his wife. He also pointed out M. Maquín's already lengthy imprisonment during the trial and described father-daughter incest as being unfathomable because it was against nature. Further, he contended that M. Maquín's alleged confession to the crime to one of the witnesses could not be considered as proof of the crime.

Penalty:

M. Maquín: one hundred lashes; two years of public works; habilitation of his marriage

A. Maquín: no penalty

60. AGCA A2.2 Leg. 230 Exp. 4899

Year: 1809

Crime: homicide

Participants:

Isidora Caseros: *mulata*

María Josefa Pineda: *mulata*

Basic Arguments:

Caseros was charged with injuring Pineda, her *hermana de leche*, from which she later died. According to Pineda, they had had a troubled relationship and avoided one another ever since Caseros became involved with the same man that Pineda had been seeing. Then, one Sunday, Caseros came to her house insulting her and injured her with a knife.

According to Bartola Betancurt, mother of Pineda and the woman who raised Caseros, Caseros came to her house looking for Pineda. Pineda offered some food to the child who accompanied Caseros. Caseros retorted that her child was not “dying of hunger.” They had words about it, and then Caseros ran home to get a knife and returned calling Pineda an “*hija de puta*.” Betancurt said that the fight centered on the man with whom both women had allegedly been involved.

Caseros described the fight differently. She said that when she was passing by Pineda’s house with her young son, Pineda called to him to offer him some food. Caseros did not want to stop and converse because her house was empty at the time. Pineda began insulting her, telling her how she knew how her son was starving. Then, Pineda came out with a club, but Betancurt intercepted her. Because of Pineda’s insistence, they wound up wrestling with one another, and it was at that point that she injured Pineda. In disagreeing with the testimonies of Betancurt and Pineda, Caseros pointed out that one should not assume that Betancurt would side with her over her own daughter. Notably, Betancurt

and Caseros referred to one another as “mother” and “daughter.” But like Caseros, the *asesor* of the case pointed out how the agreement between Betancurt’s and Pineda’s versions of events should be suspect because legal opinion presumed that a parent would always side with their child.

Caseros’s defense attorney focused on how crazed Pineda had become because of her jealousy of Caseros, even believing that Caseros’s pregnancy was the result of her involvement with Pineda’s ex when she was a married woman. Ultimately, Caseros felt the need to defend herself from the insults of Pineda.

Penalty: Caseros: six years of reclusion; fees

61. AGCA A1.15 Leg. 5522 Exp. 47691

Year: 1810

Crime: incest; [adultery]; amancebamiento/ilícita amistad

Participants:

Felipe Gil: *calidad* n/a

Petrona Alvarado: *calidad* n/a

Basic Arguments:

According to Ana Alvarado, wife of Gil, her husband had been upset with her for a long time. One night he gave her such strong blows that she left the house out of fear of greater harm and informed the priest. Their discord stemmed from her husband’s apparent involvement with her daughter Petrona who was then pregnant. Telling the priest about her suspicions, he suggested moving Petrona to her grandfather’s house since she had no firm evidence. Gil was opposed to such a move and the girl remained in their house. One morning her husband got out of bed early and neared the bed of Petrona. He

began to compel her with “loving words,” telling her, “My child, get up. Let’s go out there.” Her daughter got dressed and went after him. A. Alvarado got up hurriedly to follow them and found them having sex in the corral. Later, she went with her husband to their bedroom and remonstrated him, asking him what they were going to do now, and trying to convince him to go to the capital with her to see if he could be pardoned and given permission to live with her through some punishment. Gil refused. Asked if Petrona was also Gil’s daughter, she said she was a daughter from her first marriage. Lastly, A. Alvarado claimed she only complains against her husband so she could live with him licitly.

Petrona Alvarado admitted to having had “illicit commerce of her person” with Gil. Asked how she could do this with him when he was her mother’s husband, she said that, as she was a girl and had a “reverential respect” towards him, she would always do what he asked. She traveled with him, and when they were alone, he caressed her. She attributed these affections to an “honest love,” but slowly he began to go further with her, and before she had time to reflect on the situation, he had consummated the sexual act with her. She always gave in to him (with repugnance) because she did not dare to tell him no. Petrona maintained that Gil was the only person with whom she had had sex and that he was the author of her pregnancy of seven months. She believed her mother had her prior to her first marriage, but she was unsure. Admonished for giving in to a man who she should have viewed with *respetos de Padre* as the husband of her mother, she blamed her young age and ignorance.

Gil similarly admitted to multiple incidences of sexual intercourse with Petrona and believed that her pregnancy resulted from the union with him. However, he discussed

the debate surrounding whose child Petrona was, some saying she was A. Alvarado's daughter, while others said she was a *pepe* or girl she had taken in to raise. He was convinced of the latter and would eventually court her. Charged with incest, he excused himself with his ignorance and with having believed that she was a girl his wife raised because she was an orphan or for some other charitable reason.

Penalty:

Gil: included in royal pardon; fees totaling 17 pesos and 5 1/2 reales; habilitation of marriage

P. Alvarado: included in royal pardon; to live with her grandfather

62. AGCA A2.2 Leg. 234 Exp. 4982

Year: 1810

Crime: incest

Participants:

Bartholomé Álvarez: *mulato*

Pía Ramírez: *mulata*

Ignés Ramírez: *mulata*

Basic Arguments:

Álvarez was accused of incest with P. and I. Ramírez, mother and daughter, by P. Ramírez herself. According to P. Ramírez, Álvarez solicited her during Carnival under pretext of marriage, and with this understanding, she had a sexual act with him. Recognizing that he had many lovers, she broke it off with him and had not been involved with him since that time. Recently, the same Álvarez tried to get I. Ramírez to accompany him after she finished serving in the house where she was employed. In order

to get her to go with him, he took her shawl, and they were together in his store for eight days. P. Ramírez later pardoned Álvarez, saying that he was already married to her daughter (presumably in the sense of their sexual union).

Álvarez admitted to copulation with I. Ramírez during the eight days, but he clarified that I. Ramírez did not accede to his requests and to losing her virginity until the third night. All of this occurred under the belief of which he was still firm of marrying her. He had known and communicated with I. Ramírez since they were young and had dealt with her licitly in the presence of her mother. He denied having ever solicited or having had carnal act with P. Ramírez and said P. Ramírez knew he solicited her daughter. In fact, she had remonstrated him about it. In a later statement, Álvarez said that the most that happened between he and P. Ramírez was that he had told her he would marry her after she proposed it to him to keep her happy and so she would allow him to visit her house.

I. Ramírez also admitted to accompanying Álvarez to his store (through her own will) and to sexual intercourse with him under *palabra de casamiento*. However, now that her mother resisted the marriage, she was thinking she would not follow through with it. Her mother had scolded and even hit her because of her communication with Álvarez, but she never told her why she did not want her to communicate with him and why she tried to keep him from coming to the house. All her mother told her was that she did not like him joking around with her. She was completely unaware of Álvarez having any involvement with a relative of hers or with her mother.

Penalty:

Álvarez: included in royal pardon; fees

P. and I. Ramírez: no penalty

63. AGCA A1.15 Leg. 2965 Exp. 28089

Year: 1810

Crime: incest; adultery; concubinato/ilícita amistad; complicidad

Participants:

Roberto Figueroa: *calidad* n/a

Florentín Estrada (for potential *complicidad*): *mulato*

Josefa Turcios: *calidad* n/a

Basic Arguments:

Jacinta Turcios was suspicious that her husband, Figueroa, committed incest with her sister, Josefa Turcios. According to Jacinta Turcios, she sent her husband for her sister when she learned about the *fatal vida* she had with her husband, Estrada. After they arrived, she asked Josefa Turcios if they had completed their journey in one day and she told her they had. But later, she told her they actually slept in Mixco one night and she had lied to her because Figueroa told her not to tell her because she was very sensitive. Jacinta Turcios said they were in continual discord and her husband consistently uncomfortable after they arrived home.

José Gil, twelve-year-old son of Jacinta Turcios, confirmed that he, Figueroa (his father), Josefa Turcios, and Pioquinto Turcios (his uncle) slept in Mixco on the way back from the capital in the house of Lorenzo Pescador. He said that everyone but him slept in one room and he did not see any indecent action between Josefa Turcios and Figueroa. However, Figueroa advised him to not tell his mother that they slept in Mixco, and Gil

followed this advice. But when his mother examined him about it later, he told her the truth.

Similarly, P. Turcios stated that they all slept in one room and that he did not observe any suspicious action between Figueroa and Josefa Turcios. He said that Figueroa did not tell him to hide their night in Mixco from Jacinta Turcios and neither did she ask him about it.

Though Jacinta Turcios initially said that Estrada told her about the *ilícita amistad* of Figueroa with Josefa Turcios, he contradicted this, and she admitted it was inaccurate. Estrada denied the “carnal mixing” of Figueroa and his wife and any suspicion of the conduct of his wife. Jacinta Turcios eventually requested for her sister and husband to be freed, saying that her suspicions only stemmed from jealousy that took her out of her senses.

The *alcalde ordinario* was scolded for having broken the law by putting Figueroa and Josefa Turcios in prison because only a husband could make an accusation of adultery. This held even when it was combined with incest or another crime, unless the husband was involved in public procuring, being a *marido alcahuete*. Also, following the Real Audiencia of the previous few years, prison could not be decreed in cases of *concubinato* or others of this type without a preceding indictment in which the public crime was evident. Having taken a statement from Estrada could have brought about ill-fated results.

Penalty:

Jacinta Turcios was warned to not behave with lightness of tongue and imprudence so as to not perturb the marriage of Josefa Turcios. Josefa Turcios was to be

reunited with her husband and warned to not cause suspicion. Figueroa was reprimanded to calm his wife and to not give her *motivos de sentir*.

64. AGCA A1.15 Leg. 2965 Exp. 28088/AGCA A1.15 Leg. 5390 Exp. 45733

Year: 1810

Crime: incest; adultery

Participants:

María Rosalía Surqueah: *india*

Vicente Fuentes: *indio*

Basic Arguments:

Vicente Fuentes was accused of incest with his daughter-in-law, María Rosalía Surqueah. His son, José Rumualdo Fuentes, said that V. Fuentes forced his wife, Surqueah, to have intercourse with him two times and requested that he be exiled so that it would not happen again in the future.

Surqueah also claimed that V. Fuentes had two “accesses” with her against her will, once in a milpa and the other time in a *barranquito*. She stated that V. Fuentes suggested for her to be examined by a midwife to see if she was pregnant and that the midwife confirmed it. Her husband grew suspicious that the child was not his, and then she confessed to him what had happened. She said V. Fuentes was somewhat tipsy the first time this happened and in his right mind the second time. She did not go to live somewhere else when these advances were occurring because V. Fuentes had told her that if she caused a scandal they both would be in trouble. She did not alert the authorities because she was married.

