

## Gloria's Story: Adulterous Concubinage and the Law in Twentieth-Century Guatemala

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Gloria Peralta and Julio Díaz (not their real names) started living together, sort of, early in 1963, in Quetzaltenango, Guatemala. She was single. He was married to another woman. He was thirty-six. She was fourteen. In Gloria's words, she and Julio "lived together maritally" for several years and produced two children. But Julio neither divorced nor left his wife. Instead, he split time between the household containing his wife and three children and the one containing his concubine (Gloria) and two children.<sup>1</sup>

1. The names of this essay's principal subjects have been changed in order to protect privacy. Information in this paragraph comes from Proceso de Gloria María Peralta Valderrama, Proceso No. 44, 854, Ramo Penal, Juzgado Segundo de Primera Instancia, Quetzaltenango, iniciada 12 de septiembre de 1968, Palacio de Justicia, Quetzaltenango. Hereafter cited as

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This example of adulterous concubinage is worth exploring in detail, for it both illustrates the interactions between law and family in twentieth-century Latin America and serves as a cautionary tale about the unintended consequences of legal modernization.

Julio's simultaneous maintenance of two households was an entirely gendered act. All evidence suggests that thousands of Guatemalan men at the time, but few, if any, Guatemalan women, openly did likewise. The act epitomized stereotypical Latin American "machismo" and the sexual double standard.<sup>2</sup> Despite its infamy and cultural significance, however, Latin American adulterous concubinage has attracted little legal-historical attention.<sup>3</sup> In part, this has to do with the double meaning of the term

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"Proceso de Gloria Peralta." My thanks to the late Carlos Morales of the Palacio de Justicia for helping me to find this document.

2. Matthew C. Gutmann affirms the centrality of adulterous concubinage to popular understandings of "macho" and "machismo" in Latin America during the period under study. For instance, Gutmann quotes prominent Mexican writer Carlos Monsiváis's discussion of standard mid-twentieth-century conceptions of what it meant to be "macho": "I have four women [*viejas*]*—that is being very macho.*" Matthew C. Gutmann, *The Meanings of Macho: Being a Man in Mexico City* (Berkeley: University of California Press, 1996), 229. Monsiváis's original word was *viejas*, or "old ladies." Gutmann translated this in the English version of his book as "wives." The translation that I offer here—women—seems more accurate, give the absence of a tradition of plural marriage in Mexico. Gutmann's analysis makes clear that stereotypes do not capture the range, variability, and complexity of "macho" and "machismo." It also suggests that "macho's" meanings have changed since Gloria and Julio's day. See also Roger N. Lancaster, *Life Is Hard: Machismo, Danger, and the Intimacy of Power in Nicaragua* (Berkeley: University of California Press, 1992).

3. When it comes to the history of adulterous concubinage in Latin America, scholars have done a much better job with the colonial period than with the national period. In particular, historians of colonial concubinage have emphasized: the role of the Catholic Church; the gender, racial, and imperial hierarchies that marked relations between European men and indigenous and African women; and the *mestizaje* (race-mixing) that resulted. For discussions of colonial concubinage and the Catholic Church, see Sarah Cline, "The Spiritual Conquest Reexamined: Baptism and Christian Marriage in Early Sixteenth-Century Mexico," *Hispanic American Historical Review* 7.3 (1993): 453–80; Richard E. Greenleaf, "Persistence of Native Values: The Inquisition and the Indians of Colonial Mexico," *The Americas* 50.3 (January 1994): 351–76; Guiomar Dueñas, "Adulterios, amancebamiento, divorcios y abandono: La fluidez de la vida familiar Santaferña, 1750–1810," *Anuario Colombiano de Historia Social y de la Cultura* [Colombia] 23 (1996): 33–48; Fernando Torres Londoño, "El concubinato y la iglesia en el Brasil colonial," *Cristianismo y Sociedad* 27, 3a época, no. 102 (1989): 7–32. Regarding gender, racial, and imperial hierarchies, see Pablo Rodríguez, *Sedución, amancebamiento y abandono en la colonia* (Bogotá, Colombia: Fundación Simón y Lola Guberek, 1991); Muriel Nazzari, "Concubinage in Colonial Brazil: The Inequalities of Race, Class, and Gender," *Journal of Family History* 21.2 (1996): 107–24; Muriel Nazzari, "Casamento e Concubinato no Brasil Colonia: O Exemplo de Jose Antonio Sa Silva," *Revista da Sociedade Brasileira de Pesquisa Histórica* [Brazil] 16 (1999): 21–29; Ronald Hyam, "Empire and Sexual Opportunity," *Journal of Imperial*

“concubinage.” As popularly understood, and as employed in this article, “concubinage” refers to long-standing sexual, economic, and family relationships between married men and single women. In Latin America, the term conveys images of the notorious “*casa chica*” (little house), or “*sucursal*” (branch office). Julio’s two households typify this understanding of the term.

“Concubinage,” however, also has a second and much less precise meaning: out-of-wedlock cohabitation generally. Regrettably, scholars of twentieth-century Latin American law consistently employ this second definition. Some of these scholars lump under the single heading “concubinage” both adulterous cohabiters and the much larger pool of single people who “live maritally without being married.”<sup>4</sup> Other scholars count as “concubines” all extra-conjugal couples *except* those whose relationships are adulterous.<sup>5</sup>

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*and Commonwealth History* [Great Britain] 14.2 (1986): 34–90; Alvin Thompson, “Dutch Society in Guyana in the Eighteenth Century,” *Journal of Caribbean History* [Barbados] 20.2 (1985–86): 169–91; and Steve J. Stern, *The Secret History of Gender: Women, Men, and Power in Late Colonial Mexico* (Chapel Hill: University of North Carolina Press, 1995), 82, 86–91, 101, 133–34. For works on colonial concubinage and *mestizaje*, see Eufemio Lorenzo Sanz, “El mestizaje en hispanoamérica,” *Cuadernos de Investigación Histórica* [Spain] 4 (1980): 17–29; Thomas Calvo, “Concubinato y mestizaje en el medio urbano: El caso de Guadalajara en el siglo XVII,” *Revista de Indias* [Spain] 44.173 (1984): 203–12; Daisy Rípodas Ardanaz, *El matrimonio en Indias: realidad social y regulación jurídica* (Buenos Aires: Fundación para la Educación, la Ciencia y la Cultura, 1977), 364–70; and Eva Alexandra Uchmany, “El mestizaje en el siglo XVI novohispano,” *Historia Mexicana* [México] 37.1 (1987): 29–48.

4. Humberto Pinto Rogers, *El concubinato y sus efectos jurídicos* (Santiago, Chile: Editorial Nascimento, 1942), i. See also Oscar Borgonovo, *El concubinato en la legislación y en la jurisprudencia* (Buenos Aires, Argentina: Editorial Hammurabi, 1980). Other studies of modern Latin America that employ the broader “out-of-wedlock-cohabitation” definition of “concubinage” include the following: Flavio Galván Rivera, *El concubinato en el vigente derecho mexicano*; Vega, “Causas del concubinato en América Central,” 424–40; Gustavo A. Bossert, *Régimen jurídico del concubinato, 3a edición actualizada y ampliada* (Buenos Aires: Editorial Artrea, 1990); A. Sanchez-Cordero, “Cohabitation without Marriage in Mexico,” *The American Journal of Comparative Law* 29.2 (Spring 1981): 279–84; María Del Mar Herrerías Sordo, *Concubinage in Present-Day Mexico*, trans. Beatrice Berler (San Antonio, Texas: Burke Publishing Co., 1999); and Blanca DeLeón Regil Gutiérrez, “La unión de hecho en su aspecto social” (Thesis. Departamento de Servicio Social, Universidad Rafael Landívar de Quetzaltenango, 1970). Scholarship on Puerto Rico does tend to distinguish between out-of-wedlock cohabitation generally and adulterous concubinage (which they call “queridato”) particularly, perhaps because the latter remains illegal there. See Belén Barbosa de Rosario, “Consideraciones en torno al concubinato, las comunas y el derecho de la familia,” *Revista Jurídica de la Universidad de Puerto Rico* 42.3 (1973): 345–424, esp. 350–52; and Julio Rubén Padilla Montalvo, “El matrimonio no formalizado en Puerto Rico,” *Revista de Derecho Puertorriqueño* 38 (1999): 355–83.

5. “Let us note with utter precision,” writes Flavio Galván Rivera in a typical study of Latin American concubinage, “that by ‘concubinage’ we do *not* mean adulterous relationships

Consequently, although studies of out-of-wedlock cohabitation in Latin America abound, the *adulterous* variety remains under-explored, despite its centrality to the sexual double standard, stereotypical machismo, and other important elements of Latin American gender and family history.

Another explanation for this dearth of legal-historical scholarship is the obscurity of its paper trail. Both the institution's legality and its informality have covered its footprints, discouraging scholarly inquiry. Unlike, say, "corrupting a minor," adulterous concubinage was not a crime in twentieth-century Guatemala; hence, it left no traces in the criminal archives. And unlike, say, marriage, it was informal and thus made no imprint on the civil registry or the national census. Shrouded by legality and informality, the institution flourished while leaving no official record of its existence.<sup>6</sup>

To mitigate these research problems, this article employs the methodology of "microhistory." Microhistory reduces the scale of observation, exposing elements obscured in—or missing from—traditional aggregate data.<sup>7</sup> The article seeks to open legal-historical inquiry into adulterous concubinage in modern Latin America through a detailed, contextualized study of one married man (Julio), his concubine (Gloria), and the ways in which their private lives intersected with Guatemala's legal system.

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[emphasis added]." Flavio Galván Rivera, *El concubinato en el vigente derecho mexicano* (Mexico, D.F.: Editorial Porrúa, 2003), 6. Similarly, Nerio Perera Planas defines concubinage as: "A union between a man and a woman who have no legal impediments to marrying each other, who live privately and publicly as if married, in a permanent way." Nerio Perera Planas, *El concubinato* (Maracay, Venezuela: Editorial Aragua, 1983), 23. Scholars define "concubinage" this way "notwithstanding the popular usage of the term 'concubine' to refer to the female lover of a married man." Juan Ramón Vega, "Causas del concubinato en América Central," *Estudios Centro Americanos* 25 (1970): 426.

6. Contrast this situation with that of late nineteenth and early twentieth-century Japan and China, where the persistence of legal control created a substantial paper trail for scholars to pursue. Asako Hiroshi, "The Legal Status of Concubines in Meiji Japan," *Waseda Journal of Asian Studies* [Japan] 19 (1997): 1–13; Lisa Tran, "Monogamy and Concubinage under Modern Chinese Law, 1912–1953" (Ph.D. dissertation, UCLA, 2005). Another useful contrast is that between adulterous concubinage and "*uniones de hecho*" in Guatemala. Since the middle of the twentieth century, unmarried Guatemalan couples have had the legal option of registering themselves as a "union in fact," despite being unmarried. Although very, very few couples exercised this option (other than surviving inheritance-seekers after the deaths of their co-habitants), legal scholarship on "*uniones de hecho*" has proliferated. In contrast, adulterous concubinage, though far more common, has remained below the scholarly radar screen. For a sample of Guatemalan legal scholarship on "*uniones de hecho*," see DeLeón Regil Gutiérrez, "La unión de hecho en su aspecto social"; Neftali Rivera Barrientos, "La unión de hecho, un acto del estado en protección de la familia y su insuficiente legislación en Guatemala" (Thesis. Facultad de Ciencias Jurídicas y Solciales de la Universidad de San Carlos de Guatemala, Guatemala, 1990).

7. Lara Putnam, *The Company They Kept: Migrants and the Politics of Gender in Caribbean Costa Rica, 1870–1960* (Chapel Hill: University of North Carolina Press, 2002), 10.

This emphasis on the links between domestic life and the law in Latin America is in line with recent scholarly trends, to which both legal scholars and social historians have contributed. Many Latin American legal scholars have recently moved beyond narrow doctrinal and institutional themes toward a more broadly social conception of the law. Meanwhile, historians of Latin American gender and family relations have recently added legal explanations to their traditional emphases on economic, demographic, biological, and psychological factors. This legal-historical scholarly convergence has produced sophisticated studies both of state influence on domestic life and of domestic influence on the state.<sup>8</sup>

This article extends these promising approaches to a new front: adulterous concubinage. It comes to an unexpected conclusion: that legal reforms adopted in Guatemala since the mid-nineteenth century in the name of modernization, social equality, family protection, women's rights, and the best interest of children have, on balance, bolstered, not suppressed, the sexist institution of adulterous concubinage. Between the mid-nineteenth century and the mid-twentieth century, two changes—the decriminalization of husbands' adultery and the disappearance of the legal distinction between "legitimate" and "illegitimate" children—removed the principal legal disincentives associated with adulterous concubinage. Since the mid-twentieth century, legal efforts designed to protect families, single mothers, and poor children have, on balance, strengthened the ties connecting adulterous concubines to each other. These findings challenge the common-sense assumption that "progressive" legal reforms would naturally discourage so regressive an institution as adulterous concubinage.<sup>9</sup>

8. For examples and further discussions of these trends, see Ricardo D. Salvatore, Julio Aguirre, and Gilbert M. Joseph, eds., *Crime and Punishment in Latin America: Law and Society since Late Colonial Times* (Durham: Duke University Press, 2001); Christine Hunefeldt, *Liberalism in the Bedroom: Quarreling Spouses in Nineteenth-Century Lima* (University Park: The Penn State University Press, 2000), 4–5; Putnam, *The Company They Kept*, 9–13; Ann S. Blum, "Public Welfare and Child Circulation, Mexico City, 1877 to 1925," *Journal of Family History* 23.3 (July 1998): 240–71; and Maxine Molyneux, "Twentieth-Century State Formations in Latin America," in *Hidden Histories of Gender and the State in Latin America*, ed. Elizabeth Dore and Maxine Molyneaux (Durham: Duke University Press, 2000), 33.

9. Historians have typically emphasized the "emancipatory effects" of legal reform in Latin America since Independence. For more on this historiographical point, see Elizabeth Dore, "One Step Forward, Two Steps Back: Gender and the State in the Long Nineteenth Century," in *Hidden Histories of Gender and the State*, 4–5. The present study also disagrees with those who see essential continuity between the "marital and sexual patterns" of the colonial period and those of the nineteenth and twentieth centuries. Carol A. Smith, "Race-Class-Gender Ideology in Guatemala: Modern and Anti-Modern Forms," *Comparative Studies in Society and History* 37.4 (Oct. 1995): 732.