V. Fuentes suggested that the accusation by his daughter-in-law stemmed from her

trying to cover up a sexual relationship with another man. He claimed the only way he would have committed the crime was if he had been drunk and not remembered. Later, he said that he learned of his crime after having committed it the two times.

In defense of Surqueah, Don José Baucello pointed out the deserted locations of the crimes, the inability of a girl of eighteen to resist a drunken or sexually driven man, and how she tried to talk V. Fuentes out of committing the crime. Juan José León argued that the combination of force and V. Fuentes's position as "Father" allowed him to carry out the act. He also mentioned that it was much more common for fathers-in-law to become fond of daughters-in-law than the reverse. He suggested that, if Surqueah gladly gave in to him, the fact that sensuality was the most difficult passion to overcome and her status as a rustic *india* should be taken into consideration.

In defense of V. Fuentes, Don Félix de Salazar highlighted that he was not a person of *algún cultivo* and so the penalty for his crime should be less severe. He argued that Surqueah should have left the property or told someone about her father-in-law after the first incident in order to prevent the second one from happening. He also called into question the ability of an Indian midwife to estimate the length of a pregnancy, and he stated how the alleged length of the pregnancy would actually position J. R. Fuentes as the father. He stated that a *ladina* midwife said Surqueah was not pregnant, and he suggested that cessation of menses due to illness was more likely the case than a pregnancy. Joaquín Eduardo Mariscal claimed that if V. Fuentes committed the crimes it was out of passion, not malice, and it was not premeditated. He added that if Surqueah had fully resisted V. Fuentes he would not have been able to execute the crime.

Penalty:

V. Fuentes: 4 years of imprisonment at Omoa; 25 lashes

Surqueah: two months interior service in the Beaterio de Indias and spiritual exercises

65. AGCA A1 Leg. 2967 Exp. 28123

Year: 1810

Crime: incest; adultery; amancebamiento/concubinato/ilícita amistad

Participants:

Doña María Salomé Soto: *española/criolla*

Don Manuel de la Trinidad Mayén Catalán: *español/criollo*

Basic Arguments:

M. S. Soto and her brother-in-law, Catalán, were accused of *incestuous concubinato*. According to Catalán's wife, M. J. Soto, she had complained nine years before to the Señor Provisor who habilitated them and had them move to the capital away from M. S. Soto. She later found out M. S. Soto was also in the capital secretly, and Catalán told her that he maintained M. S. Soto because they had a child together. Despite further complaints to religious authorities and M. S. Soto being instructed to live with her husband in San Raymundo, she claimed the relationship between Catalán and M. S. Soto continued.

Don Máximo Pérez, husband of M. S. Soto, said the accusation of M. J. Soto stemmed from nothing more than her imprudent jealousies. Later, he admitted that he had spied on M. S. Soto to ease his own suspicion regarding the possible involvement of she and Catalán. He had not been able to catch her doing anything that offended him.

M. S. Soto also cited the jealousies of her sister, claiming that since the *fragilidad* that she had with Catalán eleven or twelve years before she had not been involved with him, but the relationship produced a son. She argued that the presence of she and Catalán at an inn at the same time was coincidental. She denied that she and Catalán saw one another regularly or provided for one another. She claimed that since her involvement with Catalán was more than ten years before the statute of limitations worked in her favor. Also, fourteen of the seventeen witnesses testified based on what they heard, without saying who they heard it from, so their testimonies needed to be dismissed. She claimed that if she was punished her husband would find out about her involvement with Catalán in the past, which would negatively affect her marriage.

It was said that M. S. Soto and her husband did not live together. M. S. Soto denied this, mentioning, as others did, how her husband was often absent for work. M. J. Soto claimed that it was possible M. S. Soto pursued her husband because of her abandonment by her own husband and the subsistence he could offer.

Catalán admitted that, carried by his *fragilidad*, he carnally knew M. S. Soto four times over two years about ten years before and that about five years before he fell with her again. However, he had not been involved with her since that time. He admitted that he had a son with M. S. Soto. Catalán argued that the statute of limitations worked in his favor because his second involvement with M. S. Soto was more than six years before. Catalán said that when he was home he rarely left M. J. Soto's side, so he did not understand when she could suspect him. He also pointed out that M. S. Soto was an older woman burdened by children and grandchildren in such great number that she was unable to be alone.

Pérez and Catalán both claimed that M. J. Soto had encouraged regular dealings and communication between M. S. Soto and Catalán, with Catalán claiming that M. J. Soto was at great fault in the matter.

M. J. Soto was content with M. S. Soto and Catalán being released provided that M. S. Soto went to live with her husband in San Martín, which was where he resided.

Penalty:

Considered as time served due to statute of limitations. Manuel Catalán was to perform spiritual exercises and a general confession before reuniting with his wife.

Catalán and M. J. Soto were not to communicate with M. S. Soto in the future.

66. AGCA A2.2 Leg. 238 Exp. 5104

Year: 1811

Crime: [incest]; [adultery]; estupro; dar mala vida a su mujer

Participants:

Pedro Pablo Calderón: *mulato*

María Petrona Nolasca Calderón: *calidad n/a*

Basic Arguments:

P. Calderón was accused of the violent *estupro* of his stepdaughter, M. Calderón, and of beating his wife, Martina Guzmán Bustamante, shortly after she had given birth, from which she allegedly died. He was accused by Antonia Bustamante, his sister-in-law, who claimed her information came from M. Calderón.

According to M. Calderón, her father (stepfather) had come home drunk the day he beat her mother. After she gave her mother a cup of stew, her father got upset that he was not served first and began to verbally and physically abuse M. Bustamante. Her

mother did not protest because she was afraid of her husband. M. Calderón claimed P. Calderón gave her mother very *mala vida*, which had also been the cause of physical handicaps in two of her siblings (one was mute and crippled; the other had a bad eye).

M. Calderón stated that several days after the beating, when her mother was still ill, her father tricked her into going to an isolated area under the pretext that he would accompany her to a safe place. There, he threw his poncho on her, covered her mouth, dropped her to the ground, and used force to take her state of *doncella* away from her. He left her covered in blood and aching in her “shameful parts,” a pain that remained at the time of her deposition. She could not resist the power of a man so large when she was so small. Because of her resistance, he hit her in the face, which left scars that caught her aunt’s (A. Bustamante) attention. Questioned by her aunt about where the scars came from, she explained how she feared for her little sister since she was growing up. According to M. Calderón, P. Calderón was in his full senses when he committed the act, and she did not say anything about the deed because of fear of her stepfather and her mother being so ill. Once her mother died, she told her aunt everything. A. Bustamante arranged for her to be examined by a midwife after the event, and this woman later testified that she found her *corrupta por obra de varón*.

A. Bustamante substantiated the accusation of P. Calderón having given *mala vida* to his wife (her sister). M. Bustamante did not discuss the beating from which she allegedly died with her because of her *silencio natural*, her fear of her husband, and her moribund state when she found her. (However, according to M. Bustamante’s attending physician, the patient said that she was ill from postpartum fever.) For the time being, A. Bustamante had her sister’s children residing with her, even though P. Calderón wanted

to stay with M. Calderón, expressing that “she was now woman [enough] to take care of a man.” A. Bustamante claimed P. Calderón had not supported the children in any way.

Like M. Calderón, she blamed the physical handicaps of two of the children on the abuse her brother-in-law gave her sister when she was pregnant.

P. Calderón stated that his wife died from *travesuras* during the postpartum period, becoming ill from foods and drizzle she came in contact with after giving birth. He denied fighting with her following the birth and claimed he thought well of her and cared for her. According to P. Calderón, even if he was a heretic, he would never do such a thing to a woman who had never given him cause for *sentimiento*. Instead, he suggested that the allegations of M. Calderón were at the counsel of A. Bustamante. He had always been in conflict with her because he would not tolerate her wrongdoings, and in this way, she could avenge herself, going so far as to convince M. Calderón that she was not his daughter. P. Calderón explained that even though his wife was pregnant from another man when they got married, this was not known, so M. Calderón was baptized under the notion that she was legitimate. (The baptismal record confirmed this.) He denied drinking on a regular basis and blamed the handicaps of his two sons on other factors. All of his children had been slow to speak because their mother had “broken throat.” He claimed that any fear his wife might of had of him was due to all women being afraid of their husbands.

P. Calderón also blamed the allegation of *estupro* on A. Bustamante. He said he would not be able to do such a thing, even if it was voluntary, with a *criatura* so young and *sin carnes*. As she sold tamales day and night in the streets, if she was indeed *corrupta* by a man, another one was to blame. In response to the argument that an aunt

would not have greater influence on M. Calderón than her father, he explained that it was not surprising that M. Calderón would follow the advice of her aunt after she told her that she was not his daughter. Remonstrated that the supposed defamation would not benefit A. Bustamante in any way since she was maintaining three children by the sweat of her brow, he said that M. Calderón worked and his one-eyed son ran errands. She would be happy to take them and more, especially since they now served her.

Don Joaquín Mariscal, defense counsel for P. Calderón, called into question M. Calderón's ability to testify in the case. She was not a woman of good reputation and truth but rather a (thirteen-year-old) girl who by law was too young to be a witness in a criminal trial. He also cited inconsistencies in her depositions as means to highlight their falsity. Further, he discussed the implications of M. Calderón having wept during her deposition. He contended her tears should be interpreted as evidence of falsehood, considering that women can cry easily and with the aim of softening people's hearts so they will believe and treat them with tenderness. He suggested that M. Calderón could have lost her virginity to another man since she was regularly in the streets, but he also argued that examinations of virginity were prone to error, especially if they continued to be practiced by women who were inexperienced and wrapped up in the ignorance of their sex. He believed M. Calderón would not have dared to speak against P. Calderón if not for the counsel and paternity information from A. Bustamante, who herself was not a credible witness because of her dislike for P. Calderón.

Penalty:

P. Calderón: included in royal pardon; legal fees; officials were to keep an eye on his conduct

M. Calderón: no penalty

67. AGCA A1.15 Leg. 2966 Exp. 28115

Year: 1811

Crime: incest; [adultery]; estupro; concubinato; dar mala vida a su mujer

Participants:

Manuel Rodenas: *mulato*

Josefa Gavina Aguilar: *calidad* n/a

Alejandra Vidal: *calidad* n/a

Basic Arguments:

Rodenas was accused by his wife of incest with and *estupro* of his stepdaughter, J. G. Aguilar, and niece, A. Vidal, and other excesses. A. Vidal became pregnant, but the child died when only three days old. The wife of Rodenas, Claudia Hernández, also claimed he gave her *mala vida* while married. According to Hernández, she had run out of the house one day when Rodenas was drunk and slept elsewhere, leaving J. G. Aguilar, Rodenas, and another woman in the house alone. The next day she sent a daughter of hers to see if he was no longer angry and she found him lying down with J. G. Aguilar. Hernández whipped J. G. Aguilar (a mute), who signed to her to not be at fault because her father had locked himself in with her. A few days later, she discovered J. G. Aguilar had been deflowered. Hernández admitted that she mixed carnally with her husband after the incidents, despite knowing that it was a crime, because he would get drunk and beat her and she would have to give in.

A. Vidal reported that Rodenas, her *tío político*, came to her house, gave alcohol to her father, and late in the night went to her bed. She said he was unable to accomplish

his intent the first five times, but the sixth time he “prostituted her integrity” and she became pregnant. She claimed that she was unaware of the sin she was committing.

Juana Alvina Aguilar, the daughter who had discovered Rodenas with J. G. Aguilar, added that she had felt Rodenas touching her one night when she was laying down, so she got up and went to the patio afraid of what would happen. When her mother arrived, she told her about what happened and Rodenas whipped them.

Balladares, an official who had previously imprisoned Rodenas because of a complaint from Hernández, said that he put him in prison because Hernández accused him of drunkenness and mistreating her. Once imprisoned, she then accused him of incest. There was no substantial evidence to prove his guilt, and Balladares mentioned Hernández’s desire to separate from her husband and her diligence in denouncing him for various crimes.

Rodenas claimed that the accusation was false and was the result of his wife being involved with an individual with whom she had a relationship prior to their marriage. He stated that she made the accusation to be free of him and the *derecho de marido* to govern the house individually. He mentioned Hernández’s poor childrearing of two of her sons and how he had to scold them which she did not like. He suggested that J. A. Aguilar testified against him due to the influences of her mother. He said J. G. Aguilar was never pregnant. Defending his innocence, he argued that, “as a man,” he would confess to any excesses he committed. He requested to be pardoned and said the reason he was imprisoned previously related to him having scolded his stepchildren for being drunk, a brawl developing, and them telling the authorities.

Penalty:

Rodenas: included in pardon

Aguilar and Vidal: no penalty

68. AGCA A2.2 Leg. 237 Exp. 5068

Year: 1811

Crime: incest; [adultery]; amancebamiento/ilícita amistad; fuga

Participants:

Josef Silverio Ampérez: *indio castellano*

María Basilia García: *india castellana*

Felipe Vásquez: *indio castellano*

María Leandra Ampérez: *india*

Manuel Cornel: *indio*

María Manuela López: *india*

María Juliana Tobar: *india*

Basic Arguments:

F. Vásquez was accused of taking his stepdaughter's (B. García) virginity by her father-in-law (J. S. Ampérez) and her husband (Josef Leoncio Ampérez). According to J. S. Ampérez, he learned about the deed when his son told him that it was the reason he could not go with his wife to the house of his in-laws. B. García's mother was upset that she did not come to their home and told J. S. Ampérez that "she had not sold her to him."

After B. García was sworn in, she claimed J. S. Ampérez was who actually took her virginity. She only accused her stepfather because her father-in-law had told her to do so, telling her not to reveal what had happened prior to her getting married to his son. She

gave into J. S. Ampérez's solicitation because he told her that he needed to verify that she was a virgin before she could marry his son and she did not think it would be a sin.

During a *careo* with B. García, J. S. Ampérez confirmed his sexual involvement with her before he married his son to her, and he claimed he had found her "corrupt." He said that when he asked B. García who had deflowered her, she told him her deceased father (Marcos García) had done so when she was very young. In contrast, after she got married to J. L. Ampérez, who also found her to be "worldly," she told him her stepfather was at fault. J. S. Ampérez denied having coaxed B. García by telling her he needed to see if she was a *doncella*. Rather, he claimed she came to his bed and he was "tempted by the flesh." Still, B. García maintained she only told her husband that her stepfather had taken her virginity to cover up the actions of her father-in-law, who had told her to stay quiet about it. She also verified that her father had taken her virginity from her and that was why she had said this to J. S. Ampérez. Elsewhere, J. S. Ampérez said she told him that "between her Father and Stepfather" she had lost her virginity. When asked if he had the intention to marry B. García to his son when he was involved with her, J. S. Ampérez said he did not; he consented to the marriage afterwards because his son was so inclined and he did not think their prior involvement would make it a sin.

F. Vásquez denied any sexual act with B. García, claiming he had never even thought about doing such a thing. He argued that J. S. Ampérez persuaded her to say this so that he could escape punishment for his crime. He even threatened her, telling her that, even though they might hang her, to not reveal him.

The second part of the case dealt with J. S. Ampérez being accused of incest with his own daughter, M. L. Ampérez, supposedly by his wife and her mother, María Manuela López, though her knowledge of the relationship became unclear. M. L. Ampérez said her father took her virginity against her will about four years before. The acts continued until she learned that they were wrong, and she ran away to tell her priest about it. Even though she was innocent the first time it happened, she protested, and her father flogged her as a result. After they confessed, she remained in *depósito* for about a year. Even though her priest had told her to not continue sexual involvement with her father, she gave in to her father's petitions anyway, and he told her God would forgive all of it. M. L. Ampérez claimed that her father advised her to say that it had been Manuel Cornel who had deflowered her as opposed to him.

J. S. Ampérez testified that he became involved with M. L. Ampérez out of revenge because Cornel had been involved with her and, after, with his wife. He said the first time he "sinned" with her was three years before and that he continued to do so about twenty more times (later he said six times). She was no longer a virgin when their involvement began, and he argued it was consensual. He admitted to having sexual intercourse with his daughter even after being admonished about it by a priest, claiming he still did not understand the gravity of the crime.

According to Manuel Cornel, J. S. Ampérez had accused him of being involved with his daughter even when he was not. This made him angry and he actually became involved with her. He also pursued Ampérez's wife as a form of revenge for having caught J. S. Ampérez "sinning" with his own wife on two occasions against her will. Cornel's wife helped him succeed in this quest. In fact, M. M. López said that his wife

would even keep watch for them when they got together. Cornel understood that one should not sleep with another woman, but he contended that he did not know if being married or having sex with a mother and a daughter would have an impact on the gravity of the crime.

Cornel's wife, María Juliana Tobar, said that she persuaded M. M. López to sleep with her husband. She was irritated that J. S. Ampérez had told her husband about their own sexual encounters together, because between that and Cornel having caught them in the act on two occasions, she was experiencing difficulties in her marriage. She knew committing this crime would calm him down and allow him to avenge himself. She ultimately blamed her ignorance for such actions. Similarly, when M. M. López was remonstrated about sleeping with the same man as her daughter, she said she was unaware of the gravity of her sins.

Penalty:

J. S. Ampérez: freed without fees because he was included in the royal pardon and was *indio* in the case with B. García; escaped when imprisoned for incest with M. L. Ampérez

B. García: died before conclusion of the case

F. Vásquez: died before conclusion of the case

M. M. López: escaped

M. L. Ampérez: escaped

Tobar: released

Cornel: escaped

69. AGCA A1.15 Leg. 2985 Exp. 28388

Year: 1815

Crime: incest; amancebamiento/concubinato/ilícita amistad

Participants:

José María Gómez: *indio*

María Baltazara Gómez: *india*

Basic Arguments:

J. M. Gómez was accused of incest with his daughter, M. B. Gómez, by his younger daughter, Juana Josefa Gómez. J. J. Gómez asked the *alcalde* of Canales to be placed in another home, “for the love of God,” as her father was *amancebado* with her sister and she was afraid he would do the same to her. She claimed to have seen them fornicating on three separate occasions. She did not inform authorities sooner because of her lack of instruction in the Christian doctrine, which her father neglected to teach her and in which she was being instructed in her current residence.

Initially, J. M. Gómez denied the relationship with his daughter, saying he would have to be a brute to do such a thing and that his parents raised and educated him with the fear of God. After being remonstrated during questioning, he reportedly paused for a while and then fell on his knees crying, confessing that the Devil had tempted him after he had been a widower for about a year and how he made his daughter engage with him sexually by threatening her with a whip.

M. B. Gómez also initially denied any involvement with her father. However, after her father was brought in and his statement read, she admitted that her father had forced her to have sex with him on three occasions. She did not report the crime to authorities because she was afraid her father would punish her.

During later questioning, J. M. Gómez again reversed his position. He said that a woman with whom he was illicitly involved had advised J. J. Gómez to give the accusation. Further, he had whipped her for having run away from him and this was her only means to avenge herself. He claimed he only admitted to the crime out of fear of the authorities, and if his daughters spoke to the contrary, it was only because they had been ill-advised.

In a similar fashion, M. B. Gómez reversed her testimony. She claimed she would have to be an animal to be *amancebada* with her father. She only confessed to the crime because she was afraid of the authorities. Her sister was a liar and maybe the authorities had advised her. J. M. Gómez later admitted to having sent M. B. Gómez a note (that was presented) in which he encouraged her to deny the crime because he thought that they would be freed if they both denied it.

Don Vicente Arrazola, defense counsel for J. M. Gómez, mentioned how strange it was for a child to accuse their father. He also pointed out how J. J. Gómez was not sworn in during her testimony despite being old enough and very *ladina*. He argued that J. M. Gómez confessed to the crime out of fear of the authorities, which was greater among Indians, if their “timid and pusillanimous constitution” was considered. He maintained that his client only wrote the note to his daughter to make sure her testimony did not appear discordant or weak because of the “fickleness of her sex” or concern that she would be influenced by the threats of authorities. Arrazola also argued that the Gómezes’ identification as Indians explained their sexual behavior, comparing them to peoples Ovid described as indifferent to sexual relations between fathers and daughters and between mothers and sons. Arrazola also excused the alleged act of J. M. Gómez by

pointing to the fact that he had been recently widowed. Further, his client should be viewed more favorably considering the crime occurred during the day.

Atanacio Flores, defense counsel for M. B. Gómez, referred to J. J. Gómez as “the wicked denouncer of her Father,” and he argued that the testimony of one witness was not sufficient, especially when it came from a woman, whose sex made her easily manipulated by an adversary and unable to tell the truth. Flores also discussed how it was unbelievable that people would commit such a crime during the day, as even beasts (who are not imbued with rationality) were cautious about being seen by others. He contended that M. B. Gómez only substantiated her father’s confession to the crime because she did not want to refute him.