Beyond gender and family history, this article invites a rethinking of the role of law in twentieth-century Guatemala—and, by extension, the role of law in similar societies. Guatemala's legal system has often been dismissed as either a blunt club used for top-down oppression or a meaningless fig leaf that few took seriously. In light of the abuses and injustice that have disfigured Guatemala's modern history, these assumptions certainly appear credible. But this article suggests that they do not represent the whole truth. The legal system sketched in the following pages was, at the time of our story in the mid-1960s, both surprisingly liberal—that is, unexpectedly attentive to plight of the poor and powerless—and surprisingly open to popular participation. The system invited decidedly non-elite people—Gloria and Julio among them—to pursue their interests by initiating criminal and civil suits. More tellingly, such people did so, in large number. Widespread popular participation in the legal system at the local level affected both the public course of legal history and the private lives of litigants. It also may have increased the population's stake in the existing order, enhancing the resilience of a governing system that in other ways was terribly unjust.<sup>10</sup>

### Julio and Cristina/Julio and Gloria

On St. Patrick's Day, 1960, Julio Pedro Pablo Díaz Díaz and Cristina Soto Flores got married in Quetzaltenango, Guatemala. Quetzaltenango, the nation's "second city," was the economic, political, and cultural hub of Guatemala's coffee-growing western highlands.<sup>11</sup> Quetzaltenango's population of about forty thousand was dwarfed by Guatemala City's half-million, but was almost twice as large as the population of any other city in the country.<sup>12</sup> Like all Guatemalan cities at the time, Quetzaltenango was growing rapidly; rural migrants flocked there to take advantage of its rela-

10. The legal actions of those initiating cases were driven by individual motivations, but reflected—and helped to shape—wider social processes. For additional discussion of such matters, see Sueann Caulfield, *In Defense of Honor: Sexual Morality, Modernity, and Nation in Early-Twentieth-Century Brazil* (Durham: Duke University Press, 2000), 14; Hunefeldt, *Liberalism in the Bedroom*, 5; Gilbert M. Joseph's "Preface" to *Crime and Punishment in Latin America*, ed. Salvatore et al., ix–xxi; and Laura Gotkowitz, "Trading Insults: Honor, Violence, and the Gendered Culture of Commerce in Cochabamba, Bolivia, 1870s–1950s," *Hispanic American Historical Review* 83.1 (2003): 88.

11. Greg Grandin, *The Blood of Guatemala: A History of Race and Nation* (Durham: Duke University Press, 2000), 161.

12. *VII Censo de Población, 1964* (Guatemala: Dirección General de Estadística, 1971), tomo I, 53, Cuadro XII.

tively favorable economic and social conditions.<sup>13</sup> Both groom and bride in the 1960 St. Patrick's Day wedding were migrants. Julio Díaz was a thirty-three-year-old native of Totonicapán. Cristina Soto was a twenty-five-year-old native of Génova.<sup>14</sup>

The decision to wed was not common in their day. Only about one in four Guatemalan adults at the time was formally married, though this figure was rising rapidly. Among adults counted in the 1964 national census, taken four years after Julio and Cristina's wedding, "marrieds" ranked behind both "singles" and "uniteds"—those living together but not formally married.<sup>15</sup> But Julio and Cristina took the plunge. Like all wedding-day couples, they must have dreamt of a happy future together. He would support them by painting houses; she would care for their home. Exactly nine months and twelve days later, their first child, a son, was born.<sup>16</sup>

But Julio had a weakness for younger women—a group that, due to robust demand for domestic labor, abounded in Quetzaltenango and other mid-twentieth-century Guatemalan cities. (Among the urban population of the Department of Quetzaltenango in 1964, for instance, females accounted for about 50 percent of ten-year-olds but 56 percent of twenty-year-olds.)<sup>17</sup>

13. For a record of the rapid population growth demonstrated by Quetzaltenango and Guatemala's other cities during the mid-twentieth century, see *VII Censo de población, 1964*, tomo I, 62–62, Cuadro XV, "Población total y tasa media anual de crecimiento geométrico intercensal según municipio, censos 1950 y 1964." Rates of literacy and shoelessness suggest why rural migrants were attracted to Quetzaltenango and other Guatemalan cities. As of the mid-1960s, literacy rates were twice as high in Quetzaltenango as in the country as a whole; shoeless rates were only half as much. See *ibid.*, tomo II, Tabulación 12, 449; and tomo II, Cuadro XXXIV, 114 [the city of Quetzaltenango's 75 percent literacy rate was about twice as high as the national average]. For shoelessness, see *ibid.*, tomo II, Tabulación 20, 804; and tomo II, Tabulación 21.

14. Registro de Matrimonios, tomo 16, p. 303, certificado no. 363, Registro Civil, Quetzaltenango, Guatemala.

15. The 1950 census, taken ten years prior to Julio and Cristina's marriage, reported the following numbers for Guatemalan adults: 19 percent married, 37.2 percent single, 38.5 percent "united" with a member of the opposite sex, but not formally married. By the 1964 census, a few years *after* Julio and Cristina's wedding, Guatemalan marriages were more common than they had been, but still not commonplace: 25.4 percent married, 34.8 percent single, 34.4 percent "free unions." The 1950 Guatemalan census numbers come from Vega, "Causas del concubinato en América Central," 426. The 1964 census numbers appear in Cuadro II, 1.3, "Población de 14 años y más, por estado civil, Censo de 1964," *Anuario Estadístico 1970* (Dirección General de Estadística, Ministerio de Economía, República de Guatemala, 1970), 29.

16. See the birth record of Marcos Alejandro Díaz Soto, 29 December 1960, Registro de Nacimientos, tomo 67, p. 483, no. 961, Registro Civil, Quetzaltenango.

17. These figures probably underestimate the feminization of the twenty-year-old population of the city of Quetzaltenango, since they represent the urban populations of all cities in the Department of Quetzaltenango, including both the city of Quetzaltenango and several

Apparently, Julio's marriage to a woman who, though probably of his social class,<sup>18</sup> was eight years his junior, did not satisfy him. In 1962, the year in which the married couple's second child, a daughter, was born,<sup>19</sup> Julio, then in his mid-thirties, became involved with a teenager. Gloria María Peralta Valderrama was just fourteen, *twenty-two* years younger than her married admirer. In January 1963, Gloria and Julio began "living maritally." She became, in her later words, "his concubine."<sup>20</sup>

Gloria was not unique. According to the Guatemalan census, between 3 and 4 percent of fourteen-year-old Guatemalan women at the time were either married to or living with men.<sup>21</sup> Nonetheless, fourteen is young to "live maritally"—so, in any event, thought the authors of the then-valid Guatemalan Civil Code of 1933. That code established eighteen as the age below which persons could not freely contract marriage. A loophole, however, enabled females as young as fourteen (and males as young as sixteen) to marry, as long as they first obtained parental consent.<sup>22</sup> Age would not necessarily have prevented Julio and Gloria from marrying.

Julio's marriage to Cristina, however, *would* prevent him from marrying Gloria. Guatemala prohibited plural marriages absolutely.<sup>23</sup> Gloria and Julio could wed only if his existing marriage ended. Cristina's death would have done the trick. But she lived—and, for the record, Gloria and Julio could not have murdered her without sacrificing, among other things, their legal standing to marry each other.<sup>24</sup>

Divorce was an alternative. Because Julio was a man, it was an especially feasible one. The Guatemalan civil code unabashedly treated men

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smaller municipalities. In the latter category, demand for domestic labor was probably less pronounced than in the city of Quetzaltenango itself. See *VII Censo de Población, 1964*, tomo I, 184, Cuadro 2–1.

18. Guatemalan wives "mostly come from the same . . . class background as the men they marry." Smith, "Race-Class-Gender Ideology in Guatemala," 735.

19. Registro de Nacimientos, tomo 70, p. 9, no. 14, Registro Civil, Quetzaltenango.

20. "Proceso de Gloria Peralta." Although this document is not paginated, the quoted words appear at the fiftieth page of the copy in the author's possession.

21. According to the 1950 census, 4 percent of fourteen-year-old Guatemalan women were either formally married (0.6 percent) or informally "united" to men; by the time of the 1964 census, that figure had dropped to 3.3 percent (with 0.6 percent married). *VII Censo de Población, 1964* (Guatemala: Dirección General de Estadística, 1971), tomo I, Cuadro XXI, 81.

22. If parents were not available to give their consent, guardians could do so. If guardians were unavailable, judges could do so. *Código Civil de la República de Guatemala, 1933*, Artículos 86, 95, and 95. Nineteenth-century minimum marriage ages, with parental consent, were even lower: twelve years for girls, fourteen for boys. *Código Civil de la República de Guatemala, 1877*, Art. 120, sec. 1.

23. *Código Civil de la República de Guatemala, 1933*, Art. 93, sec. 1.

24. *Ibid.*, Art. 95, sec. 6.

and women unequally. Among other things, it forced ex-wives, though not ex-husbands, to postpone remarriage for at least three hundred days following marital dissolution.<sup>25</sup> Being a man, Julio, in theory, could have divorced at noon and remarried at 12:01 the same day. Furthermore, divorce was fairly accessible. Guatemala allowed it either by the couple's "mutual agreement" or by the aggrieved spouse's initiative for any of a series of causes, the first of which was infidelity.<sup>26</sup> Cristina and Julio's failure to act suggests that divorce was not their preference. They may have been discouraged by the stigma that accompanied divorce. In a country whose religious life was dominated by Catholicism and, increasingly, Evangelical Protestantism,<sup>27</sup> formal marital termination was extremely rare. The 1964 census counted only 0.55 percent of Guatemalan adults as "divorced."<sup>28</sup> Furthermore, although Julio may have wanted a divorce, as he appears to have suggested to Gloria at some point during their time together, he also may cynically have told Gloria what he thought she wished to hear, while secretly planning to remain married.

Julio's preference, however, counted less than Cristina's, since she was the aggrieved party. Divorce was an option only if she approved. As we shall see, she certainly realized that her husband had a concubine, and probably resented it greatly. But she apparently concluded that, although marriage to an adulterous husband may have been bad, it was preferable, given existing social and economic circumstances, to single motherhood.<sup>29</sup> Cristina and Julio remained married.<sup>30</sup>

25. *Ibid.*, sec. 3. Women who gave birth during the waiting period did not have to wait the full three-hundred days. If the marriage broke up due to the husband's impotence, the wife could remarry immediately.

26. *Ibid.*, Art. 123, sec. 1; Art. 124, sec. 1. Interestingly, infidelity ceased to be a legitimate cause of divorce if the wronged spouse consented to it in advance or if the married couple continued to cohabit once the wronged spouse learned of the infidelity. *Código Civil de la República de Guatemala, 1933*, Art. 126.

27. According to the 1964 census, Guatemala's rapidly growing "non-Catholic Christian" population accounted for about 9 percent of the population, up from just 3 percent in 1950. Evangelical Protestantism would continue to grow robustly in Guatemala in subsequent years. *VII Censo de población, 1964* (Guatemala: Dirección General de Estadística, 1971), tomo II, 136, Cuadro LV, "Porcentaje de la población total según religión, 1940, 1950, 1964."

28. Cuadro II-1.3, "Población de 14 años y más, por estado civil, Censo de 1964," *Anuario Estadístico 1970* (Dirección General de Estadística, Ministerio de Economía, República de Guatemala, 1970).

29. Cristina was not the first woman to come to the same conclusion. For a discussion of the notable tendency of betrayed Guatemalan wives to stay with disloyal husbands, see Judith N. Zur, *Violent Memories: Mayan War Widows in Guatemala* (Boulder: Westview Press, 1998), 58. For a discussion of the same phenomenon in late colonial Colombia, see Dueñas, "Adulterios, amancebamientos, divorcios y abandono," 38.

30. The birth of another baby to Julio and Cristina after the beginning of Julio's relationship

The result was adulterous concubinage. Julio established two domiciles: one for his wife and children, the other for his mistress and children. Both women, meanwhile, stayed with Julio, even after they learned about each other.

Julio and Gloria were not unique. Although the absence of official records makes it impossible to know precisely how widespread adulterous concubinage was at the time, the Guatemalan census suggests that it was not particularly uncommon. The 1964 census, compiled the year after Gloria and Julio started living together, asked respondents ages fourteen and up to place themselves into one of five “civil status” categories: single, married, “united” (unmarried but living together), widowed, and divorced. Participants who were “attached”—that is, in long-term relationships with members of the opposite sex—should have checked either “married” or “united.” If perfect monogamy prevailed, the total number of attached (married or united) women would have precisely equaled the total number of attached men. Relationships of adulterous concubinage, however, would have created an imbalance by adding more women than men to the “attached” total. When census workers went door-to-door in 1964, for instance, Cristina surely reported herself as “married,” Julio probably did likewise (although he conceivably could have answered “united”), and Gloria, whose first baby was born that year, likely reported herself as “united” (although nothing would have stopped her from saying “single” or even “widowed,” as some single mothers historically have done).<sup>31</sup> If Cristina, Julio, and Gloria reported married/married/united, as seems likely, they would have increased the “attached” total by two women but only one man.

The 1964 numbers suggest that adulterous concubinage was indeed a measurable presence in Guatemala. Although adult men slightly outnumbered adult women in the 1964 census, “attached” (married or united) women outnumbered attached men by over twenty-three thousand. Adulterous concubinage was not the only factor contributing to this imbalance. For cultural reasons, some attached but unmarried men may have self-reported “single,” while their female lovers, especially if expecting or raising children, may have told census canvassers that they were “united” or “married.” Nonetheless, as the Cristina-Julio-Gloria example suggests, adulterous concubinage contributed to the imbalance. In all likelihood,

with Gloria—indeed, after the birth of Julio and Gloria’s first child—demonstrates the continuation of Julio and Cristina’s marriage. Birth certificate of Juan David Díaz Soto, born 1 Feb. 1965, Registro de Nacimientos, tomo 77, p. 833, no. 660, Registro Civil, Quetzaltenango.

31. See Carmen Castañeda, “La formación de la pareja y el matrimonio,” in *Familias Novohispanas: Siglos XVI al XIX* (México, D.F.: El Colegio de México, 1991), 81.

thousands, if not tens of thousands, of Guatemalan women joined Gloria and Cristina in sharing men at the time of the 1964 census.<sup>32</sup>

If Julio and Gloria's relationship was at all typical, adulterous concubinage, in addition to being fairly widespread, was open and unconcealed. There was nothing secret about Julio's two households. Each woman knew about the other. Friends, relations, and neighbors knew about them both. The two street addresses that Julio listed on the birth certificates of his first three children—two of which he had with Cristina, the third of which he had with Gloria—reveal how open his double family life was. According to these birth certificates, Julio's "Cristina" household was located in Quetzaltenango's low-lying Parque Bolívar neighborhood, east of downtown. His "Gloria" household was located there, too. Cristina and Julio lived on Third Avenue at Fifth Street; *Gloria* and Julio lived on Fifth Street at Third Avenue. The two domiciles, in other words, were right around the corner from each other, separated by a mere one hundred meters or so.<sup>33</sup> Cristina, Gloria, and everyone else in the neighborhood undoubtedly knew that Julio had two families. (Significantly, by the time Cristina gave birth to her third and final child, she and Julio had moved uptown to a more

32. "Cuadro XXI. Población masculina de 14 años y más, por estado civil, según grupos quinquenales de edad, censos 1950 y 1964," and "Cuadro XXII. Población femenina de 14 años y más, por estado civil, según grupos quinquenales de edad, censos 1950 y 1964," *VII Censo de Población, 1964* (Guatemala: Dirección General de Estadística, 1971), 80–81. Adult men accounted for 50.39 percent of the total adult population reported in the 1964 census. (The 1964 census counted 1,227,427 men ages fourteen and over and 1,208,618 women ages fourteen and over.) Nonetheless, women outnumbered men in four out of the five "civil status" categories. Women predominated in married, united, widowed, and divorced. Men predominated only in the "single" category. All other post-World War II Guatemalan censuses replicate this pattern of imbalance. Consistently, men led women in the "single" category and trailed women in all others. Adulterous concubinage helps to explain this consistent pattern of imbalance. The Guatemalan census used the "canvasser" method of data collection, whereby paid census workers went door-to-door asking questions of residents, rather than the "householder method" of data collection, whereby residents fill out pre-distributed forms. The "canvasser" method, though more labor-intensive and expensive, was deemed better suited to developing counties such as Guatemala, where illiteracy rates were high. See René Arturo Orellana González, "Estudio sobre aspectos técnicos del Censo de Población" (Thesis. Universidad Autónoma de San Carlos de Guatemala, Facultad de Ciencias Económicas, 1950), 54–56.

33. *Ibid.* The author has changed the street names in order to protect the privacy of his subjects. The true addresses are in the author's possession. For confirmation of Julio's two street addresses, see the birth certificates of his first four children, two of which he had with Cristina, and two of which he had with Gloria. All four birth certificates are available at the Registro Civil in downtown Quetzaltenango. The certificates are filed as follows: Registro de Nacimientos, tomo 67, p. 483, no. 961; Registro de Nacimientos, tomo 70, p. 9, no. 14; Registro de Nacimientos, tomo 77, p. 518, no. 31; Registro de Nacimientos, tomo 82, p. 30, no. 56.

expensive neighborhood near the municipal theater. Conflicts between the two women—common between wife and concubine—may have occasioned the move. One can imagine Cristina insisting that she, as the wife, deserved the privilege of moving uptown. Whatever prompted Cristina's move, she probably was happy to leave Gloria behind in the Parque Bolívar.)<sup>34</sup>

Although we cannot be sure of Julio's and Gloria's respective motivations for entering adulterous concubinage, we can speculate. Julio likely saw public and private benefits. The private side of concubinage offered him sex, companionship, progeny, and refuge from marital storms.<sup>35</sup> The public side of concubinage, meanwhile, offered him social prestige. He could show his world that he was masculine and successful: macho enough to "conquer" (in common parlance) two women, virile enough to sire two broods, wealthy enough to support two households.

One hesitates to treat Gloria's choice to enter concubinage as either deliberate or rational, so great was the initial power imbalance between her and Julio. Gloria likely came from a lower social class than he did.<sup>36</sup> She was also just fourteen at the time, twenty-two years his junior. Moreover, Julio could conceivably have raped her or otherwise used violence to make her submit to concubinage, though there is no evidence that he did so. (He did hit her years later, according to Gloria; but no evidence exists to suggest that violence or coercion accompanied the beginning of their relationship.)<sup>37</sup> Nonetheless, it is at least possible that some of the "private" benefits that seemingly appealed to Julio—sex, companionship, progeny—appealed to Gloria, too. Gloria may also have perceived concubinage as an economically and socially sensible option. In a place such as mid-twentieth-century Guatemala, where wealth was both scarce and concentrated, and where women's working options were limited, a poor woman who wanted children did not necessarily act irrationally by partnering with a married man wealthy enough to support two families instead of a single man too poor to support even one. Some scholars also

34. Birth certificate of Juan David Díaz Soto, Registro de Nacimientos, tomo 77, p. 833, no. 660, Registro Civil, Quetzaltenango. For an analysis of the conflict that typically marks relations between concubines and wives of the same man, see Smith, "Race-Class-Gender Ideology in Guatemala," 736.

35. For historical precedent for such thoughts, see Durñas, "Adulterios, amancebamientos, divorcios y abandono," 39.

36. Smith, "Race-Class-Gender Ideology in Guatemala," 723–49; Durñas, "Adulterios, amancebamientos, divorcios y abandono," 35–36; and Vega, "Causas del concubinato en América Central," 426.

37. Juicio oral de alimentos contra Julio Pedro Pablo Díaz, iniciado por Gloria María Peralta, Juicio No. 857, Juzgado de Familia, Ramo de Familia, Departamento de Quetzaltenango, Iniciado el 8 de Marzo de 1967, Palacio de Justicia, Quetzaltenango, Guatemala. Hereafter cited as "Juicio contra Julio Díaz."

have suggested that adulterous concubinage enabled poor women, like rich men, to raise their social status.<sup>38</sup>

Family experiences may also have influenced Gloria. She followed her mother and grandmother into single parenthood. But she did some things differently. Her own biological father never formally “recognized” her as his daughter. This shamed Gloria and it dimmed her economic future. By engaging in stable concubinage, Gloria assured that the same fate did not befall her own children. She may have associated her father’s irresponsibility with his relative youth. He appears to have been in his early twenties when she was born. He also appears to have been four years *younger* than her mother, an unusual circumstance. Gloria’s decision to get involved with a man in his mid-thirties—old enough, perhaps, to have amassed the resources necessary to support two households—may have been an unconscious reaction against her own father’s youthful irresponsibility.<sup>39</sup>

Both Gloria and Julio, thus, may have concluded that the advantages of adulterous concubinage outweighed the disadvantages. Julio’s wife Cristina and her children surely viewed matters differently. For them, Julio’s betrayal was in every way bad. It seriously damaged their economic prospects.<sup>40</sup> Though not unusual, it nonetheless was shameful (especially for Cristina). It also likely changed Julio’s behavior in the marital home. If historical precedent held, his treatment of Cristina grew cold, cruel, and perhaps even violent following Gloria’s offstage appearance.<sup>41</sup> For Cristina and her children, no compensating benefits spring to mind.

38. Pao-hua Hsieh, “Female Hierarchy in Customary Practice: The Status of Concubines in Seventeenth-Century China,” *Funü Shi Yanjiu* [Taiwan] 5 (1997): 55–114. Concubines also may have enjoyed “greater social and sexual freedom” than elite married women did. See Smith, “Race-Class-Gender Ideology in Guatemala,” 737. On the limited employment opportunities available to Guatemalan women, see Laurel Bossen, “Wives and Servants: Women in Middle-Class Households, Guatemala City,” in *Urban Life: Readings in Urban Anthropology*, ed. George Gmelch and Walter P. Zenner (New York: St. Martin’s Press, 1980), 200.

39. For the official record of Gloria María Peralta’s birth on March 27, 1948, see Registro de Nacimientos, tomo 52B, p. 669, no. 1859, Registro Civil, Quetzaltenango, Guatemala. Interestingly, one study of late colonial Spanish America found that men tried for adulterous concubinage were most commonly between the ages of thirty and forty. Durñas, “Adulterios, amancebamientos, divorcios y abandono,” 36.

40. Christine Hunefeldt quotes troubling testimony to this effect from a betrayed wife in nineteenth-century Peru: “He [my husband] has money to pay for his concubine’s room,” the wife complained, but “[i]f I ask him for money to buy food, he hits me and tells me he hasn’t anything.” Hunefeldt, *Liberalism in the Bedroom*, 284.

41. Durñas, “Adulterios, amancebamientos, divorcios y abandono,” 38.

### The Law

Gloria and Julio's actions prompt a legal question: Was it permissible, in Guatemala, in 1963, for a thirty-six-year-old married man to "live maritally" with a fourteen-year-old concubine? If Julio had *raped* Gloria using "force or intimidation," of course, that would have been illegal and he could have received eight years in prison. (There is no evidence that he raped her.) *Statutory* rape, however, was not an issue; Gloria was above the twelve-year-old age threshold for that crime.<sup>42</sup>

Gloria's youth, however, may have made Julio guilty of a lesser crime: "corruption of a minor." This criminal charge, which carried the threat of a six-month prison sentence, applied to men who used deception—such as the promise of marriage—to take sexual advantage of women between the ages of twelve and eighteen. Years later, Gloria complained that Julio had led her to believe that he would divorce his wife and marry Gloria.<sup>43</sup> She did not specify when Julio made this empty promise. If he did so at the outset of his relationship with Gloria in order to deceive and thereby "corrupt" her, he could, if prosecuted, have been found guilty of this crime.<sup>44</sup> But neither Gloria nor anyone in her family appears to have filed a criminal suit against Julio on these grounds.

Aside from Gloria's age, however, the case presented no legal issue. Adulterous concubinage involving a married man and a single woman outside of the marital home was perfectly legal in Guatemala in 1963. This represented a significant historical shift.

Had Gloria and Julio gotten together a century or more previously, they would have been in violation of the law. Adulterous concubinage was illegal in Guatemala for centuries following the arrival of the Spanish in the 1520s. Although the institution was too widespread during the colonial period for Spanish authorities to eradicate, its control was an important goal of church and state alike.

Spanish colonial authorities had difficulty eliminating Mesoamerican polygyny (the practice of men taking multiple female mates) in part because its historical roots were so deep, reaching back both to pre-Conquest America<sup>45</sup> and to pre-Conquest Spain.<sup>46</sup> Moreover, the turmoil of

42. Código Penal de la República de Guatemala (1936), Art. 329. Again, although rape cannot be ruled out, there is no evidence that it occurred.

43. "Proceso de Gloria Peralta," 51.

44. Código Penal de la República de Guatemala (1936), Art. 331.

45. Men in pre-Hispanic Mesoamerica could legally have multiple wives simultaneously. Plural marriage was widespread among the region's elite and not unknown among its popular classes. Some indigenous nobles allegedly had as many as two hundred wives. M. C. Mirow, *Latin American Law: A History of Private Law and Institutions in Spanish America* (Austin:

the Spanish Conquest itself resulted in an additional rash of adulterous concubinage.<sup>47</sup>

During three centuries of colonial rule, Spanish authorities sought, with considerable success, to combat polygamy (plural marriage), as a means of Christianizing and controlling their American empire. Their efforts to combat concubinage were less successful.<sup>48</sup> Although concubinage in Span-

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University of Texas Press, 2004), 57. Information in this paragraph also comes from Robert McCaa, "Marriageways in Mexico and Spain, 1500–1900," *Continuity and Change* 9.1 (1994): 14; Josefina Muriel, "La Transmisión Cultural en la familia Criolla Novohispana," in *Familias novohispanas, siglos XVI al XIX*, ed. Pilar Gonzalbo Aizpuru (México, D.F.: El Colegio de México, 1991), 111; Cline, "The Spiritual Conquest Reexamined," 473; and Herrerías Sordo, *Concubinage in Present-Day Mexico*, 13–14. This situation was not unique to Mesoamerica. At the dawn of the colonial period, in what is today Ecuador, for instance, indigenous "nobles and favored commoners had several secondary wives." Frank Salomon, "Indian Women of Early Colonial Quito as Seen through Their Testaments," *The Americas* 44.3 (January 1988): 327. Robert McCaa relates pre-Hispanic polygyny to the deficit of men that resulted from the era's warfare and slavery. McCaa, "Marriageways in Mexico and Spain," 14.

46. Polygyny in pre-Conquest Spain related in part to centuries of Islamic-Moorish influence there. Concubinage in medieval Spain went by the legal name *barraganía*, a term derived jointly from Arabic and Spanish. Regil Gutierrez, "La union de hecho en su aspecto social," 8; Herrerías Sordo, *Concubinage in Present-Day Mexico*, 7–8. Although Spanish *barraganía* had formally disappeared by the time of Columbus's voyages, concubinage and illegitimacy remained far more common in Spain than in contemporary France, England, or Germany. McCaa, "Marriageways in Mexico and Spain," 18, 11.

47. Many *conquistadores* left wives in Spain and took American concubines. Some native chieftains offered young women to the Spanish, hoping to strengthen political alliances. Spanish men, who outnumbered Spanish women in the Americas throughout the colonial period, routinely coupled with native women. These couplings were often out of wedlock, frequently involved more than one woman per man, and occasionally resulted from theft or the use of force. Some of the male Spanish colonists who did bring wives with them from Spain also maintained native concubines on the side. McCaa, "Marriageways in Mexico and Spain," 11, 21–22; Smith, "Race-Class-Gender Ideology in Guatemala," 723–49; Salomon, "Indian Women of Early Colonial Quito," 325–26; Rípodas Ardanaz, *El Matrimonio en Indias*, 364–70; Herrerías Sordo, *Concubinage in Present-Day Mexico*, 16; and Alexandra Parma Cook and Noble David Cook, *Good Faith and Truthful Ignorance: A Case of Transatlantic Bigamy* (Durham: Duke University Press, 1991).