Penalty:

J. M. Gómez: included in royal pardon

M. B. Gómez: included in royal pardon; she was to be kept separated from her father

70. AGCA A1.15 Leg. 2985 Exp. 28390

Year: 1815

Crime: incest; amancebamiento/concubinato/ilícita amistad

Participants:

Marto Gallardo: *calidad* n/a

Diega Paz: *calidad* n/a

Teodora Paz: *calidad* n/a

Basic Arguments:

Gallardo was charged with incest in the first degree. He allegedly maintained *ilícita amistad* with T. Paz (deceased) for many years and then became involved with D.

Paz. According to Juana Mejía, Gallardo regularly came to sleep in D. Paz's house and they shared a bed (but not a blanket). This was confirmed by another witness. Because Gallardo was in the military, his case was to be transferred to its respective court. The investigation was to continue with respect to D. Paz.

Penalty: n/a

71. AGCA A1.15 Leg. 4470 Exp. 37705

Year: 1815

Crime: [incest]; concubinato; illicit sale of alcohol

Participants:

José María Díaz (alias Cantarillas): *calidad* n/a

Agustina (no surname): *calidad* n/a

Basic Arguments:

José María Díaz (alias Cantarillas) was thought to be in *concubinato* with his sister-in-law, Agustina, since the death of his wife, Josefa. Pedro Sorzo cited the jealousy Agustina showed regarding Díaz as evidence of such crime. Manuela Villeda said that it was evident to her that they lived as husband and wife, but Agustina would say that Díaz was her father, which some people could believe given their age difference.

Mariano Placido Almeida, a regular visitor to their store in the past, said that, despite having lived together, a *guanaquita* had lived with them, and he did not suspect any ill of them. Micaela Gerónima Catalán, roommate of Díaz and Agustina, said that Díaz and Agustina saw one another as brother- and sister-in-law, sleeping in their own beds, and Agustina's deceased sister (Josefa) had left her in charge of taking care of Díaz as she had.

Penalty: They were told to separate their residences and to stop selling alcohol, from which resulted the gathering of people of both sexes.

72. AGCA A1.15 Leg. 4471 Exp. 37723

Year: 1815

Crime: brawl; paseando; ilícita amistad

Participants:

José Bárbaro Cisneros: *mulato*

José Aniceto Muñoz: *indio*

Josefa Martínez: *calidad n/a*

Basic Arguments:

The Alcalde de Barrio reported that when he was on patrol the night before he found Cisneros and Muñoz in a fight and two men on horseback, each with a woman (including Martínez) riding in front of them. Martínez identified the man she was riding with as her nephew Lucio, whose surname she did not know. Questioned as to whether she was in *ilícita amistad* with this man, considering she would know his surname if he was in fact a relative, she stated that “they are not really relatives. Rather, he calls her ‘aunt’ because of his affection for her.”

Penalty: All freed as time served. Cisneros was sentenced to the fees.

73. AGCA A1.15 Leg. 3005 Exp. 28771

Year: 1820

Crime: incest

Participants:

Tomás Pérez: *indio*

María Catalina Pérez: *india*

Basic Arguments:

T. Pérez and M. C. Pérez, father and daughter, were accused of incest. Initially, M. C. Pérez said that her father had a carnal act with her on one occasion when he was somewhat drunk.

T. Pérez claimed to be a *viejo* of about one hundred years old. However, it was recorded that he only appeared to be about fifty-one years old. T. Pérez claimed a man named Jacinto Chávez, who he had had some trouble with, falsely accused him of dealing illicitly with his daughter. Considering how old he was, it was unbelievable that he would have had the ability to cohabit with his daughter.

During a *careo* with her father, M. C. Pérez denied having made her previous statement. What she actually said was that she was taking care of her father in terms of providing him with provisions. She maintained that she had never had a carnal act with her father and that she was not made aware during her deposition that she was being questioned regarding illicit commerce. She slept in the kitchen with a young female neighbor and her father in the barn with one of her brothers.

Penalty:

T. Pérez: handed over to the Indian Authorities of Santo Tomás

M. C. Pérez: to be placed in “a house of good conduct”

74. AGCA A1.15 Leg. 5543 Exp. 48019

Year: 1820

Crime: incest; estupro

Participants:

Felipe de la Cruz Flores: *calidad* n/a

Aureliana Velásquez: *calidad* n/a

Encarnación Velásquez: *calidad* n/a

Antonia Velásquez: *calidad* n/a

Basic Arguments:

This is only a case fragment. Flores was accused of incest with his stepdaughters, the Velásquez sisters. Flores had repeated acts with Aureliana (thirteen- to fourteen-years-old) and Encarnación, taking their virginity. He also “indecently touched” Antonia (seven- to eight-years-old). Flores denied the accusation.

Penalty:

Flores: included in royal pardon

Velásquez sisters: ordered to be removed from the house of Flores

75. AGCA A1.15 Leg. 5450 Exp. 46739

Year: 1820

Crime: incest; estupro

Participants:

Don Manuel Castañeda: *calidad* n/a

Doña María Antonia Canales: *calidad* n/a

Basic Arguments: Castañeda and Canales were accused of incest and *estupro*. Canales was the “political sister” of Castañeda.

Penalty:

Castañeda: included in the royal pardon except for the *derecho de tercero*

Canales: no penalty

Measures were to be taken by the *corregidor* to make sure it did not happen again.

76. AGCA A1.15 Leg. 5543 Exp. 48013

Year: 1820

Crime: incest

Participants:

Juan José Álvares: *calidad* n/a

Basic Arguments: This document contains several reports from the *alcalde mayor* of Suchitepéquez. The only information provided regarding Álvares is that he was charged with incest.

Penalty: n/a

77. AGCA A1.15 Leg. 3007 Exp. 28829

Year: 1821

Crime: incest; amancebamiento/concubinato/ilícita amistad; aborto

Participants:

Rosalío Yescas: *mulato*

María Ramona Alvarez Román: *ladina*

For the abortion aspect, Miguel del Sid (mestizo) and Rita Moreira were also implicated.

Basic Arguments:

Rosalío Yescas was accused of incest with his sister-in-law, María Ramona Alvarez Román, and of taking measures so that she would abort. He was also accused of impregnating another sister-in-law, María Pía Alvarez.

Basilia Alvarez, mother of M. R. Alvarez Román, claimed that she investigated M. R. Alvarez Román's "shameful parts" following an alleged liaison with Yescas and found her to be a virgin. She also said that some time later M. R. Alvarez Román became ill from "detention of her menses," which caused her belly to bulge, but she was not pregnant and was treated for this ill.

M. R. Alvarez Román claimed that, even though she had been in the kitchen with Yescas one day, she had not "sinned" with him. She said that from the anger and fear of having previously been accused of involvement with Yescas she stopped menstruating and her belly bulged as if from pregnancy. She was treated by two women, the second one causing her to produce coagulated blood and curing her of "detention of blood." She claimed she was still a virgin.

Yescas denied the *amistad* and the pregnancies, but he affirmed the ceasing of M. R. Alvarez Román's period. He argued that he had always treated his sisters-in-law like sisters. He said that such false accusations stemmed from enmity.

Penalty:

Yescas, Román, and Sic were freed, but they were to pay court fees and appear if summoned regarding the case. Moreira was never obtained.

ENDNOTES

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CHAPTER 1: INTRODUCTION

1. While Lévi-Strauss (1969 [1949]) argues that the logic behind the universal nature of the incest taboo is to compel exogamy and alliance between family groups, thereby ensuring the dominance of the social over the biological, Françoise Héritier (2002[1994]) proposes an alternative explanation. She argues that the incest taboo taps into how human societies construct the categories of the identical and the different. When combinations of the identical are believed to produce negative results, they will be proscribed; when they are thought to have positive effects, they will be encouraged. Proscriptions and prescriptions of the combination of the identical may vary within a society depending on the realm (e.g. medicine versus marriage).
2. Specifically, *compadrazgo*, or the relationship between godparents and the parents of their godchild, during the late colonial period.
3. Descendants of indigenous Central Mexican populations also resided in Guatemala. For example, Ciudad Vieja was a community of largely Tlaxcalan ancestry (Komisaruk 2013: 62).
4. In the contributions to Carsten (2000b), the term “relatedness” was adopted and used alongside, or in opposition to, “kinship” to indicate a willingness to embrace indigenous idioms of being related (Carsten 2000a: 4). Here, the term is used interchangeably with “kinship” as a reflection of changes in kinship theory following postmodernist critiques.
5. Janet Carsten (2001:50) cautions against drawing stark lines of contrast between Western and non-Western categories. Thus, “Western” is here used as a way to highlight that not all worldviews are influenced by Judeo-Christian values and/or emphasis on the modern scientific method more so than as a way to distinguish homogenous Western and homogenous non-Western conceptual frameworks.
6. See, for example, Weston (1991, 1995), Carsten (2004), and the contributions to Franklin and McKinnon (2001a), including Weston (2001), Howell (2001), and Yan (2001). Franklin (2013) shows how biology itself is relativized in the context of in vitro fertilization (IVF).

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7. For example, Foucault 1978, Chimombo and Roseberry 1998, Talbot, et al 2003, and Deloria 2004.

8. For example, Behar 1989, 1987a, 1987b, Few 2002, 1995, Dunn 1995, Restall 1995, Kanter 1995, and Chuchiak, IV 2007.

9. Cases that only mentioned incidents of incest in passing are not included in this total but can be found in the appendix. Cases that do not include explicit use of the term “incest” are so identified in the appendix by brackets (i.e. [incest]).

10. The capital moved to Nueva Guatemala following extensive damage to Antigua Guatemala as a result of an earthquake in 1773. See Komisaruk (2013) for a map of late colonial jurisdictional areas.

11. This title theoretically originated in legitimate descent from high status parents (Twinam 1999: 4).

12. One of these individuals was identified as both Indian and of mixed race (Case 47), but because the Indian identification surfaced more emphatically in the case, the identification as Indian was favored.

13. See Komisaruk (2013: 207) for further discussion of such terms in late colonial Guatemala.

CHAPTER TWO: *CALIDAD* AND HONOR IN SPANISH AMERICA: A FRAMEWORK FOR UNDERSTANDING SOCIAL RELATIONS

1. The New Laws reiterated the desire for nucleated Indian towns through a process termed *reducción*. They were to be given sufficient land for croppraising and grazing livestock (Martínez Peláez 2009 [1970]: 91, 225).

2. By the mid-seventeenth and eighteenth centuries, the term *casta* was used to describe individuals of some form of mixed ancestry (Schwaller 2016: 21). However, as mentioned above, *casta* could also be used in the same manner as *calidad* (see, for example, Case 56).