48. Having recently "re-conquered" Spain by expelling Muslims and Jews, Spanish Catholics hoped to continue Christianity's spread in the Americas. Indeed, "saving souls" through conversion was a key legal justification for their imperial actions. Members of the Catholic clergy, as part of their broader evangelizing mission, sought to institute monogamous, permanent, sacramental marriage. They pressured indigenous men to shed all wives but one. They also turned the fearsome prosecutorial powers of the Inquisition against concubinage. Their assault on polygamy and concubinage prompted some indigenous dissidents to urge maintenance of these traditional domestic arrangements as a form of political defiance. Greenleaf, "Persistence of Native Values," 353–54. The clergy's emphasis on "sacramental" marriage under the Church's auspices was especially pronounced following the Council of

ish America did decline, it remained much more prevalent than in Spain itself. Enforcement of concubinage bans was uneven. In some places, it appears to have been quite strict.<sup>49</sup> In others, it was lax, in line with the common colonial response to inconvenient Spanish decrees: “*obedezco pero no cumpro*” (“I accept your orders, but won’t actually carry them out”). Enforcement problems notwithstanding, however, the formal law was clear: adulterous concubinage was illegal in Spanish America.<sup>50</sup>

Although Guatemala achieved independence from Spain in the 1820s, Guatemalan marriage law followed Spanish precedent until the 1870s. In

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Trent in 1563. See Galván Rivera, *El Concubinato en el vigente derecho mexicano*, 18–19; Castañeda, “La formación de la pareja y el matrimonio,” 73–90. For more on Spanish colonial marriage law, see Cline, “The Spiritual Conquest Reexamined,” 473; Thomas Calvo, “Matrimonio, iglesia y sociedad en el occidente de México: Zamora (Siglo XVII a XIX),” in *Familias novohispanas, siglos XVI al XIX*, ed. Pilar Gonzalbo Aizpuru (México, D.F.: El Colegio de México, 1991), 101–8; Herrerías Sordo, *Concubinage in Present-Day Mexico*, 16–17; McCaa, “Marriageways in Mexico and Spain,” 22; Guillermo F. Margadant, “La familia en el derecho novohispano,” in *Familias novohispanas*, ed. Pilar Gonzalbo Aizpuru, 33–34; and Muriel, “La transmisión cultural en la familia criolla novohispana,” 109–22. For a specific example of the Inquisition’s role in regulating marriages in colonial Latin America, see Richard Boyer, “Juan Vázquez, Muleteer of Seventeenth-Century Mexico,” *The Americas* 37.4 (April 1981): 421–43. In the latter phases of Spanish colonialism, royal officials challenged the Church’s role as the top arbiter of family relations in Spanish America. Family infractions, including adulterous concubinage, accounted for ever-increasing proportions of the royal courts’ criminal dockets. Patricia Seed, *To Love, Honor, and Obey in Colonial Mexico: Conflicts over Marriage Choice, 1574–1821* (Stanford: Stanford University Press, 1988). One underlying objective of Spanish colonial family law was the discouragement of race mixing. Mirow, *Latin American Law*, 57–58.

49. Adulterous concubinage was apparently the most commonly prosecuted family-related criminal offense in late colonial Bogotá. See Durñas, “Adulterios, Amancebamientos, Divorcios y Abandono,” 35–36.

50. McCaa, “Marriageways in Mexico and Spain,” 14, 18, 22, 27, 31; Cline, “The Spiritual Conquest Reexamined,” 473, 479; Herrerías Sordo, *Concubinage in Present-Day Mexico*, 19; Dueñas, “Adulterios, amancebamientos, divorcios y abandono,” 39; Calvo, “Concubinato y mestizaje en el medio urbano,” 203–12; Mirow, *Latin American Law*, 56–57. For a detailed look at the legal treatment of marriage in one corner of Spain’s American empire, see Viviana Kluger, *Escenas de la vida conyugal: los conflictos matrimoniales en la sociedad virreinal rioplatense* (Buenos Aires: Editorial Quorum, 2003), 144–45. Kluger finds that, although the law regarding marital fidelity was applied somewhat differently to husbands and wives, respectively, with husbands enjoying more latitude, nonetheless “the obligation of marital fidelity was one of those that was demanded of both spouses. Husband and wife were on an equal footing in both secular and canon law. . . .” *Ibid.*, 144. For more on the “surprising degree of freedom and openness” that marked marital and other intimate relations in parts of Spanish America, even “under the shadow of the Inquisition,” see Cook and Cook, *Good Faith and Truthful Ignorance*, xiii. See also Richard Boyer, *Lives of the Bigamists: Marriage, Family, and Community in Colonial Mexico* (Albuquerque: University of New Mexico Press, 1995); and Stern, *The Secret History of Gender*.

that decade, anti-clerical liberals, led by Justo Rufino Barrios, took power and enacted a new national constitution, a new civil code and a new penal code.<sup>51</sup> These new legal instruments altered Guatemala's formal treatment of adulterous concubinage. Not surprisingly, plural marriage remained illegal; married men still could not marry their mistresses.<sup>52</sup> But Guatemala redefined "adultery" in a way that exempted the principal adulterers: unfaithful married men and their lovers. The married *woman* who slept with a man other than her husband, the 1877 Penal Code decreed, was guilty of adultery, as was the man who slept with her knowing that she was married.<sup>53</sup> The married *man* who slept with a woman other than his wife violated no law, unless he made the mistake of "having" his concubine inside the marital home.<sup>54</sup>

The decriminalization of husbandly adultery reflects three characteristics of the liberals who wrote it into law. First, President Barrios and his supporters were ardent anti-clerics. They disestablished the Catholic Church, confiscated church property, expelled the Jesuits, and instituted lay education. In the same anticlerical spirit, they secularized family law.<sup>55</sup> Guatemala's new Civil Code (1877) defined marriage as a "civil contract" only.<sup>56</sup> Henceforth, in Guatemala, civil authorities, not priests, performed the only marriages that counted, and civil registrars, not Catholic parishes, kept official marriage, birth, and other such records.<sup>57</sup>

The secularization of Guatemalan law in the 1870s helped clear the

51. After Guatemala achieved independence in the 1820s, liberals hoped to modernize the fledgling republic by doing away with colonial law. They proposed a new system of law based principally on legal codes that U.S. jurist Edward Livingston drafted for the state of Louisiana in the 1820s. The new codes would have reduced the Catholic Church's legal influence over marriage and other facets of Guatemalan life. Conservatives were not pleased. They wrested power away from liberals in an 1838 coup, re-established Catholicism as the state religion, revoked liberal legal reforms, and adopted a modified form of the old colonial law. See Jorge Luján Muñoz, "Del derecho colonial al derecho nacional: el caso de Guatemala," *Jahrbuch für Geschichte Lateinamerikas* 38 (2001): 85–107; Mario Rodríguez, *The Livingston Codes in the Guatemalan Crisis of 1837–1838* (New Orleans: Middle American Research Institute, Tulane University, 1955). Note that, in the absence of a strong central government, local authorities took the lead in implementing marriage law during the early decades of Central American independence from Spain. Elizabeth Dore, "Property, Households and Public Regulation of Domestic Life: Diriomo, Nicaragua, 1840–1900," *Journal of Latin American Studies* 29 (1997): 591.

52. *Código Civil de la República de Guatemala* (1877), Art. 120, sec. 6.

53. *Ibid.*, Art. 282.

54. *Ibid.*, Art. 286.

55. The secularization of family law was something of a world-wide trend in the second half of the nineteenth century. See Hunefeldt, *Liberalism in the Bedroom*, 85.

56. *Código Civil de la República de Guatemala* (1877), Art. 119.

57. *Ibid.*, xviii; Arts. 144–47; 458–62.

way for the deregulation of husbandly adultery. The Catholic Church had officially opposed *all* adultery, whichever spouse committed it. Formally, at least, it also favored equality within marriage.<sup>58</sup> The Church's loss of power made it easier for reformers to legalize adulterous concubinage involving married men.

Second, President Barrios and his supporters, like other nineteenth-century Latin American liberals, championed the rule of law and "state-building" as means to economic progress.<sup>59</sup> They also were keenly concerned with family preservation,<sup>60</sup> in part for economic reasons. Given how prevalent adulterous concubinage was in Guatemala at the time, lawmakers may have concluded that the existing ban on husbandly adultery was untenable.<sup>61</sup> If un-enforced, but left on the law books, the ban would erode respect for the rule of law. If vigorously enforced by the liberals' comparatively muscular bureaucracies, the ban could result in a troubling wave of arrests, family dissolution, and economic disruption. Liberals appear to have concluded that the decriminalization of husbandly adultery was the best solution. It would maintain respect for the rule of law while keeping families together, fathers out of jail, and workers on the job.

Third, the blatant gender discrimination of Guatemala's 1877 adultery reform was in line with the patriarchal tendencies of nineteenth-century Latin American liberalism generally. Liberals in Guatemala and elsewhere knew that the dissolution of the Spanish Empire had badly destabilized their societies. Their own attacks on indigenous communities and the Catholic Church threatened further instability. Liberals looked to individual families, headed by strong patriarchs, to anchor the new societies that they were trying to create. To this end, they used legal reform to bolster the powers of male heads of households and to reinforce the traditional subordination of women and children to men.<sup>62</sup>

58. Dore, "One Step Forward," 17. See also Dore, "Property, Households and Public Regulation of Domestic Life," 598. For more on secularization and family law elsewhere in Latin America in the late nineteenth and early twentieth century, see Mirow, *Latin American Law*, 147–49.

59. For a discussion of how liberal-era state growth affected even a previously isolated local community, see Michaela Schmolz-Haberlein, "Continuity and Change in a Guatemalan Indian Community: San Cristóbal-Verapaz, 1870–1940," *The Hispanic American Historical Review* 76.2 (May, 1996): 227–48.

60. On late nineteenth-century liberalism's intense interest in family preservation, see Blum, "Public Welfare and Child Circulation."

61. For similar thoughts from the colonial period, see Dueñas, "Adulterios, amancebamientos, divorcios y abandono," 39–40.

62. Arlene J. Díaz, "Women, Order, and Progress in Guzmán Blanco's Venezuela, 1870–1888," in *Crime and Punishment in Latin America*, ed. Ricardo D. Salvatore, Julio Aguirre, and Gilbert M. Joseph (Durham: Duke University Press, 2001), 56–82; Alberto Saladino

Guatemala's 1877 adultery provision fit this patriarchal model.<sup>63</sup> It established clear preferences for men and gave legal expression to the sexual double standard. Wifely infidelity was illegal everywhere; husbandly infidelity was legally suspect only inside the marital home. A wife violated the law if she slept with *any* man other than her husband. A husband violated the law only if he had a *concubine* within the conjugal home. (Could a husband avoid criminal punishment by being unfaithful in the marital home with a woman not his concubine? The law was unclear on this point. But straying wives had no such wiggle room.) The penalty for the wife-specific crime of adultery was significantly harsher than the penalty for the husband-specific crime of inside-the-marital-home concubinage.<sup>64</sup> Furthermore, the law gave aggrieved husbands, but not aggrieved wives, almost complete control over the prosecution and punishment of their unfaithful spouses. "No wife shall be punished for the crime of adultery," the law stipulated, "except by virtue of her aggrieved husband's wishes."<sup>65</sup> The penal code also empowered husbands, but not wives, "at any moment," to lift the criminal sanctions that had been imposed on their unfaithful spouses and their spouses' lovers.<sup>66</sup> Many other elements of the 1877 codes were similarly discriminatory.<sup>67</sup>

The restrictions on adultery and concubinage contained in the Penal Code of 1936, in force when Julio and Gloria began living together in the 1960s, were essentially the same as those adopted in 1877. "Adultery" was committed when a wife slept with any man other than her husband; it carried a prison sentence of four years. "Concubinage" was committed when a husband "had a concubine within the marital home"; it carried a prison sentence of six months.<sup>68</sup> Although neither law was strongly enforced, a sample of several thousand Quetzaltenango criminal cases from

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García, "La función social de las mujeres entre los liberales latinoamericanos," *Siglo XIX* [Mexico], 1.2 (1986): 175–87; Hunefeldt, *Liberalism in the Bedroom*, 14; Dore, "One Step Forward," 15; and Salvatore, *Crime and Punishment in Latin America*, 23.

63. Note that liberal-era adultery reforms were even more blatantly sexist in some other Latin American nations. See Dore, "One Step Forward," 17, 22–23.

64. *Código Penal de la República de Guatemala* (1973), Art. 235. In the original 1877 Code, adultery carried a "correctional reclusion" grade of "medium to maximum"; concubinage, in contrast, carried a "correctional reclusion" grade of "minimum to medium." *Código Penal de la República de Guatemala* (1877), Arts. 282, 286.

65. *Código Penal de La Republica de Guatemala, 1877*, Art. 283.

66. *Ibid.*, Art. 284.

67. See, for example, *Código Civil de la República de Guatemala, 1877*, Art. 150: "Husbands should protect their wives and wives should obey their husbands."

68. *Código Penal de la República de Guatemala* (1936), Arts. 324, 328.

the mid-twentieth century reveals that “adultery” prosecutions outnumbered “concubinage” prosecutions twenty-four to one.<sup>69</sup>

Thus, Julio and Gloria, like many other twentieth-century couples, had no legal qualms about setting up a quasi-marital household a stone’s throw from Julio’s marital home. Their actions, indeed, were perfectly legal.

### The Children

Changes in the legal treatment of children, much like the previously discussed changes in marriage law, improved the legal standing of adulterous concubinage in Guatemala.

As far as we know, Julio had five children: three with Cristina, his wife, and two with Gloria, his concubine. Had these births occurred centuries or even decades earlier, Guatemalan law would have treated Cristina’s children preferentially. By the 1960s, however, this was no longer the case.

The Spanish law that prevailed in colonial Latin America bestowed legal privileges upon “legitimate” children, meaning those “who spring from a father and mother that are truly married, according as the Holy Church directs.”<sup>70</sup> Spanish lawmakers favored “legitimates” for both legal and religious reasons. Such children were “lawful and begotten according to law.”<sup>71</sup> They were also, “as it were, sacred,” since they were “begotten without impropriety or sin.”<sup>72</sup> In areas ranging from inheritance to government employment, “legitimate” children enjoyed legal advantages.<sup>73</sup>

69. “Registro de Procesos Penales,” Juzgado Primero de Primera Instancia, Palacio de Justicia, Quetzaltenango, Guatemala. Between Oct. 1929 and March 1930, no adultery or concubinage cases appeared among the 179 cases counted. Among the 431 criminal cases observed in the docket books between April 1938 and April 1943, three were for adultery and none was for concubinage. One adultery case and no concubinage cases appeared among the 245 cases counted between 5 January 1949 and 24 March 1949. Twelve adultery prosecutions and no concubinage prosecutions appeared in a 458–case sample taken between 2 July 1949 and 30 Dec. 1949. The final sample in this series extends from 3 Aug. 1959 to 31 December 1959 and contains eight adultery prosecutions and a single concubinage prosecution among 1192 total prosecutions. In total, among 2,505 criminal cases counted, twenty-four (about 1 percent) were for adultery and one (about .04 percent) were for concubinage.