3. That is, an Indian who spoke Spanish was distinguished as an *indio ladino*. Such individuals might also be termed *indio castellano*. In the context of the African slave trade, *ladino* was used to describe a Hispanized slave; *bozal* referred to those born in Africa (Schwaller 2016:60).

4. It was not until after Independence that Guatemala became conceptually divided between *ladinos* and *indios*, the former being associated with Western values and some degree of Spanish heritage, while the latter was viewed as racially and culturally

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distinctive (Taracena Arriola 1982: 99-100). This division was characterized by prejudicial notions of Indian inferiority, which has continued to have an impact on race relations in Guatemala to this day (see for example Hale 2006).

5. *...la poca union que guardan entre si Yndios, y Ladinos...*

6. As will be discussed in the following chapter, “incest” included love triangles in which two of the individuals were blood relatives.

7. *...la muger q.e se mezcla con otro q.e no sea de los de su casta p.r la mas perdida, y despreciable...*

8. Individuals seeking dispensations due to a shortage of eligible partners are also noted for colonial Medellín (see Rodríguez Jiménez 1988).

9. Catholic theologians had held that marriage was under the exclusive jurisdiction of ecclesiastical courts since the tenth century. This position was affirmed at the Council of Trent. However, such sole jurisdiction was being undermined during the eighteenth century (Seed 1988: 33, 201).

10. The works of Eugenia Rodríguez Sáenz (2005) and Komisaruk (2008) on sexual violence in Costa Rica and Guatemala mention the potential for such concerns in the Central American region.

11. David Carey, Jr. (2013:361) claims the primary concern for Maya rape victims in dictatorial Guatemala (late nineteenth and twentieth centuries) was the assault itself rather than honor or virginity.

12. The relationship between Andrés Victorio and María Anastacia Vásquez was only counted once here even though they were tried in 1794 and 1797 (Case 18).

13. Compare with Rodríguez Sáenz (2005) for Costa Rica. Out of thirteen incidents of sexual violence between 1800 and 1850, three were committed by fathers and three by stepfathers.

14. Penyak (2016: 176) found a similar age range in his incest-rape cases from Mexico: rapists averaged 34.8 years and rape victims 13.4 years. For consensual unions, Penyak found only a four-year average age difference (with men senior).

15. Scandal and magic were the other two weapons discussed by Stern (1995: 108-110).

16. Similarly, when Claudia Hernández learned that her husband lay down with her mute daughter while she away, she came home and lashed the girl (Case 67).

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Her daughter signed to her that she was not at fault because her stepfather had locked himself in with her.

17. However, Isabel Cos, the mother-in-law, denied having said this in her own testimony.

18. *...no savia esta la gravedad del Pecado, y q. el no haver dicho lo á nadie fue, y a sido de temor, y por pareserle que era con su suegro el mismo pecado q con otro hombre extraño, hav.do sido (como lleva dicho) violentada, y atemorizada p.r el susodh.o asi para el pecado como para el sigilo.*

CHAPTER 3: AN ORIENTATION TO THE COLONIAL LEGAL SYSTEM: SPANISH LAW, LEGAL PRACTICE, AND INCESTUOUS CRIME

1. References to divine and natural law regularly surface in the records of incestuous crime in colonial Guatemala as will be seen throughout this analysis.

2. Elizabeth Archibald (2001: 23-24) also discusses seemingly contradictory attitudes in terms of incest rules in the Old Testament.

3. See Penyak 2016: 183 n. 4 and Héritier (2002: 57-70) for biblical verses related to incest prohibitions.

4. Following Goody (1983: 136), the Church had used two systems for determining degrees of consanguinity, the Roman and the Germanic, with a formal shift to the Germanic system in the eleventh century. The Roman system counted degrees by the number of acts of generation between two individuals such that an uncle and niece were related in the third degree (i.e. ego to ego's parent (one degree), ego's parent to ego's grandparent (one degree), ego's grandparent to ego's uncle (one degree) totaling three degrees). In the Germanic system, sibling groups formed a generation and degrees were counted by determining the number of generations from a common ancestor. (In this system, an uncle and niece would be related in the second degree.) Here, "canonical" refers to the Germanic system and will be more fully discussed below.

5. *...yaciendo á sabiendas con su parienta, ó con parienta de su muger ó de otra con quien hobiese yacido fasta el quarto grado...*

6. It is unclear from the wording whether a woman would also be put to death for committing incest or whether she would be subject to the penalty for adultery specific to women. Like men, women could be sentenced to death for various crimes according to this text.

7. Following the *Diccionario de Autoridades* (1726-1739), *cuñado(a)* referred to any relative through affinity regardless of degree. However, its authors note

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that in contemporary common usage it denoted a husband or wife of a sibling or the brother or sister of one's spouse.

8. Guatemala received 6.4 percent of the missionaries sent to the Americas between 1493 and 1819, ranking it fourth among American destinations (Borges Morán 1977 in van Oss 1986: 6-7).

9. *A sus hijos e hijas los llamaban siempre por el nombre del padre y de la madre...de esta manera, el hijo de Chel y Chan llamaban Nachanchel, que quiere decir hijos de fulanos y esta es la causa...dicen los indios que los de un nombre son deudos y se tratan por tales...Y así ninguna mujer u hombre se casaba con otro del mismo nombre porque en ellos era gran infamia* (Landa 2015[1556]: 50).

10. In Nahuatl, “[t]he preterit agentive noun *micqui*, ‘dead person,’ can be incorporated into in-law terms. They then mean not that the mentioned in-law is dead, but that the blood relative through whom the relationship was established has died” (e.g. *nomiccacihuamo* translates as “my daughter-in-law whose husband (my son) is dead) (Lockhart 2001: 129-130; Lockhart 1992: 80).

11. The intendency reforms in 1785 reduced the administrative capacities of *audiencia* magistrates and relocated them to the sphere of the superintendent (Cunningham 1919: 160).

12. *Oidores* were judges with civil *and* criminal functions in Guatemala and other non-viceregal audiencias.

13. The majority of incest cases analyzed here were forwarded to the Real Sala del Crimen following sentencing by a lower magistrate for its approval or reform prior to the execution of a punishment regardless of whether or not an appeal had been made. There could have been various reasons for this. For example, in 1799 there was a royal order for lower magistrates to consult the Real Sala del Crimen prior to releasing a criminal when severe criminal cases resulted in absolutory sentences (see Case 27). In an incest case from 1804, reference is made to another order that required the Real Sala del Crimen to be informed of certain criminal persons with the goal of filling the fixed armed regiments at the border ports of the kingdom with them (Case 44).

14. The Provisorato was ultimately not limited to Indians. See, for example, Case 15.

15. One Guatemalan incest case from 1730 is explicitly identified as being of *fuero mixto* (Case 3).

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16. *Parcialidad* was the Spanish term for a Preconquest Maya unit of social organization, several of which might have technically fallen under the jurisdiction of a colonial town.

17. Here, *fiscal* refers to an assistant to the priest whose responsibilities included ensuring that all residents attended Mass, teaching children the catechism, and recording matters such as the rite of baptism (Burkhart and Gasco 2007: 212). See, for example, Case 1.

18. A *corregidor* was a Spanish official in charge of a jurisdictional area termed a *corregimiento*.

19. The *ius commune* tradition generally refers to a culture of legal thought formed by a combination of canon and Roman law.

20. An examination might also be carried out by a midwife or surgeon to establish a pregnancy.

21. A magistrate would be accompanied by *testigos de asistencia* to serve as witnesses in these instances.

22. An accused person might be held in prison during the course of the trial in order to secure them though other alternatives existed. For example, a pregnant woman might be placed in the care of relative so as to prevent any danger to the fetus (e.g. Case 61; see also Case 30).

23. In fact, in Case 25, the magistrate explicitly stated that Eusebia Escalante's sentence of reclusion stemmed from perjury.

24. Penalty information was taken from records of 161 individuals in which Josef Silverio Ampérez (Case 68), Andrés Victorio (Case 18), and María Anastacia Vásquez (Case 18) were counted twice because they were each tried on two separate occasions. Punishments such as spiritual exercises, the habilitation of marriage, or court fees were not included as major penalties in the quantitative data. However, all penalty information, including these minor sentences, can be found in the case log in the appendix.

25. Marital status was not always apparent for the forty-nine acquitted individuals.

26. If a cease of communication was ordered of one party, all parties whom the order would affect were included in the total number of those subjected to this penalty.

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CHAPTER 4: *LA SANGRE TIRA*: INCEST, DEVIANCE DISCOURSE, AND EXPECTATIONS OF KIN IN THE LEGAL CONTEXT

1. The term “political” indicated a relative through marriage.
2. *...la diferencia, y maior gravedad de la copula nefaria, entre padre, é hija, comparada con la de incesto en general...*
3. *...no digo entre Madre e hijo, pero entre tia, y sobrino, ó entre primos, causa natural horror el co[fi]to inhonesto, se resiste por si enteram.te a la naturaleza por desvocada que sea, y con mucho mayor Razon se resiste el dar excensia al que se imputa a mi p.te por ser su Madre de sessenta años; y por q.e no era posible que de un golpe huvieran vensido esta natural resist.a y casual, por Razon de la hedad; havia p.a ello precisam.te de haver precedido continuaz.n de acciones cariñosas, con que aunq.e con mucha dificultad tal vez, se Huviera Ydo vensiendo el natural horror, pero nada delito ha precedido...*
4. *...que el delito de que tratan es atroz, y lo es en tanto grado, q.e ni por dro. Canonico, ni Civil, se encuentra texto expreso que trate (en materia de incestos y sus penas) del executado entre el Padre y la hija; delito verdaderam.te q.e ni aun se presume, y su repugnancia nos quedó detallada desde la ley escrita; y aun Seneca el Mayor, siendo Gentil, quando á otro proposito tocó p.r insidencia la deformidad del coito habido entre los Parientes ó deudos inmediatos, lo calificó por criminal criminalisimo; y efectivam.te p.r dro. comun, los reos deste delito eran castigados con pena de muerte, haviendo fuerza, como p.r exemplo, el acceso con la entenada, Madrasta, sobrina, &.a con q.e siendo de Sup.r gravedad el que se dice haver tenido Patricio de Leon con su tierna hija Fran.ca no havia otra cosa q.e hazer, sino p.r el merito de la causa mandarlo ahorcar...*
5. *...el incesto q.e cometio no es de los mas áborrecidos, y que castigan con mas severidad las Leyes, por que la Muchacha no es su Parienta por Consanguinidad, sino por áfnidad.*
6. Note that incidents of incest outnumber incest cases because some cases included multiple accusations of incest. Relationship types reflect accusations or the type of relationship being scrutinized regardless of debate in a case regarding the nature or absence of a kin tie.
7. These percentages are derived from penalty data that was limited to individuals charged with single (as opposed to multiple) incestuous relationships/incidents and whose sentences were recorded.
8. These percentages were derived from data on eighty-six two-person relationships where the relationship was recorded. (Seven others did not have the

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relationship recorded.) Love triangles were broken into two data records (e.g. man/sister 1 of 2, man/sister 2 of 2).