70. *Las Siete Partidas*, vol. 4, *Family, Commerce, and the Sea: The Worlds of Women and Merchants*, trans. Samuel Parsons Scott, ed. Robert I. Burns, S.J. (Philadelphia: University of Pennsylvania Press, 2001), 948.

71. *Ibid.*

72. *Ibid.*

73. *Ibid.* Spanish lawmakers had additional justifications for privileging “legitimate” children. “God loves, assists, and endows” such children “with strength and power to conquer the enemies of His religion.” Those un-persuaded by these theological declarations may (or may not) have been swayed by the claim that followed: “legitimate” children were “more

Children whose parents were not married to each other were “illegitimate” and faced legal disabilities. Children born out of wedlock could not fully “share the honors of their fathers or grandfathers.”<sup>74</sup> They risked losing or being denied “any high office or honor” they might achieve.<sup>75</sup> Moreover, their inheritance rights were limited. Spanish lawmakers warned: “Great injury results to children through their not being legitimate.”<sup>76</sup> By establishing these legal disabilities for illegitimate children, lawmakers hoped to promote marriage and discourage extra-conjugal sex.<sup>77</sup>

After Guatemala achieved independence, the bright line separating “legitimacy” from “illegitimacy” gradually faded. Guatemala’s Civil Code of 1877 began the erasure quite deliberately. “The goal of the [prevailing Spanish] laws” that categorized children according to the marital status of their parents, Guatemalan lawmakers explained in 1877, was “to minimize illicit unions by making people fear that the children of such unions would live in disgrace.”<sup>78</sup> But experience had demonstrated “that this fear has not succeeded in preventing illicit unions. Indeed, its only effect has been to punish the innocent [children] for the acts of the guilty [parents].”<sup>79</sup>

The 1877 Civil Code maintained the legitimacy/illegitimacy distinction,<sup>80</sup> but softened some of the disabilities accompanying illegitimacy. For instance, in cases in which parents died without leaving wills, the new code granted illegitimate children some inheritance rights, although those rights were not equal to the inheritance rights of legitimate children.<sup>81</sup> The

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choice and strong, for the reason that they are not liable to suffer shame on account of their mothers.” Ibid.

74. Ibid., 953.

75. Ibid.

76. Ibid.

77. Spanish law divided illegitimate children into seven categories. At the head of this list were “natural” children—those whose parents were unmarried but faced no legal impediments to marriage. “Natural” children were the elite of the illegitimates. Then came a rogues’ gallery of illegitimacy: products of adultery; products of concubinage; products of “direct-line-of-descent” incest; products of “transversal” incest; clerics’ children; and prostitutes’ children. Inheritance restrictions were particularly stiff for children whose parents were not only unmarried to each other, but legally barred from marrying each other. Children of adulterous concubinage fell into this severely disadvantaged category. *Las Siete Partidas* 4:953; Margadant, “La familia en el derecho novohispano,” 47–51; Alfonso Brañas, “Estatuto de las unions de hecho,” *Revista de la facultad de ciencias jurídicas y sociales de Guatemala* 4.1 (1948): 27; Ann Twinam, *Public Lives, Private Secrets: Gender, Honor, Sexuality, and Illegitimacy in Colonial Spanish America* (Stanford: Stanford University Press, 1999), 220–22, 231, 277. Note that a legal process existed whereby some illegitimate children could be “legitimated.” See Twinam, *Public Lives*.

78. *Código Civil de la República de Guatemala* (1877), §XII, “Hijos ilegítimos,” xi.

79. Ibid.

80. Ibid., Arts. 200–236.

81. Ibid., Arts. 969–82.

1877 Code also facilitated paternal “recognition” of “illegitimate” children. Under the new rules, fathers who wished to recognize their paternity could easily do so in the new civil registries at birth, in public acts sworn out subsequently, or in their last wills and testaments.<sup>82</sup> Even fathers who did not wish to recognize paternity of their illegitimate children could be forced to do so through “filiation suits.”<sup>83</sup> Paternal recognition was an important issue, since the code granted several legal rights to paternally recognized illegitimates that it denied to paternally un-recognized illegitimates.<sup>84</sup> An 1898 reform further facilitated paternal recognition of out-of-wedlock children by clarifying what needed to be proven in order to win “filiation” suits.<sup>85</sup> The collective result of these reforms was to widen the gap between paternally recognized children and paternally unrecognized children, even as the gap between legitimate and illegitimate children narrowed.

During the twentieth century’s first half, the legal distinction between legitimacy and illegitimacy disappeared entirely from Guatemalan law. The Civil Code of 1933 accomplished this reform in an effort to combat social inequality. No longer would “legitimate” children, among whom the privileged classes were overrepresented, have rights that “illegitimate” children lacked. Henceforth, for instance, should a parent die without leaving a will, all children, “whether born inside or outside of marriage, shall inherit equal shares.”<sup>86</sup> The Constitution of 1945 cemented this reform into place. That instrument was part of Guatemala’s “Ten Years of Spring”—a decade of egalitarian reform that began with a popular, left-leaning uprising in 1944 and ended with a U.S.-backed right-wing counter-coup in 1954. The egalitarian Constitution of 1945 famously granted women the right to vote, facilitated labor organization, and laid the legal groundwork for agrarian reform.<sup>87</sup> Less famously, the Constitution proclaimed that Guatemalan

82. *Ibid.*, Art. 229.

83. *Ibid.*, Art. 235. In practice, “filiation” suits rarely succeeded in compelling fathers to recognize paternity. See César Eduardo Alburez Escobar, *El derecho y los tribunales privativos de familia en la legislación guatemalteca* (Thesis. Facultad de Ciencias Jurídicas y Sociales de la Universidad de San Carlos, 1964), 42.

84. *Código Civil de la República de Guatemala* (1877), xi–xii, and Articles 200–236, 243, and 969–82. For a discussion of the 1877 Code’s weakening of legitimacy distinctions and strengthening of paternity designations, see Brañas, “Estatuto de las unions de hecho,” 27–28.

85. Decreto Gubernativo No. 591, discussed in Gladys Dorita Rodríguez Fernández, “La union de hecho y su declaración judicial” (Thesis. Facultad de Ciencias Jurídicas y Sociales de la Universidad de San Carlos de Guatemala, 1981), 7.

86. *Código Civil de la República de Guatemala* (1933), Art. 993. See also Art. 163: “When it comes to maternal rights and obligations, no difference exists between children born in wedlock and those born out of wedlock.”

87. Francisco Javier Gómez Díez, “La iglesia católica en Guatemala frente a la década

law “recognized no inequalities among children.” All offspring, whatever the marital status of their parents, would enjoy “the same rights.”<sup>88</sup>

In April 1945, a month after the new constitution's adoption, the Guatemalan Congress ordered all civil registrars and other keepers of public records in the country henceforth to omit “all references to the legitimacy of children and the marital status of parents.”<sup>89</sup> This policy would remain in place even after the 1954 coup that terminated the “Ten Years of Spring.”<sup>90</sup>

Thus, by the time Julio and Gloria got together, a declared commitment to modernization and social equality had pushed Guatemalan family law away from the defense of marriage as such and toward the protection of children and family units.<sup>91</sup> Adulterous concubinage no longer constituted “adultery.” Fathers could “recognize” their out-of-wedlock children with unprecedented ease. Legal distinctions between “legitimate” and “illegitimate” children no longer existed. All of these changes benefited adulterous concubines and the families that they formed.

The birth certificates of Julio's various children are illustrative. Prior to 1945, birth certificates classified babies born in Quetzaltenango as either “legitimate” or “out-of-wedlock.” They also reported the marital status of the mother and, where a father was listed, the father. (Interestingly, pre-1945 birth records also classified newborns as either “indigenous” or “ladino”; registrars stopped classifying newborns in this way in 1945.) For instance, the birth certificate of Pedro Pablo DePaz, born in Quetzaltenango on June 29, 1937, describes the newborn as the “ladino, out-of-wedlock son of Mercedes DePaz . . . unmarried.”<sup>92</sup> This system of reporting made it easy to identify—and stigmatize—out-of-wedlock children.

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revolucionaria,” *Hispania Sacra* 51 (1999): 297–332; Jim Handy, “‘The Most Precious Fruit of the Revolution’: The Guatemalan Agrarian Reform, 1952–54,” *Hispanic American Historical Review* 68.4 (1988): 678–79; Francisco Javier Gómez Díaz, “La política Guatemalteca en los orígenes de la ‘década revolucionaria’: La Asamblea Constituyente de 1945,” *Revista de Indias* 55.203 (1995): 127–47.

88. Constitución de la República de Guatemala, decretada por la Asamblea Nacional Constituyente el 11 de marzo de 1945, Art. 76.

89. Officials who failed to comply with this order faced six months in prison. Decreto Numero 86, El Congreso de la República de Guatemala, *Recopilación de Leyes*, tomo 64 (1945–1946), 458.

90. See the Constitution of 1956, Art. 90; the Civil Code of 1964, Art. 395, the Constitution of 1965, Art. 86; and the Constitution of 1985, Art. 50. Alfonso Brañas, *Manual de derecho civil* (Guatemala: Editorial Estudiantil Fenix, Universidad de San Carlos de Guatemala, 1998), 218.

91. Verónica Lucrecia Ajxup Zarate, “Derecho de familia: principios que lo fundamentan” (Thesis. Ciencias Jurídicas y Sociales, Facultades de Quetzaltenango, Universidad Rafael Landívar, 1998), 17.

92. Registro de Nacimientos, tomo 45, p. 542, no. 1250, Registro Civil, Quetzaltenango, Guatemala.

Post-1945 birth certificates, in contrast, revealed nothing about the marital status of children's parents. The legal standing of Gloria's two children was indistinguishable from that of Cristina's three. Both sets of birth certificates listed the mothers—Gloria and Cristina—by their maiden names. Neither set revealed whether the parents were married or whether the children were "legitimate." This benefited Gloria's children.

Gloria's children also benefited from Julio's decision to "recognize" his paternity. Because Gloria was not married, the paternity of her children was not officially assumed. It was Julio's option to extend or withhold "voluntary recognition."<sup>93</sup> His decision to take advantage of Guatemalan legal reforms by "recognizing" his paternity in the civil registry just days after his children's births secured three important rights for Gloria's children: the right to a paternal surname, the right to claim child-support from Julio during his life, and the right to inherit fully from him after his death.

The surname issue is especially noteworthy, given Gloria's own past. Guatemalan surnames were powerful "signifiers," for they divided, in a lifelong and conspicuous way, paternally recognized children from paternally un-recognized children. The child whose parents were married—or whose father had officially "recognized" him or her—used two surnames: the father's and the mother's, in that order. The out-of-wedlock child whose father had not "recognized" him or her, in contrast, notoriously went through life with a single surname: that of the mother.<sup>94</sup>

Gloria María Peralta was born in Quetzaltenango in 1948, three years after Guatemalan civil registrars stopped recording the "legitimacy" of newborns. Her birth certificate said nothing about her parents' marital status. Nonetheless, her name told the story. On her official birth certificate, her two given names (Gloria and María) were followed by only one surname (Peralta). The single surname advertised two things about Gloria's origins: that her mother, Carla Peralta (who also had but one surname), was unmarried; and that her father, whose surname was Valderrama, had not "recognized" her. Gloria, like many other single-surname Guatemalans, was ashamed of this eye-catching badge of illegitimacy.<sup>95</sup> Although

93. *Código Civil de la República de Guatemala de 1964*, Art. 210. Judicial declarations of paternity were possible, though rare. *Ibid.*

94. *Ibid.*, Art. 4. For evidence of the importance of paternal recognition and surnames in Guatemalan culture, see Luz Alicia Herrera, "Testimonies of Guatemalan Women," *Latin American Perspectives* 7.2/3 (1980): 163 ["Not until my son was three years old did I manage to convince his father to recognize him. I did it because children need to carry their father's name"].

95. For a discussion of the social discrimination suffered by paternally "unrecognized" children in Guatemala, see Ursula Mariana Montegro Velasco de Turcios, "La paternidad: necesidad de su reconocimiento legal" (Thesis. Departamento de Ciencias Jurídicas y Sociales, Facultades de Quetzaltenango de la Universidad Rafael Landívar, 1999), 49–53.

she never changed her name officially,<sup>96</sup> she did, as a young adult, start presenting herself to the world as “Gloria María Peralta Valderrama.”<sup>97</sup> That is, she thumb-tacked her biological father’s surname to the end of her official (maternal) surname. This inverted the standard order throughout the Spanish-speaking world, whereby paternal surnames precede maternal ones. By appending her father’s last name in this odd position, Gloria managed to give the respectable appearance of having two last names, while leaving her official surname (Peralta) unchanged.<sup>98</sup>

Gloria’s two children, unlike Gloria (and unlike Gloria’s mother, Carla Peralta), had double surnames—“Díaz Peralta”—from the start. This reflected Julio Díaz’s willingness to “recognize” both of Gloria Peralta’s children at birth. Neither their first-born child, Gloria Julia Díaz Peralta (b. 1964), nor their second, Julio Omar Díaz Peralta (b. 1966), would face the social stigma that both Gloria and her mother had endured for having but one surname.<sup>99</sup>

Two final points regarding the children: First, the birth order of Julio’s five children demonstrates that his relationships with Cristina and Gloria were simultaneous, not sequential. Cristina bore Julio’s first child in 1960. Thereafter, she and Gloria alternated deliveries: Cristina (1962), Gloria (1964), Cristina (1965), Gloria (1966). Each time, Julio was the declared father.

Second, both of Gloria’s deliveries took place at home, in the domicile that she and Julio shared. Although this gives the superficial appearance that Julio lacked either wealth or regard for Gloria, it actually demonstrates just the opposite. Home deliveries with private midwives were comparatively expensive. The principal alternative was delivery in Quetzaltenango’s

96. Official name changes were possible, though somewhat complicated. See *Código Civil de la República de Guatemala de 1964*, Arts. 5–6. Official name changes appear in the margins of the name-changer’s birth certificate. Gloria’s birth certificate contains no record of an official name change. Registro de Nacimientos, tomo 52B, p. 669, no. 1859, Registro Civil, Quetzaltenango, Guatemala.