9. *...mediante á que el parentesco, que entre los dos mediaba, provenia de copula ilicita...*

10. *...el hallarse desnudos en un mismo lecho los parientes no funda presuncion, ni prueba de copula entre ellos; p.r q.e aunq.e bastaria respecto de los estraños, tienen los parientes a su favor mas fuerte y vehemente presuncion de honestidad, nascida del mismo parentesco.*

11. *...el hallarse los consanguineos desnudos en un mismo lecho prueba suficientem.te el incesto: pero tambien dice q.e debe entenderse quando estos parientes colaterales yacieren en el lecho secreta, y ocultam.te, y no en publico, p.r q.e en este caso no bastaria semejante prueba.*

12. She cites a bound volume of *cabildo* records related to the management of the community fund of Jacaltenango dated from 1627 to 1756.

13. Foucault (1978: 46) mentions that the polarity between the bedrooms of parents and children became routine in the West during the course of the nineteenth century.

14. *...los vicios dominantes son la embriaguez y lascivia, abandonándose a incestos horribles entre padres y hijos...siendo el riesgo próximo el dormir todos juntos.*

15. *...desde pequeña ó desde q.e le entro la razon le puso su Madre cama separada de suerte q.e nunca se sirbio de la de su Padre aunque estaban en una misma piesa...*

16. *...nunca, en ningun tiempo, ni por mal pensamiento ha tenido con la referida su Madre el mas leve descomedimiento sobre el particular, pues á mas de ser Muger mayor, siempre le ha guardado el respeto devido de Madre...*

17. *...accion alguna que indique maldad pues Cantarillas trata a la Agustina con el respeto de cuñada durmiendo cada uno en su cama y solo si se resiven a la hora de comer y beber...y quando murio la muger de aquel le dejó encargado a la Agustina su hermana q. cuidase á su marido lo mismo que ella...*

18. *...valiendose de los halagos de Padre y de la inocencia de la exponente, la primera vez tubo polucion con ella, esto es, q.e usaba de sus piernas, y lo externo del utero p.a la confricacion, y poluccion...*

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19. ...y aunque extorta le entregó su cuerpo, fue poseida del terror, y del respeto...
20. ...pero ningo. consumó intra vas p.r q.e tenia particular estudio, en la extravasacion...
21. ...q.e como ella hera muchacha y le tenia un respeto reberencial spre. le obedecia en cuanto le mandaba saliendo con el fuera de la casa á biajes y a su Labor, y q.e spre. q.e estaban solos, el la acariciaba atribuyendo ella estos cariños á un amor onesto, hasta q.e el poco, á poco se fué exediendo con ella en las ocaciones...y q.e cuando hubo lugar a la reflexion yá Felipe Gil havia consumado el acto con ella: q.e la q.e declara no tenia trato con ning.a otra persona mas q.e con el, y spre. sedia aunq.e con repugnancia p.r no atreberse á desirle q.e no...
22. See Case 64 for the argument that *respetos de Padre* would prevent a daughter-in-law from defending herself against sexual violence from a father-in-law. This case will be discussed at length in Chapter 6.
23. Only one plaintiff was a godparent.
24. Sometimes multiple plaintiffs who did not share a gender came forward to make an accusation. Thus, each plaintiff was considered individually in these tallies.
25. ...el motibo q.e tuvo p.a denunsiar á su P.e siendo sobre la tierra los P.es las personas a qns. mas reverensia y amor deben los hijos...
26. ...que los hijos son cuerbos p.a sacar los ojos y que conforme a dro. no deben tirar contra su Padre sino en cassos capitales por el capitulo cuarto del Decalogo que hassi lo manda...
27. ...por amor de Dios que le buscasse una casa donde servir por que no queria estar con su Padre...
28. ...lo estraño que es, el q.e un hijo acuse á su Padre...
29. ...como viesse q. su P.e Joze M.a huviesse echado sobre si un crimen q. no habia cometido, esta por no desmentirle, ignorando lo q. hasia, manifestó su convencimiento...
30. ...pues su propria hermana Juana Josefa la acusa, que esta no há sido apremiada, ni obligada para que los denunciase...
31. ...pues no pueden ser zelos solamente pues de su hermana; sino motivos positivos los que le asisten para querellarse de su ilicito comercio con su marido...

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32. *...siento q.e mi hermanita esté creciendo p.r q.e no viese el mal ejemplo de mi Padre.*

33. *...la sujestion de la tia no es creible que hiciese en la petrona maior imprecion que la natural de un(a) hija á un Padre para caluniarlo dijo que no es de estrañar el que se dejara la muchacha llevar del concejo de la tia quando esta le ha impuesto de que no es su hija.*

34. *Ella no se hubiera atrevido á semejante desacato, si su tia Antonia no la hubiera sugerido á la desovediencia manifestandola que no era hija suya.*

35. *...no soy casado ni tengo hijos ningunos p.r que una muger q. tuve en mi compania esta me estubo cuidando p.r algun tpo. y asi q. se aburrio de cuidarme se mud[ó] y se yevó a sus hijos...una muchacha q. aparese acriminandome de unos tan enormes delitos, q.e esta es hija de la muger q. me cuidó, y se yama Maria Josefa la q. no es hija mia p.r q. si lo fuera no tirara tan desenfrenadam.te en contra de su padre...si fuera su padre como eya dise le tirara la sangre a bolber p.r su padre viendolo en la calamidad q. se halla, y preso con tan grandes crimenes de q. lo acusa, y asi doy p.r nula su declarasion falza, y esta se tiene p.r hija de la dh.a Micaela, y no lo es p.r q si lo fuera no procurara ni ubiera procurado desunir a su padre del lado de su madre sabiendo q. eran casados luego no es hija sino pepe...*

36. Dardón later denied having authored this document.

37. *...me he enterado de que dha Secilia no es parienta por ningun termino en sanginidad mia...*

38. *...se hapellidan Mangoches, y estas me tratab.n de pariente, Yo con la Ygnorancia dha por tal las conocia= Por lo que es, que la dha Secilia dise ser mi Marido quien la deve su onór, sin embargo de ser falso...*

39. Concepts of milk kinship are regularly found in the Islamic world (Héritier 2002[1994]: 269).

40. *...no es presumible que esta se abanderize mas á la que confiesa que á su misma hija.*

41. *...en el concepto legal siempre se presume q.e el padre quiere favorecer la causa de su hijo.*

42. *...tanto por su sexo y calidad, quanto por que siendo la muger propia, no puede descubrirse con que intension, y quales antecedentes la compelerian á deponer contra su marido un testimonio tan escandaloso...*

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43. Children might also be accused of testifying falsely so as to free themselves from the grip of a parent. See Case 2.

44. *...si hubiera cometido tales exesos como hombre lo confesara...quando á su hija le levantó este testimonio como no se lo ha de levantar al confesante.*

45. *...y como sobrino de la muger del declarante se valieron de la ocasion para formarle esta calumnia al confesante.*

CHAPTER 5: *HERMANAS EN REALIDAD*: RELATIVE AND STRATEGIC KINSHIP IN THE CRIMINAL CONTEXT

1. *...q. por el respecto q. tenia a su Madre Magdalena de Estrada y mied[o] grande a su tia Maria Phelipa permitio q. esta su dha tia diera la criatura Gregoria Antonia hija suia a los dichos Narciso Gonzales y Petrona Quintanilla, su muger para q. de charidad la crian.*

2. *...q. Yo y dho Narciso mi marido, somos sus Padres Lex.mos y q. como tal la criamos, y casamos; Dezpuez de q. dho Narciso mi marido; la estrupo violentam.te sin atender q. era su P.e...De cuya Querella, no solo resulta la calumpnia Ynfamatoria contra la crianza, q. nos deve, sino tambien el Despojo, q pademos de ntros. cortos vienes; Y siendo, siniestra la querella, ni concurrir la gravedad q. se supone de q. siendo Padre, huviese extrupado su hija; ni menos constarme á mi, q aun no siendo lo huviese executado; por tanto, recurro a Vm...*

3. *...q.e es hija de Ana Albarado y q.e esta la hubo antes de su primer matrim.o con Benito Berriondo quien trataba á esta muchacha con el cariño de una buerfana recojida, q.e algunos en el Pueblo creian ser hija de Benito y de Ana, otros q.e de esta solam.te y algunos q.e ni de uno ni de otro, sino q.e hera lo q.e llaman Pepe...*

4. *...pepe ó muchacha á quien su muger Ana Albarado havia recojido en su casa p.r caridad p.a criarla...*

5. *...p.r su ignorancia y haver creido q.e hera muchacha á q.n su muger havia criado p.r huerfana ú otro motibo de caridad.*

6. *...á el Padre de la muchacha le crio de Pepe, p.r cuyo motivo las criaturas le intitulan de abuela.*

7. *...p.r la causa de haverla cricido, le disse Prima pero q.e no hay ningun parentesco.*

8. *...comenzó a llamarlo carinosamente, diziendole veni tata quitate de ay.*

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9. *...si mediante á que la Dolores y su difunta Muger no eran hermanas sino hijas ambas de Padres no conosidos, se podria casar con la Dolores para no dejarla desamparada...*
10. Perhaps Domingo would have even interpreted a shared paternal line differently than that of a shared maternal line.
11. *Estimada Prenda de mi Corazon, y todo mi consuelo Maria Gaitan...Hija esta solo sirbe de partisiparte como lla poco falta q.e quiten de las piedras y pongan en nosotros y por todas estas cosas y p.r bolber p.r tu credito y el mio te mando esta para q.e sepaz q.e la intension q.e llebo en el Dia es q.e nos pongamos en estado. esto bajo tu pareser pues me abis de mandar abisar si es tu gusto para segir la istansia. esto tanto lo ago p.r la Bolunta q.e te tengo como p.r bolber p.r tu onor y tapar tanta boca pues el termino con q.e nos llaman es tan grosero q.e nos llaman p.r inses.tos y asi solo tu repuesta espero para escribirle al Sor. Cura y correr las delijencias que llo te prometo portarme como ombre de bien y quidarte como bos mereses. lo q.e si te digo es q.e bien es q.e no ai ningun inconbiniente. pues piensan q.e bos sos mi Cuñada y no q.e podemos Cazarnos y asi no dejes de responderme lo mas pronto q.e podas...Domingo Morales.*
12. *...ha alegado verbalm.te q.e sin embargo de que se estimaban y reputaban en el concepto publico por tales hermanas en realidad no lo eran, sino solo de leche, p.r q.e su muger havia sido unicamente expuesta á las puertas a dha Manuela de Leon, y de su marido Pantaleon Gaitan...y q.e la dha M.a Dolores es hija lexitima de los nominados consortes...*
13. *...p.a averiguarse con certeza si son, ó no hermanas...*
14. The marital records of Morales and R. J. Gaitan list the latter as legitimate daughter of P. Gaitan and Manuela de Leon. Baptismal records list M. (Saturnina) Gaitan as legitimate daughter of this couple as well.
15. *...q.e haviendo muerto los legitimos padres desta muchacha, y quedada enteram.te huerfana, el Padre Zapata tomando prenda en su seguridad, la huviese entregado a su hermana de leche, como asi lo ha dicho ultimamente el mismo Domingo procurando desmentir el concepto comun de que la Ramona su muger y la Maria Dolores fuesen hermanas en realidad.*
16. *...q.e p.r haver fallecido sus Padres, se havia venido la muchacha á buscarla y ella como Hermana mayor la havia recojido, y tenia en su poder...*
17. *...los expuextos, del mismo modo llaman, y reverencian p.r padres a los q.e los crian y mantienen...*
18. *...dentro y fuera de casa se miran y tratan como hermanos.*

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19. *Lo cierto es q.e si Morales vivio en la duda de que propiam.te era cuñado de la Maria...desde luego no se le puede a Morales arguir de que cometiese incesto aun quando se le convenza de haver tenido trato ilicito con la Maria...*

20. *...efectivam.te no estaba en la creencia de que aquella era su cuñada en realidad...*

21. *Si estaban en la intelig.a de q.e eran parientes tienen a su favor la presuncion mas fuerte y vehemente de honestidad. Si se tenían p.r libres de parentesco, no hai tal incesto, mayormente no haviendose probado el coito...*

22. *...no cabe en la cabeza su perpetracion, pues la misma naturaleza lo repugna...*

23. *...mirando el Amor q.e mi Marido, le tiene á sus Hijos como Padre al fin, me dijo, q.e á ella ce le ponía q.e mi Marido estaba o tratava Ynlicitam.te con mi hija. Respondiendole llo q.e no podía ser que siempre era áci q.e p.a todos sus hijos era Amorozo.*

24. *...tu heres la q.e mandas aqui, y no esa...*

25. *...esta es Simona, esta sos vos...*

26. *...que si era chucha, que si no era su Padre, y le respondia que no le hacia, que si le sucedia alguna cosa, que el respondia por todo, que no tuviera miedo.*

27. *...las palabras que profirio para apagar el ardor de la pacion que le dominaba, y las contestaciones que la dió dirigidas á ablandar su constancia.*

28. *...aunque ella se resistio diciendole que si no beia que lo miraban como a Padre, que como queria aser esas cosas estando casado con su Madre...*

29. *...segura confianza del marido p.r aver este criado á la Juana aun desde pequeña y p.r esta razon tenerla p.r hija pues reciprocam.te assi le tratava en au[s]encia y pr[e]cencia de la madre. bastante fé era esta para no sospechar la mas leve malicia.*

30. *...que no era su madre que bien podian pecar...*

31. José denied having told Anica he would marry her, being aware of the impediment since she is his stepmother. Anica initially denied but then conceded that she knew they were unable to get married.

32. *...pero luego que apagaron la Candela se llegó [á] ella el dho Rivas á estarla forzando, y la declarante aunque se recistió con las reflexiones d[e] que habia*

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comulgado aquel dia, que tenia amistad con su hermana, y que finalmente no era su gusto, le contestó Rivas no tenia animo de casarse con su hermana, y aunque ultimamente le manifestó lo odioso que le era su perzona logró Rivas sus torpes deceos, pues no tubo á bien evitarlos gritando porque temió escandalizar á los que dormian halli, y que su honor lo padeciese...

33. *Pero lexos Sor. de obserbar en el un christiano proceder ha llegado á tal modo su infamia, q.e sin temer á Dios, á la Justicia ni a mi á desflorado violentam.te haze pocas horas á una muchacha sobrina mia q.e vive vajo de mi amparo...*

34. *...le decia á su marido, suelteme, no sea indigno p.r Maria Santissima, mire q.e se lo digo a su Muger pues yo soi donzella, y sobrina de su Muger: á que le contextaba, q.e aunq.e fuera, q.e media vez q.e el metia el pie en el lodo, lo sabia sacar, y q.e si se lo decia á la q.e declara, la havia de matar...*

35. As will be recalled from Chapter 3, María Engracia Mangoche later drops her complaint, denies that Cecilia is her niece, and suggests the *estupro* was a false accusation.

36. *...date prisa antes de que venga tu madre y tu muger...*

37. *...que no queria de aquella suerte sino que subiese encima de ella...*

38. *...que su Padre no habia estado aquella hora q. el declarante lo habia visto...*

39. *...ponerla en la Casa Nueva p.r q. no era su Padre sino su Cuñado y q. le consta de positivo q. viven juntos como marido y muger y que su tienda es una sodoma p.r la aguard.te y concurrencia q. alli hay en perjuicio a la R.l Universidad.*

40. *...que la Agustina publica q. Cantarillas es su Padre y como este és ya hombre grande y ella muy moza respecto del por este motivo podrán crerlo algunas personas.*

41. *...que en realidad no son pariente(s) sino que el le trata a la declarante tia por, cariño q.e le tiene.*

42. *...jamás ha tenido tal amistad, pues siempre ha tratado así a la Ramona, como a sus otras Cuñadas, como hermanas...*

43. *...el es temeroso de Dios, y sabe muy bien la gravedad del pecado q se le acumula, y nunca a tenido trato ilisito con ninguna de las dh.as sus dos nueras en obras ni en palabras por que siempre las á mirado, y atendido como a sus hijas propias...*

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44. ...para q. de esta suerte se experimentase la ermienda con el parentesco contraido...

45. ...es su comp.e y mal pudiera comete tal...

46. ...para obiar esta ofensa le á ynstado ál susodho á que encompadren.

47. María de la Concepción Palacios also hinted at the incompatibility of *compadrazgo* and sexual involvement while being interrogated about Benito Gueren's involvement with her and her sister (Case 21). She admitted to having been in *ilícita amistad* with him in the past, "but that year to date, she separated herself from it, making him a *compadre* because of having taken a son of hers to Confirmation."

48. ...y ahora quiere la Maria Rosalia, hecharle la culpa al que habla, por librar á Cuc.

49. ...si se halla (como dice dha su Madre estar violada) haver sido ótro el hechor; y dha Muchacha, por salvar al que fue, (que pudo ser Perzona de su cariño) haver condenado á dho Francisco, con el dicere, de que fue su tio, para evadirse del castigo de su Madre.

50. ...la ligereza, y temeridad con q.e la Josefa ha querido constituir á su Pad.e autor de su desfloramiento, y preñez.

51. ...por encubrir su fragilidad, ha querido acriminar á su Pad.e...

52. ...le seria mas natural desirle a mi parte son vuestros mis hijos y no de Lorenzo, relevante prueba és sean de del predho. Ratzal, q.e confiesa su ilisito trato, q.e no de q.n se infiere...

CHAPTER 6: *EN QUIEN LA IGNORANCIA Y RUSTICIDAD CAMINAN JUNTAS: INDIANNESS, INCEST, AND CRIMINALITY IN LATE COLONIAL GUATEMALA*

1. Similar to Robert Buffington's (2001: xi) use of the term "criminality," it's use here is intended to highlight the constructed nature of criminal matters.

2. The English priest Thomas Gage (1958 [1648]: 202) notes of his travels in Guatemala that "[h]ad not these Indians been given to drunkenness (as most Indians are), they might have governed a town of Spaniards." This comment strongly hints at how stereotypes could be used to justify Spanish colonialism.

3. Penyak (2016: 180) similarly notes that lawyers and judges made references to indigenous background, socioeconomic class, and lack of education in Mexican incest cases.

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4. Accordingly, youths under the age of seventeen were also thought to act with less malice and were therefore deserving of lighter penalties (see, for example, Case 38).

5. *...la rusticidad, é ignorancia de los Indios; principalm.te de las Mugerres...p.r esta razon no hay en los de esta clase el mismo dolo y malicia q.e en los de la otra para delinquir...conforme á lo prebenido p.r las Leyes, no debe imponerse la misma pena á los Indios, q.e a los Ladinos, sino q.e aquellos deben ser juzgados con equidad, y no con el rigor, q.e disponen las mismas Leyes se jusgue á estos...*

6. *Era pues presiso un impulso, y movimiento, extraordinario de la bondad, y poder de Dios, p.a sostener á Hernandes en una provocacion...tan singular como esta; y mas viviendo junto(s) en donde no podia resistir a los ruegos, y lagrimas, de una Madrastra zelosa, y afligida, q.e hasta la salid(a) á Misa le negaba, p.r pareserle, q.e iba a buscar otr(a) Muger. ¿Que podia pues esperarse de un Pobre Yndi(o); en quien la ignorancia, y rustisidad caminan juntas? El mayor santo huviera caido; co(n) semejante provocacion...*

7. *...parece que debe mirarse con alguna eguidad quando se comete por Yndios, cuia ignorancia funda á su favor la presuncion de no proceder con la malicia que se supone en los de las otras castas.*

8. Reference to this law also surfaces in Case 56.

9. *...deb(e) suponerse mas adelantada su sivilizacion (á lo menos respecto de la Religion Cristiana) q.e en los inmediatos á la Conquista...*

10. *...la torpeza de los Yndios, é indiferencia con que regularm.te ven el delito de incesto, les hace caer en el, q.do la ocasion se les presenta...*

11. *...de la rusticidad de los Yndios y del poco escrupulo con que cometen delitos de esta clase...* It is noteworthy that while Mejía describes himself as *mestizo*, he is elsewhere identified as *indio tributario*.

12. *Se ha dicho ser Ynd.s los delinquentes, con lo q. se dijo todo sobre esta particular, combiniendo el modo con q.e se portan en q.to al sexto, con lo q.e cantó Ovidio de otras gentes muy parecidas á nros. naturales entre las q.e indiferentem.te se mesclaban el Padre con la hija, y el hijo con la madre.*

13. *...aunque es mi padre pero no por eso a de salirse con el echo pues no sera cristiandad ni profesaremos la fe de Jesucristo por lo que pido contra Bisente Fuentes por aber anulado mi matrimonio y el suyo abiendo yegado a tener auto fordadamente con mi muger por dos veces por lo que en meritos de Justicia pido un destierro para toda su bida...prosediendo yo a no juntarme con eya por ninguna manera*

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por que no sera [rr]azon que yo mismo busque esa sal pais. Bien sabe el Senor General el delito que se tiene pues es mi padre, y faltara yo a ser cristiano si n(o) lo hiziera asi y en meritos de Justici(a) pido que lo destierren para toda su vida a un castiyo...que yo estando el no me junto con eya aunque egecuten en si el quastigo que el Senor General mandara...