97. A perfect example is the “Proceso de Gloria María Peralta Valderrama.”

98. Revealingly, Gloria and Julio disagreed about what Gloria’s true name was. When Julio issued a criminal complaint against Gloria for leaving him and “abandoning” their minor children, he used her official (and less respectable) name, “Gloria María Peralta.” At first, officials followed suit. When Gloria herself was taken into custody, however, she insisted upon the more respectable, though technically inaccurate, “Gloria María Peralta Valderrama.” The double-surname version carried the day. Gloria’s case file refers to her as Peralta Valderrama. “Proceso de Gloria María Peralta Valderrama.”

99. Birth certificates can be found as follows: Gloria Julia Díaz Peralta, born Oct. 28, 1964, Registro de Nacimientos, tomo 77, p. 518, no. 31, Registro Civil, Quetzaltenango; Julio Omar Díaz Peralta, born Oct. 9, 1966, Registro de Nacimientos, tomo 82, p. 30, no. 56, Registro Civil, Quetzaltenango; Gloria María Peralta, born March 27, 1948, Registro de Nacimientos, Tome 52B, p. 669, no. 1859, Registro Civil, Quetzaltenango, Guatemala.

Western General Hospital, a public facility where the service was cheap but not especially good.<sup>100</sup> A home birth signified higher status.

Numbers back this assertion. As of the mid-1960s, births in Quetzaltenango divided almost evenly between private residences (48.5 percent) and Western General (46.5 percent). (The remaining 5 percent of births took place at elite birthing facilities, such as “El Nido”—“The Nest.”)<sup>101</sup> But among paternally unrecognized babies—not a wealthy bunch—the numbers were much less even. These “single-surname” children, among whom the impoverished were overrepresented, were overwhelmingly likely (80 percent) to be born in the General Hospital, not at home.<sup>102</sup> Giving birth at home distinguished Gloria, the long-term concubine of an economically stable married man, from the mothers of most paternally *un*-recognized children.<sup>103</sup>

### The Law and Adulterous Concubinage during Rocky Times

Four years after it began, Gloria and Julio’s relationship soured. Both parties, in turn, would seek legal redress. Their experiences highlight significant changes in how Guatemala’s legal system interacted with families during the twentieth century. As a result of these changes, by the mid-1960s, out-of-wedlock couples such as Gloria and Julio had unprecedented access to legal tools capable of reinforcing extra-conjugal family obligations. This was especially true of the criminal law.

Prior to the 1960s, Guatemalan criminal law, to the extent that it affected families, served principally to buttress marriage and discourage infidelity.

100. Many Latin American states started offering free midwifery in the 1930s, due to the combined effects of eugenics, feminism, and state growth. Molyneux, “Twentieth-Century State Formations in Latin America,” 49.

101. These numbers come from a survey of births in Quetzaltenango in January 1965, Registro de Nacimientos, tomo 77, pp. 716–816, Registro Civil, Quetzaltenango, Guatemala. Among two hundred total births surveyed, ninety-seven took place in a private home, ninety-three took place in the Hospital General del Occidente, and ten took place in private facilities.

102. Registro de Nacimientos, tomo 77, pp. 716–920, Registro Civil, Quetzaltenango. Among seventy-five paternally unrecognized children born in Quetzaltenango during January and February 1965, sixty (80 percent) were born in the General Hospital, while only fifteen (20 percent) were born at home. Babies born to single mothers with no father listed represented about 20 percent of all children born at this time.

103. Gloria and Julio’s two children’s births are documented in the Quetzaltenango Civil Registry as follows: Gloria Julia Díaz Peralta, born 28 Oct. 1964, Registro de Nacimientos, tomo 77, p. 518, no. 31, Registro Civil, Quetzaltenango; Julio Omar Díaz Peralta, born 9 Oct. 1966, Registro de Nacimientos, tomo 82, p. 30, no. 56, Registro Civil, Quetzaltenango.

A 1929 municipal court case from the western Guatemalan town of Coatepeque shows one way in which wives used the criminal law to defend their marriages. Eleodoro Barrios had both a wife and a concubine. As often is the case, the two women were bitter enemies who frequently clashed in public. In 1929, Eleodoro's wife—backed by his mother—turned to the courts. She and her mother-in-law issued a criminal complaint against María Teresa de León, the concubine. They “complained—and not for the first time—that María Teresa de León insults them, even though Señora de Barrios [the wife] refuses even to look at her, blaming her, as she does, for having disrupted her conjugal relationship.” The court found María (the concubine) guilty of “mistreating another with words” and sent her to prison.<sup>104</sup>

More common than such marriage-defending criminal cases initiated by wives, however, were marriage-defending criminal cases initiated by husbands. Particularly common were cases in which husbands accused their wives (and, less frequently, their wives' alleged lovers) of criminal adultery. In these cases, as in the “María” case above, betrayed spouses turned to the criminal law for redress. The criminal law thus reinforced marriage.

Around the middle of the twentieth century, family-related criminal law in Guatemala changed significantly. Its emphasis shifted from the protection of marriage as such to the protection of families, especially children. As a result of this shift, it became increasingly common for family-related criminal cases to be initiated by single women and to name men as criminal defendants. Had María the Coatepeque concubine gone to criminal court in the 1970s instead of the 1920s, she might well have been the complainant, not the defendant.

These findings derive from my analysis of over four thousand criminal cases drawn from a Quetzaltenango criminal court docket at roughly ten-year intervals (1929, 1939, 1949, and so forth), between 1929 and 1989.<sup>105</sup>

104. Pedro Castillo[?], Juzgdo Municipal de Coatepeque, Departamento de Quetzaltenango, 5 de diciembre de 1929, to Señor Juez de Primera Instancia Territorial; Juzgado Primero de Primera Instancia, Quetzaltenango, Palacio de Justicia, Quetzaltenango, Guatemala. This case was tried under *Código Penal de la República de Guatemala, 1889*, Art. 455, sec. 1. In a similar vein, in the Río de la Plata region of Spain's colonial empire, there were women who went to court to accuse their husbands of infidelity and to request court orders forcing their husbands to cease their extra-marital relations and return to married life with their wives. See Viviana Kluger, “El proyecto familiar en litigio. Espacios femeninos y contiendas conyugales en el virreinato de Río de la Plata, 1776–1810,” in *História, género y familia en iberoamérica (siglos XVI al XX)*, ed. Dora Dávila Mendoza (Caracas: Fundación Konrad Adenauer, 2004), 225.

105. Studies of this sort are rarer than they should be. As Ann Varley has noted, scholars of gender and family history in Latin America are quick to notice legislation but slow to investigate its courtroom application. Ann Varley, “Women and the Home in Mexican

The cases yield four principal conclusions. First, Guatemalan criminal law appears to have become increasingly involved with family relations as the twentieth century progressed. In samples taken prior to 1960, obviously family-related criminal cases (adultery, concubinage, infanticide, abandonment of minor children, denial of economic support, and the like) accounted for less than 2 percent of the total criminal docket. In post-1960 samples, such cases increased to over 4 percent of the total criminal docket. It is important to note that this survey consistently under-reports actual levels of family-related violence. It includes neither unreported cases of domestic abuse nor family-related cases that appear in docket books under non-family-related headings, such as “assault.” Nonetheless, the 100 percent increase in obviously family-related cases that the survey documents is substantial.<sup>106</sup>

Second, prosecution for adultery was the most common sort of family case prior to the 1960s, but virtually disappeared thereafter. Adultery cases accounted for half (49 percent) of the obviously family-related criminal cases in the 1929–1959 samples,<sup>107</sup> but just 1.3 percent of such cases re-

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Family Law,” in *Hidden Histories of Gender and the State*, 241. My data are cases listed in a Quetzaltenango criminal court’s docket books: Registros de Procesos Penales, Juzgado Primero de Primera Instancia, Palacio de Justicia, Quetzaltenango, Guatemala. Exceptionally uneven availability of these docket books frustrated my attempt to compile a perfectly consistent sample series. Nonetheless, I was able to access docket books that fell into roughly ten-year intervals: Oct. 1929 to March 1930 (180 cases), April 1938 to April 1943 (431 cases), 5 January 1949 to 24 March 1949 (245 cases), 2 July 1949 to 30 Dec. 1949 (458 cases), 3 Aug. 1959 to 31 Dec. 1959 (1192 cases), 20 Jan. 1969 to 30 Dec. 1969 (942 cases), 10 May 1971 to 17 Aug. 1971 (342 cases), June 1985 to Jan. 1987 (318 cases). I separated the crimes listed in these docket books into several categories: property crimes (e.g., robbery), financial crimes (e.g., embezzlement), violent crimes (e.g., homicide), sexual violence (e.g., rape), miscellaneous (e.g., falsification of documents), and family crimes. Family crimes included: adultery, concubinage, acting against the security of the family, denial of economic support, infanticide, parricide, abandonment of minor children, subtraction of minor children, abandonment of the household, and illegal marriage. I then measured the trends over time that these numbers revealed. Full statistical data are in my possession and are available upon request. My sincerest thanks go to the following workers of the Juzgado Primero de Primera Instancia in Quetzaltenango for helping me to find and make sense of this material: Josué Bayron Armando Anlev Soberanis, Walter Stuardo Anlev Soberanis, Yohana Magaly Enríquez Jocol de Herrera, Allan Amilkar Estrada Morales, Reyna Laura López Barrios, Pedro Antonio Pérez López, Lucía Catalina Ponciano Andrade, Patricia Rodríguez de Vainz, Marcia Dolores Salazar Rivera, and Lily Sam Solorzano.

106. The 1929–1959 sample totaled 2506 criminal cases, of which forty-nine were obviously family-related. The 1969–1989 sample totaled 1867 criminal cases, of which seventy-nine were obviously family-related.

107. For evidence that male-initiated accusations of adultery were similarly prevalent in the ecclesiastical courts of nineteenth-century Peru, see Hunefeldt, *Liberalism in the Bedroom*, 303, 353.

corded thereafter. Wifely infidelity (the only sort of infidelity that counted as criminal “adultery”) surely did not disappear. Nor did the formal law change in any relevant way.<sup>108</sup> Nor is there any evidence that husbands grew dramatically more tolerant of wifely infidelity or less concerned about perceived threats to their masculine honor; indeed, it is possible (though difficult to prove) that spousal abuse of wives suspected of infidelity increased, even as adultery prosecutions fell.<sup>109</sup> Nonetheless, by the late 1960s, criminal adultery cases had become much, much less common.

Third, the decline in male-initiated adultery cases was more than offset by a gusher-like increase in female-initiated “denial of economic support” cases. The principle that family members should support dependents (especially children) was not new. It was part of the colonial law brought over from Spain and it remained valid in Guatemala after independence.<sup>110</sup> In the first half of the twentieth century, however, Guatemalan child-support law changed in ways that benefited unmarried mothers. Both Spanish colonial law and early national Guatemalan law gave “legitimate” children preference over “illegitimate” children in child-support eligibility.<sup>111</sup> The disappearance of the legitimacy-illegitimacy distinction leveled the playing field, aiding concubines and their issue.

Moreover, in 1945, at the dawn of Guatemala's social-democratic “Ten Years of Spring,” the long-standing but widely flouted principle that family members must provide economic support to dependants grew teeth via inclusion in the nation's *criminal* law. Henceforth, family members who failed to satisfy their legal obligations to support dependents could be found guilty of a crime and sent to prison for a year.<sup>112</sup>

108. Guatemala did adopt a new Criminal Code in 1973, but its adultery provisions (Arts. 232–34) were fundamentally the same as those contained in every Criminal Code since 1877.

109. Judith N. Zur believes that domestic violence against women increased in Guatemala in the second half of the twentieth century. See Zur, *Violent Memories*, 58. Similarly, Matthew Gutmann notes a “probable rise in domestic violence of men against women” in one working-class neighborhood in Mexico City during the latter decades of the twentieth century. Gutmann, *The Meanings of Macho*, 244. Understandably, given the research complications involved in the topic, neither scholar backs these suspicions with hard data.

110. See Scott and Burns, *Las Siete Partidas*, vol. 4, Title XIX; and *Código Civil de Guatemala* (1877), Art. 237–57.

111. Scott and Burns, *Las Siete Partidas*, vol. 4, 973–74; and *Código Civil de Guatemala*, 1877, Art. 244.

112. Decreto del Congreso número 147, Art. 324–A (1945). Those who could prove penury could escape punishment. The 1973 penal code adopted this measure but changed the sentence from one year to “six months to two years” in prison. The 1973 code also specified that this sentence would increase by a third if the accused employed fraudulent means in order to avoid his or her family-support obligations. *Código Penal de la República de Guatemala* (1973), Arts. 242–43. For more on this crime, see Elva Esperanza Castillo

The new law offered women a powerful new way to pressure the fathers of their children to provide the economic support that they owed. Only gradually, however, did women take advantage of this new mechanism. A sample of Quetzaltenango criminal cases from 1949, four years after the passage of the new law, includes 458 total cases, seventeen of which involve families. Of these, *zero* invoked the new “denial of economic support” statute. Samples taken periodically thereafter reveal steady and impressive increases, from 29 percent of the family-related criminal docket in 1959 all the way to 86 percent of the family-related criminal docket in 1989.<sup>113</sup>

The explosion of “denial of economic support” cases is particularly impressive given its timing. It roughly coincided with Guatemala’s bloody and protracted armed confrontation (or civil war) that caused the death or disappearance of an estimated 200,000 Guatemalans between 1962 and 1996.<sup>114</sup> The government repeatedly discredited itself during this unsettled period by either committing or condoning brutal acts of terror. This makes it all the more striking that ever-increasing numbers of Quetzaltenango women during these years would turn to the state for help with child-support cases, notwithstanding the government’s shameful human rights record.<sup>115</sup>

The final conclusion to emerge from this docket research involves changes in the gendered impact of criminal-family law in twentieth-century Guatemala. The sharp decline in adultery cases around the 1960s, combined with the even sharper rise in “denial of economic support” cases around

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Monro y de Pons, “La excepción de la punición en el delito de negación de asistencia económica” (Thesis, Facultad de Ciencias Jurídicas y Sociales de la Universidad de San Carlos de Guatemala, Guatemala, 1981).

113. Registros de Procesos Penales, Juzgado Primero de Primera Instancia, Palacio de Justicia, Quetzaltenango, Guatemala.

114. “Guatemala: Memory of Silence,” Report of the Guatemalan Commission for Historical Clarification (CEH), <http://shr.aaas.org/guatemala/ceh/report/english/prologue.html>, accessed 24 March 2005.