14. When José said he would “not join her in any way,” he used the verb *juntarse*, which at the time could also refer to sexual intercourse (see *Diccionario de Autoridades*). Elsewhere in the case, it was argued that by saying that he would not join his wife unless his father was banished it was apparent José was open to receiving his wife in his bed and was convinced that the carnal acts were violent in nature.

15. On the other hand, perhaps José was making a reference to areas of salt production. Fuentes y Guzmán ([1690-1699] 1932: vol. 2 in Martínez Peláez 2009 [1970]: 141-142) discusses the detrimental impact of working in the salt pans on one’s health and how highland Indians transported to work in salt pans in lowland areas often fell ill due to the change in climate. In discussing salt production in Amatlán, Thomas Gage (1958 [1648]: 204) mentions how mules were brought there to feed on the “salt earth.”

16. *...pensando se huviese mesclado con otro hombre estraño carnalmente, y resultó que su mismo Padre del que expone Vicente Fuentes, fue el que cometió este crimen, por lo qual se presento a la Justicia para que se le escarmiente.*

17. *...que si era chucha, que si no era su Padre...*

18. Following an appeal, Vicente and Rosalía were assigned new legal representatives. It had originally been suggested that Rosalía serve five years of reclusion and Vicente eight years in prison.

19. *...procuró persuadir a su suegro a fin de que contubiese su impetu, haciendole ver que era su hija politica, y que semejantes procedimientos quedaban para los irracionales, y no se obcerbaban entre Cristianos...pero a pesar de esto Fuentes no hizo caso de estos combencimientos tan naturales, y por el contrario la insistia a que no tubiese miedo...*

20. *...no supo lo que se hizo, ni la gravedad del pecado que cometa, y pide se le mire con commiseracion.*

21. *Pero que queremos que practiquen unas jentes yncultas, unas jentes ynbrutesidas, unas jentes sin temor, ni respeto á D.s pues esta en desir, que los Yndios p.r mas cognato q.e pongan sus Curas en ynstruirlos, estan hasta el dia por conquistar...*

22. *...falto de los principios racionales se deliberó á pecar...*

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23. *Aunque Yndio rustico Vicente, y sin las luces necesarias de religion, despues de cometido su delito, lo conoció, é infirió su gravedad, y p.r esto impuso á su nuera perpetuo silencio, creyendo q.e con esto todo se havia concluido, y hechadosele trra. y q.e con no bolverla á solicitar mas, cumpliria con Dios, y con la lealtad q.e debia guardar á su hijo: tales son los sentimientos sencillos, y nada maliciosos de los Yndios en esta parte, pues como en ellos no resplandecen las luces de religion y caridad, q.e en los cultos, se hacen acrehedores á la conmisericion.*

Charity is a theological virtue that refers to loving God above all things for his sake and loving others for God's sake. Religion, a moral virtue with which God is revered, is born from the theological virtue of Charity. See, for example, *Diccionario de Autoridades*.

24. *Quantos exemplos se leen en las Historias, de Mugerres que habiendo cuidado extrahordinariamente de la pureza, han caido por ultimo en las artificiosas trampas de un disoluto; y quien no advierte, que aunque sus cuerpos quedaron manchados, sus virtudes se han hecho mas admirables.*

25. *...la union corporal de Padres é hijas era la mas monstruosa, vista solamente entre los animales.*

26. *Los r sper s de su Padre, y  l tem r de no levantar la la mano contra el, la impedirian hacer los esfuerzos posibles en su def nsa; asi como quando un hijo es reprendido de su Padre injustamente, no se atreve   contradecir, ni usar de sus derechos, por el miedo de incurrir en alguna falta.*

27. *No debe dudarse tampoco que la Rosalia Surquiah esta imbuida en el  rro r comun de las gentes idiotas, que   los Padres debe obedecerse hasta en los mandatos pecaminosos; por que su condicion, y principios de gobierno no pronostican otra cosa.*

28. Those who have and keep/defend the grace of God; those who live by faith (see *Diccionario de Autoridades*).

29. *...la sensualidad es la pacion que mas dificilmente se vence; por cuyo motivo aseverare, sin temor de errar, que es el escalon mas trabajoso para los justos, que continuamente exercitan su cuerpo con asperas penitencias, y q.e ha sido la causa del trastorno de ilustratos entendimientos... Y haciendo tantos extragos, y en tales Personas.  Que se debe esperar de una Yndia rustica sin principios de Religion, que no tiene otra regla para obrar que su propia voluntad?*

30. He had also been sentenced to twenty-five lashes.

31. *...la falta de instruccion y menos malicia q.e ordinariam.te o por lo comun se advierte en las de nuestra clase... Clase can be used as a means to refer to people of a*

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particular *calidad*. For example, see Case 26. *Clase* and *calidad*, then, can be conflated.

32. *...aunque le dijo q.e savia que estava con su ermana en ilicita amistad con palabra de casamiento, le respondio Quachita, q.e no le asia, q.e si resultava preñada se llevaria la criatura a criar a su casa, y con este motivo se metio con él, de q.e a resultado embarasada...*

33. *...p.r su ig(no)rancia nunca penetró el delito q.e cometio n(i) que fuese motibo de q.e se impidiese el casamiento q.e Quachito tenia propuesto a su hermana...*

34. Though he did say that he was not sure “whether they were whole [sisters] or not.”

35. *...concubinato incestuoso con las dos Marias...sabiendo de positivo q.e son ermanas, y q.e semejantes exésos solo entre los irracionales se ven...q.e como hombre fragil, y sin estos sentimientos cristianos, no graduó la enormidad q.e cometia en estos exésos de q.e se le hace cargo...*

36. *...por su calidad é ignorancia se disminuye mucho su criminalidad, y gravedad...*

37. *...temerosa de que su Padre hiciese lo mismo con la que declara lo haviso al Alcalde del lugar, no habiendolo hecho antes por falta de advertencia, y se halla en el dia entregada en otra casa en donde le estan enseñando la doctrina pues su Padre no lo hacia...*

38. *...si acaso es bruto para haber hecho semejante pecado, que sus Padres le criaron, y educaron con temor á Dios.*

39. *Que ninguno Que es hermana de Madre, de Petrona Martel, q.e fue su muger lexitima pero q.e heran hijas de distintos Padres.*

40. *Que como tonto q.e es, no save...Que lo hizo con el fin de casarse y como tonto no savia lo q.e hacia.*

41. *...si se considera el Idiotismo que es tan proprio en los de su clase, y calidad.*

42. *...q.e todo és verdad; pero q.e como era tonta, no sabia lo mal q.e hacia, hasta ahora q.e se lo han dicho.*

43. *...no puede ignorarlo, p.r ser cosa muy sabida aun entre las gentes mas burdas q.e el trato torpe de un mismo hombre con dos hermanas carnales es un nuevo*

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delito, á mas de el de la simple fornicacion, y q.e en el p.r sus circunstancias de saber leer y escribir, y la de haverse rosado con gentes no se puede suponer la ignorancia q.e aparenta...

44. This does not include incidents where individuals were unaware due to intoxication, did not realize their relatives had a sexual relationship with the same person as them, or misunderstood the nature of a relationship like when Domingo Morales from Chapter Four did not believe his deceased wife was the sister of the woman he wanted to marry.

45. *...hombre q.e es esto somos cristianos asi se cumple la Ley de Dios como es esto con tu hija...*

46. *...entre los Yndios y los que se crían a estilo de ellos, el delito de incesto, lo mismo q.e la embriaguez (como dice el P.e Avendaño, y apunta el S.or Solo(r)zano) no es de los pecados de mayor gravedad, por no tener la comprehension de su malicia...*

47. *...el incesto cometido p.r Manuel Salvatierra con su hija legitima Manuela es uno de aquellos delitos mas avominables q. puedan contarse entre los lasibos pues aun la misma naturaleza se orroriza de ellos.*

48. *...q. el pecado de inesto es casi tan comun entre los Yndios como el de la embriaguez; pero el q. se comete en el primer grado de Padre con hija aun entre los Yndios gentiles se vio con repugnancia...*

49. Following Montenegro (1771[1668]), such groups of people were to be more subject to correction for actions against the Law of Nature than those against Canonical Law due to their ignorance of the latter.

50. *...un hombre á quien naturalm.te debe respetar y temer.*

51. Though this is similar to the argument against Manuel Aldana that was mentioned above, it is significant that in this case a specific group of people is identified, since their descendants form a segment of the colonial population.

52. *...estava ebrio en terminos de no saver lo que hacia...*

53. *...no ha cometido tal delito, a menos que lo haya executado bolo, y no se acuerde.*

54. *...que nunca estava ebrio, aunque algunas besses havia tomado aguardiente, y q.e nunca há padecido de locura ni de ótra falta de sentidos...*

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55. *...que pensando que era su muger tubo acto carnal con su hija de lo que se arrepintio al dia siguiente.*

56. *Es constante, que Garcia tuvo un simple acceso con su hija; pero igualm.te lo es, q.e fué estando fuera de si, ó en terminos, q.e no sabia lo que hacia; p.r q.e se hallaba poseido de la ebriedad...cuya circunstancia es bastante en el concepto legal p.a escusarle de la pena ordinaria...*

57. *Que quando el suceso no estava bolo p.r entero sino es medio tomado, y p.r eso se acuerda que la muchacha le dio palabra en aquel acto...*

58. *...nunca pudiera haver condesendido siendo hasi que no savia por razon de su estado p.a que pudiera combidarla...*

59. *...q.e es seg.do estim[ulo] [a] lo accidental y fuerza decresiente contr[a] la devilidad, y fragil resistencia, q.e dej[a] supuesta...*

CHAPTER 7: CONCLUSION

1. Research into “alternative” sexualities in colonial Latin America has gained momentum in recent years. See, for example, Sigal (2007), Few (2007), Tortorici (2007), and Lewis (2007).

2. In Guatemala, civil marriage and divorce was formalized in 1836 and 1837 only to be returned to ecclesiastical jurisdiction a few months later following a rebellion that ousted the liberal government. It was not until 1877 that the state was again granted shared jurisdiction over marriage and divorce (Komisaruk 2013: 248-249).

3. This included the wife of an adoptive father, and presumably, the husband of an adoptive mother.

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