115. For more on the armed confrontation, see: Zur, *Violent Memories*; Diane M. Nelson, *A Finger in the Wound: Body Politics in Quincentennial Guatemala* (Berkeley: University of California Press, 1999); Greg Grandin, *The Blood of Guatemala: A History of Race and Nation* (Durham: Duke University Press, 2000); Linda Green, *Fear as a Way of Life: Mayan Widows in Rural Guatemala* (New York: Columbia University Press, 1999); Margaret Hooks, *Guatemalan Women Speak* (Washington, DC: EPICA, 1993); Matilde González, “The Man Who Brought the Danger to the Village: Representations of the Armed Conflict in Guatemala from a Local Perspective,” *Journal of Southern African Studies* 26.2 (June 2000): 317–35; and Carol A. Smith, “The Militarization of Civil Society in Guatemala: Economic Reorganization as a Continuation of War,” *Latin American Perspectives* 17.4 (1990): 8–41.

the same time, transformed the ways in which criminal-family law touched Guatemalan men and women. In the earlier period, when adultery cases accounted for about half of the family-crime caseload, about half of all family-law criminal defendants were women.<sup>116</sup> In the later period, when “denial of economic support” cases dominated, women accounted for only 11.4 percent of all family-law criminal defendants. This dramatic decline reflected the completely gendered nature of “denial of economic support” cases. In 100 percent of such cases sampled, the criminal defendants were men and their accusers were women. (In contrast, men initiated 100 percent of the adultery cases, always against women—their wives—though sometimes against their wives’ male lovers as well.)

As long as adultery remained the top family-related crime, Guatemala’s system of criminal law served largely to regulate, and thus reinforce, the institution of marriage. With the fall of adultery and the rise of “denial of economic support,” Guatemala’s family-related criminal law shifted emphasis. It now principally regulated, and thus reinforced, extra-conjugal relationships, including adulterous concubinage. Although many of the criminal defendants in “denial of economic support” cases were single men, an estimated 50 percent were *married* men. Many of the criminal complainants in these cases were (single, female) concubines or ex-concubines seeking to compel their (married, male) partners or ex-partners to support their children.<sup>117</sup>

To summarize, a sample of family-related criminal cases from Quetzaltenango, Guatemala, between 1929 and 1989 suggests four trends:

1. Family matters comprised an increasing portion of the criminal law docket.
2. Adultery cases declined dramatically.
3. “Denial of Economic Support” cases increased dramatically.
4. Complainants in family-related criminal cases were increasingly likely to be women, while defendants were increasingly likely to be men.<sup>118</sup>

116. Men in these years appeared as criminal defendants in cases involving infanticide, parricide, adultery, abandonment of the home, concubinage, and subtraction of minors.

117. One family-court judge estimates that long-term adulterous concubinage accounts for about 20 percent of the “denial of economic support” cases initiated against married men. Oral interview with Judge Pilar Eugenia Pérez Morales, Quetzaltenango, 5 Aug. 2004. More study of these issues is warranted.

118. For further discussion of the tendency of Latin American states during the twentieth century to play “an increasingly significant role in the ordering of social . . . life” while at the same time becoming “less authoritarian and less patriarchal,” see Molyneux, “Twentieth-Century State Formations in Latin America,” 36–37.

Table 1 illustrates these trends.

Table 1. Family-related cases in Quetzaltenango Criminal Court, 1929-1989<sup>a</sup>

Sample years	Total number of criminal cases in sample	Family-related criminal cases	Adultery cases	Denial of economic support cases	Family-related criminal cases in which the defendant was female
1929-1959 (samples taken in 1929, 1938-43, 1949, 1959)	2506	49 (1.96% of all criminal cases sampled)	24 (49% of family-related criminal cases)	7 (14% of family-related criminal cases)	23 (46.7%)
1969-1989 (samples taken in 1969, 1971, 1985-87, and 1989)	1867	79 (4.23% of all criminal cases sampled)	1 (1.27% of family-related criminal cases)	52 (66% of family-related criminal cases)	9 (11.4%)

<sup>a</sup>Based on random samples of cases found in various Registros de Procesos Penales, Juzgado Primero de Primera Instancia, Quetzaltenango, Guatemala.

## Family Court

The trends outlined above reflected, among other things, the Guatemalan legal system's response to a widespread belief that the family was in crisis. This belief was not unique to Guatemala. The Pan American Child Congress was a group of scholars, social workers, policy-makers, and diplomats representing Western Hemisphere nations (including Guatemala) and affiliated with the Pan American Union (later the Organization of American States) that met periodically. It dedicated its 1959 meeting to discussion of child abandonment and family disintegration.<sup>119</sup> Analysts at the meeting—like those back home in Guatemala—perceived multiple threats to familial stability, including economic change, rural poverty, urbanization, materialism, mass migration, political instability, moral decline, and the mass media. The principal victims of family breakdown were easier to agree upon: single mothers and poor children. Throughout Latin America during the twentieth century, concerns such as these generated a “maternalist-feminist” movement that blended minority concern for gender equality with majority concern for “mother-child” issues.<sup>120</sup>

Guatemalan academics, jurists, and legislators urged their government to respond to a crisis in the family that, they believed, had reached “truly alarming proportions.”<sup>121</sup> Among other things, they urged the creation of

119. Instituto Interamericano del Niño, *XI congreso panamericano del niño, Bogotá, Colombia, 1959* (Montevideo, Uruguay: Impresa LIGU, 1959).

120. For discussion of the broader “maternalist-feminist” movement in the Americas, see Donna J. Guy, “The Politics of Pan-American Cooperation: Maternalist Feminism and the Child Rights Movement, 1913–1960,” *Gender & History* 10.3 (1998): 449–69; and Molyneux, “Twentieth-Century State Formations in Latin America,” 49.

121. Blanca Estela Acevedo Leonardo de Recinos, “La familia. Tutela jurídico-penal” (Thesis. Facultad de Ciencias Jurídicas y Sociales de la Universidad de San Carlos de Guatemala, Guatemala, 1965), 12, 17–18. In response to this concern, Guatemala's 1945 Constitution became the nation's first to declare formally that the government had an obligation to protect the family. “The family, motherhood, and marriage,” the Constitution stated, “shall have the protection of the state.” Constitution of the Republic of Guatemala (1945), Art. 72. A new constitution in 1956 retained its predecessor's pledge of state protection for families, but dropped its explicit commitment to protect “marriage.” Constitution of the Republic of Guatemala (1956), Art. 87; Acevedo, “La familia,” 23–24. Some observers identified the criminal law as one area in which the state could do more to aid Guatemalan families. These observers demanded, as a 1960s treatise phrased it, the “juridico-penal guardianship of families.” Such guardianship would do more than benefit the single mothers and destitute children who were the principal victims of family breakdown. It would benefit *all* Guatemalans, since “defects in family life go a long way toward explaining our ever-worsening problems” with delinquency and crime. Preventing family disintegration today would prevent social problems tomorrow. Acevedo, “La familia,” 13, 46–47. In this spirit, Guatemala, in 1945, made it a crime to deny family members the economic support that the civil law demanded. Decreto del Congreso número 147, Art. 324–A (1945).

special family courts. The family-court push had international dimensions. The Pan American Child Congress's tenth international meeting (Panama 1955) recommended the establishment of family courts "in all American nations where"—as in Guatemala—"they do not yet exist."<sup>122</sup> The group's Eleventh Congress (Colombia 1959) and the Twelfth Congress (Argentina 1963) reinforced this recommendation.<sup>123</sup>

Within Guatemala, reformers had pushed for family courts as early as 1943.<sup>124</sup> Although family law in Guatemala had always been considered a regular sort of private law and had always been handled in the regular civil courts, mid-century reformers argued that family law, given its social ramifications, was different from—and more important than—other forms of private law. It required special institutions.<sup>125</sup>

At a Guatemalan juridical congress in 1960, two distinguished lawyers gave voice to these sentiments by proposing the creation of special family courts. The present civil courts, these lawyers argued, were not up to the task. Their legalistic procedures were too cumbersome to provide families with quick and effective justice. More important, the civil courts were too formalistic. They clung to the sophism that opposing parties in legal disputes stood on equal footing, when it was clear that, in family disputes, this rarely was the case. The civil courts, reformers complained, "see family disputes not as the *human* problems that they are, but rather as routine legal cases, just like all the others." Family courts—complete with special procedures, personnel, and powers—were the answer.<sup>126</sup>

Early in the 1960s, the Guatemalan government heeded these calls. It appointed a commission of social workers, doctors, and lawyers to study issues related to family law. One-third of the commission's members, including the chair, Secretary of Welfare Elisa Molina de Stahl, were women, an unusually high figure for the time. The commission recommended the creation of a nationwide system of courts dedicated wholly to resolving family-based legal disputes. Guatemala soon adopted the Family Court Act of 1964. This established new tribunals and granted them "exclusive

122. *Congresos panamericanos del niño, ordenación sistemática de sus recomendaciones, 1916–1963* (Montevideo, Uruguay: Impresora Liga, 1965), 252.

123. For the Eleventh Pan-American Child Congress, see *XI congreso panamericano del Niño* (1959), 54. For the Twelfth Child Congress, see *Ordenación sistemática de sus recomendaciones* (1965), 251.

124. Oscar Barrios Castillo, *El juez de familia* (Thesis, 1943), discussed in César Eduardo Alburez Escobar, *El derecho y los tribunales privativos de familia en la legislación guatemalteca* (Thesis. Facultad de Ciencias Jurídicas y Sociales de la Universidad de San Carlos, 1964), 49.

125. Alburez, *El derecho y los tribunales privativos de familia* (1964), 46–48.

126. *Ibid.*, 48–49.

jurisdiction over all matters relating to the family,” including divorces, annulments, paternity disputes, custody battles, and child-support cases.<sup>127</sup> In subsequent years, the new courts extended the power and reach of the Guatemalan government; enhanced the claims-making ability of Guatemalan women; and provided new legal mechanisms for the enforcement of family ties, including those linking adulterous concubines to each other.

The new family courts accelerated the four trends noted above. Their very existence advertised the availability of legal remedies for family disputes. In Quetzaltenango, a “Family Court” sign above the new tribunal’s door at the (then) centrally located “Palace of Justice” broadcast a powerful message to passers-by: litigation is an option for those with domestic troubles. Of even greater importance was a provision in the 1964 Family Court Act that guaranteed legal aid to poor litigants (as long as their cases “related to family matters”).<sup>128</sup> The creation of family courts also provided personnel—most importantly the judges and social workers assigned to the new courts—who had a professional stake in the provision of family-related justice.<sup>129</sup>

Although the new family courts spurred overall increases in family-related cases, they may have deterred adultery prosecutions. Adultery was a crime and thus technically unrelated to the new family courts, which were civil, not criminal.<sup>130</sup> But adultery was clearly a “family matter.” Therefore, the criminal courts may have been reluctant to touch it after 1964, since the new family courts allegedly had “exclusive jurisdiction over all matters relating to the family.”<sup>131</sup>

The new courts unquestionably stimulated “denial of economic support” litigation. Such cases, indeed, were the new tribunals’ bread and butter. The 1964 Act expressly targeted the needs of “abandoned mothers and destitute children.”<sup>132</sup> “Denial of economic support” was the first cause of action listed in the description of the new courts’ jurisdiction. Child-support cases dominated the new court’s docket. And when negligent fathers refused to provide economic support as instructed, family court judges

127. Family Court Act of 1964 (“Ley de Tribunales de Familia,” Decreto Ley No. 206, Guatemala, 1964), Arts. 1–2. The membership of the “Comision de Estudio Sobre Legislación de Protección a la Familia” appears on page thirteen of a pamphlet entitled “Ley de Tribunales de Familia” that the Secretary of Information published in 1964 to publicize the new measure.

128. “Ley de Tribunales de Familia,” Decreto Ley No. 206 (Guatemala, 1964), Art. 15.

129. *Ibid.*, Arts. 3–7.

130. *Ibid.*, Arts. 8–9.

131. *Ibid.*, Art. 1.

132. *Ibid.*, 1. Quotation from Guatemalan Supreme Court President Romeo Augusto de León.

routinely bounced their cases into criminal court. By 1984, “denial of economic support” cases accounted not only for the bulk of all cases heard in Quetzaltenango’s family court, but also for an astounding 9.5 percent of *all* criminal cases heard in the *Juzgado Primero de Primera Instancia*, a Quetzaltenango criminal court.<sup>133</sup> Each and every one of these criminal child-support cases originated as a civil case in family court.

Not surprisingly, the new family courts fell short of their stated goal: to “resolve” all domestic problems, particularly those besetting “the lowest social classes.”<sup>134</sup> The courts did relatively little, for instance, to combat spousal abuse. Indeed, their commitment to encouraging estranged couples to reconcile may have exposed some ill-treated women to additional abuse.<sup>135</sup> The new courts did, however, facilitate the feminization of legal claims-making in Guatemala. They offered women, particularly poor women (a group that included many concubines), unprecedented access to the legal system. Officials encouraged women to take advantage of this expanded access. In 1964, they published a handsome pamphlet to advertise the new courts’ creation. The cover illustration depicts a stylized conception of the new tribunals’ principal intended beneficiaries: young mothers and their children. (See Fig. 1.)

The mother-centered message that accompanied the government’s family court advertising blitz represented a fresh approach for Guatemalan legal culture. The ideas appear to have resonated with the public. In subsequent years, Guatemalan women would parade to the new tribunals, seeking family support. Among these women was Gloria María Peralta Valderrama.

### **Gloria Goes to Court**

On a March Wednesday in 1967, three years after Guatemala established its new system of family courts, Gloria entered the family court in Quet-

133. “Negación de Asistencia Económica” cases accounted for 122 of 1281 criminal cases heard in 1984 in Quetzaltenango’s *Juzgado Primero de Primera Instancia* criminal court.

134. This quotation comes from Supreme Court President Romeo Augusto de León, in his formal acceptance of the new law, quoted on page one of “Ley de Tribunales de Familia,” Decreto Ley No. 206 (Guatemala, 1964).

135. The new courts’ commitment to encouraging estranged partners to reconcile appears in Art. 11 of “Ley de Tribunales de Familia,” Decreto Ley No. 206 (Guatemala, 1964). Instances of verbal, psychological, or physical spousal abuse might possibly have been filed in family court as cases of “violencia intrafamiliar.” If sufficiently severe (e.g., sufficient to leave visible markings), physical spousal abuse could also be tried in criminal courts under the crime of “lesions.” My thanks to Quetzaltenango lawyer Mercedes Argueta for discussing this point with me. Mercedes Argueta to John Wertheimer, 25 October 2004, e-mail correspondence.

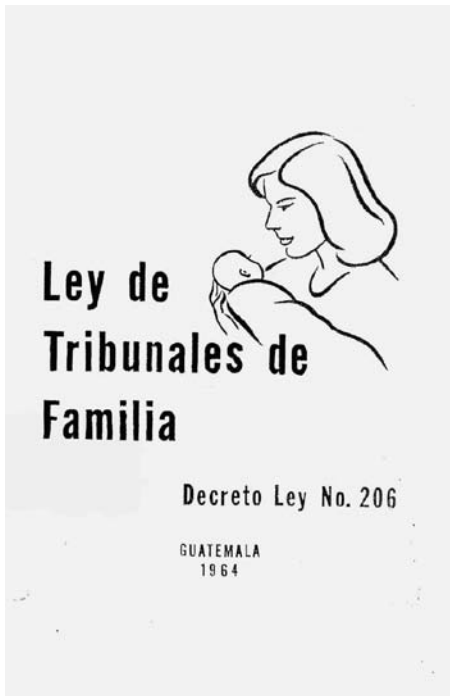


Figure 1. Cover of “Ley de Tribunales de Familia,” Decreto Ley No. 206, a 1964 pamphlet announcing the creation of Guatemala’s new family courts. Following the conventions of the time, the pamphlet depicts the prototypical Guatemalan family as fair-skinned “ladinos,” an image that was unrepresentative of most Guatemalans.

zaltenango and filed suit against Julio. The previous Saturday, she had been “forced to abandon her home” because her mate of four years had “hit her without giving her any explanation why.” The court record is ambiguous and poorly worded when describing the conflict’s immediate cause. One plausible reading is that the dispute began when Julio “did not want to go inside the house to eat.” Gloria was, at this point, caring for the couple’s two-year-old daughter and five-month-old son in her Parque Bolívar residence. Julio, meanwhile, had moved his conjugal home a good distance away, to a more expensive neighborhood uptown. Gloria probably saw less of Julio than before; with a toddler and a newborn to care for, she may have felt vulnerable and uncertain of Julio’s commitment to her and her children. Julio may have missed one meal too many at her house. When he finally showed up, she may have reproached him verbally and he may have struck back physically.<sup>136</sup>

136. *Peralta v. Díaz*, Ramo de Familia, Departamento de Quetzaltenango, Juicio no. 857, iniciado el 8 de marzo de 1967, Palacio de Justicia, Quetzaltenango. Hereafter *Peralta v. Díaz* (1967).

An equally plausible reading of the hazy court record is that it was *Gloria* who “did not want to go inside the house to eat.” As we shall see, she was an increasingly independent young woman. She may have been out with friends when he came down the hill, expecting a prepared meal. Hungry and indignant, he may have tracked her down and beaten her.

In either event, *Gloria* struck back. She immediately moved out of *Julio*’s house and into the home of a friend. Just four days after the incident, she walked up the hill to the Palace of Justice, found the sign advertising *Quetzaltenango*’s new family court, and filed suit. She requested that *Julio* be compelled to provide her with monthly payments to help her feed and house their two children.<sup>137</sup>

In part because of technical problems with the filing, the case never reached a legal conclusion. *Gloria* did not press for a decision, it seems, because she and *Julio* had gotten back together. The 1964 Family Court Act may have facilitated reconciliation. The threat of monthly child-support payments may have inspired *Julio* to seek forgiveness, especially since his failure to pay, in accordance with a family court order, could have landed him in prison for a year. *Gloria*, with two young children to feed, took him back.

Furthermore, family court personnel may have actively encouraged the adulterous couple to stay together. The preservation of family units—whether or not they involved formal marriages—was a central objective of the new family courts. The 1964 Act directed the social workers and judges assigned to these courts to encourage reconciliation wherever possible. The statute urged court officials “personally to employ the means of convincing and persuasion that they deem adequate to achieve an understanding between the parties.”<sup>138</sup>

When the dust cleared, *Gloria* and *Julio* were back together. The legal system had used both coercion (the threat of imprisonment) and cajoling (judicial “convincing and persuasion”) to reinforce the couple’s adulterous concubinage.

### **Julio Goes to Court**

A year and a half after the beating incident, *Gloria*, now twenty, again left *Julio*, now forty-two. Once more, the legal system got involved, this time at *Julio*’s bidding. He filed a criminal case against *Gloria* for “abandonment of minor children.”

137. *Peralta v. Díaz*.

138. “Ley de Tribunales de Familia,” Decreto Ley No. 206 (Guatemala, 1964), Art. 11.

Although abandoning minor children had been a crime throughout Guatemala's history, increasing concern about family disintegration called new attention to the problem in the twentieth century's second half. Internationally, as mentioned above, the Pan American Child Congress focused on child abandonment at its 1959 meeting.<sup>139</sup> Domestically, concern for abandoned children was one of the principal factors driving the "strong movement in favor of legal protections for the family" that swept the nation in the mid-twentieth century.<sup>140</sup>

Prosecutions of women (and, occasionally, men) for child abandonment in Guatemala increased following World War II.<sup>141</sup> In one respect, this trend reflected a small advance for women's rights. Spanish colonial law had granted fathers, not mothers, strong preference in the area of "*patria potestad*," or the authority that parents exercised over children below the age of majority.<sup>142</sup> Guatemala's nineteenth-century civil law more or less followed suit, declaring all paternally recognized children "subject to the authority of the father, and, failing him, the mother."<sup>143</sup> In the twentieth century, preference gradually shifted from father to mother. The 1933 Civil Code granted both parents *patria potestad* over paternally recognized children, though fathers still had preference when it came to "directing, representing and defending their minor children" publicly.<sup>144</sup> The 1964 Code, which was in effect at the time of Gloria's prosecution, split *patria potestad* essentially equally between *married* mothers and fathers, but gave *unmarried* mothers preference over unmarried fathers, regardless of whether the children were paternally recognized. "When the father and the

139. *XI congreso panamericano del niño* (1959).

140. Julio Rafael Yaquian Otero, "El delito de abandono de familia o incumplimiento de los deberes de asistencia familiar" (Thesis. Facultad de Ciencias Jurídicas y Sociales de la Universidad de San Carlos de Guatemala, Guatemala, 1954), 11. This same Guatemalan legal scholar estimated that "[t]he number of [Guatemalan] children who have been abandoned by their parents is enormous, perhaps bigger than the number of orphans." For an early Guatemalan law regarding familial abandonment, see *Código Penal de la República de Guatemala, 1877*, Art. 331.

141. None of the 610 pre-World War II criminal cases that the author sampled in a Quetzaltenango court involved charges of "abandono de niños menores" or "abandono hogar." Among the 3762 criminal cases sampled between 1949 and 1989 were seven prosecutions for either "abandono de niños menores" or "abandono hogar." Five of the seven criminal suspects in these cases were women. Registros de Procesos, Juzgado Primero de Primera Instancia, Palacio de Justicia, Quetzaltenango.

142. Donna J. Guy, "Parents before the Tribunals: The Legal Construction of Patriarchy in Argentina," in *Hidden Histories of Gender and the State*, 176-77; Dore, "One Step Forward," 12.

143. *Código Civil de la República de Guatemala, 1877*, Art. 286.

144. *Código Civil de la República de Guatemala, 1933*, Arts. 191, 183-84.

mother are not married,” the 1964 code specified, “the children shall be under the authority of the mother, unless she agrees to transfer the children to their father’s authority or to that of a boarding school.”<sup>145</sup>

By the mid-1960s, thus, the legal presumption of parental authority over paternally recognized out-of-wedlock children had shifted decisively from fathers to mothers. This was an advance for women’s rights. Its effect on adulterous concubinage is unclear, but may have been fortifying. Married men such as Julio may have grown more willing to take concubines, knowing that any children that resulted would principally be under their mothers’ authority. Furthermore, as Gloria’s case suggests, women who sought to escape the bonds of concubinage may have had a harder time doing so after this change went into effect. Prosecution for “child abandonment,” as Gloria’s story shows, could reinforce extra-conjugal commitments. In this case, as in Gloria’s suit against Julio the previous year, the legal system discouraged attempts to dissolve the family bonds created by adulterous concubinage.

Julio filed his criminal complaint on September 12, 1968. He alleged that, for six years, he and Gloria had “made a common life together” in their residence, “the place where I live.” Needless to say, he provided authorities with his “Gloria” address, not his “Cristina” address. He did not, however, seek to disguise the nature of his relationship with Gloria. He openly referred to her as his “concubine.”<sup>146</sup>

Julio further alleged that on August 9, 1968, for reasons that, he assured the court, had no bearing on the case, “my aforesaid concubine moved out and went to live in a house near the Pensión Altense [hotel] here in Quetzaltenango.” Gloria took their two young children (almost four and almost two) with her and sought to support them by opening a small clothes-washing business. “Imagine my surprise,” Julio continued, when, a week later, “various people told me that my ex-concubine had left town with another man and had abandoned our two minor children.” Julio hurried to Gloria’s place near the Pensión Altense and found “my minor children totally abandoned.”<sup>147</sup>

The abandonment of children under the age of seven years constituted a crime in Guatemala. If convicted, Gloria would face up to a year in prison.<sup>148</sup>

Subsequent evidence from the man who allegedly discovered the chil-

145. *Código Civil de la República de Guatemala, 1964*, Arts. 252–53, 255, 261.

146. “Proceso de Gloria Peralta,” 1.

147. *Ibid.*, 1–2.

148. If the child’s life was lost or threatened as a result of the abandonment, the sentence increased substantially. *Código Penal de la República de Guatemala, 1936*, Art. 373.

dren's abandonment corroborated Julio's story. This eyewitness, who lived near Gloria's new place around the Pensión Altense, testified that he had known Julio, Gloria, and their children for some time. (He knew Cristina and her children as well.) On August 17, 1968, at about nine o'clock in the morning, this witness stated, he visited Gloria to inquire about a clothes-washing order. Finding the door ajar, he knocked. Out came three-year-old Julia, who said that her mother had left. Concerned, the witness pushed the door open and observed that the girl and her younger brother were indeed alone. Gloria was gone. The witness dispatched a friend to inform Julio of the children's abandonment and Gloria's flight. Subsequent testimony from that friend corroborated this witness's account.<sup>149</sup>

If Gloria did abandon the children, Julio, as a father, surely would have been upset. But his extraordinary actions following Gloria's flight betrayed motivations beyond parental concern. He also appears to have been driven by the code of masculine honor, a code often associated with Latin American elites but, as this case suggests, also characteristic of men of Julio's middling status during this era.<sup>150</sup> Gloria had shredded Julio's masculine honor by administering, in full public view, the dreaded *golpe traidor* [jolt of betrayal]: She had left him for another man.<sup>151</sup> By asking the court to inflict what he called "exemplary punishment" on Gloria, Julio sought to vent his jealousy, restore his battered honor, and make his "ex-concubine" pay for her misdeeds. He also clearly hoped that Gloria's "exemplary" punishment would make future concubines think twice before leaving their adulterous partners.

Julio did his best to help the legal system punish the mother of (some of) his children. He advised officials to search for Gloria in the Joan of Arc neighborhood of Guatemala City, where he understood her to be living with her new partner, whose name he shared with the police. To help

149. "Proceso de Gloria Peralta," 9–10, 25.

150. For more on the code of masculine honor and social class, see Hunefeldt, *Liberalism in the Bedroom*, 7.

151. The phrase "*golpe traidor*" was immortalized in a popular mid-twentieth-century Mexican "*ranchera*" song of the same name. In the song, written by Roberto López Garza and well known to Guatemalans of Julio's era, the betrayed male singer warns the woman who has left him for another man: "For what you did to me, you shall be punished, I swear, by God!" Julio appears to have acted in that spirit. Although the singer's marital status in "*Golpe traidor*" is unclear, another *ranchera* from the same era, Jesús Martínez's "*El abandonado*" (the abandoned one), suggests that, at least according to the code of masculinity inscribed in the day's popular culture, even married, adulterous males were indeed justified in feeling indignant when their lovers left them. For more on the code of honor as it relates to the male response to unfaithful women, see Pablo Piccato, *City of Suspects: Crime in Mexico City, 1900–1931* (Durham: Duke University Press, 2001), 109. For discussion of these themes in a later historical era, see Gutmann, *The Meanings of Macho*.

authorities in their search, Julio provided a possible street address. He also described Gloria: twenty years of age, light brown skin, one meter fifty centimeters tall, a mark on her right cheek, straight black hair, small black eyes, literate. Quetzaltenango court officials conveyed this information to the National Judicial Police in Guatemala City and asked them to find Gloria.<sup>152</sup>

This was not enough for Julio. He traveled to the capital—some two hundred mountainous kilometers away—to participate in the police search. On September 28, 1968, at about ten o'clock in the morning, Julio and the National Judicial Police captured Gloria. Julio, who had brought a camera, photographed his ex-concubine's arrest. He later added two of his snapshots to her criminal case file. (See Figs. 2 and 3.)

Authorities provisionally placed Gloria in the Santa Teresa Women's Prison in Guatemala City.<sup>153</sup> When officials did not immediately transfer Gloria to Quetzaltenango for trial, Julio suspected that she had taken devious measures to escape punishment. He pleaded with Quetzaltenango officials to pursue and prosecute her case. They did so.<sup>154</sup>

After her forced return to Quetzaltenango, Gloria told her side of the story. She admitted having "lived maritally" with her accuser since the beginning of 1963 and having had two children with him. Recently, however, she had given Julio an ultimatum: either divorce your wife or lose me. Since Julio "did not divorce the other woman that he had," Gloria, displaying a spirit of independence that was growing in her generation of women, left him.<sup>155</sup>

Gloria admitted that, on August 9, 1968, she moved her two children out of their father's house and into a place near the *Pensión Altense* in Quetzaltenango.<sup>156</sup> She also admitted leaving her children behind when she moved to Guatemala City a week and a half later.<sup>157</sup> But she denied having "abandoned" her minor children. According to her account, on August 17, the day of her supposed flight to the capital, Gloria actually "delivered" her two children to Julio, pursuant to a "mutual agreement" that they had.<sup>158</sup> Julio allegedly accepted the children and "made himself

152. "Proceso de Gloria Peralta," 4, 12, 4, 31.

153. Sergio Osorio Carias, *El Teniente Coronel de la Policía Nacional*, to Señor Juez 2o. de 1ra. Instancia, 5 Oct. 1968, in "Proceso de Gloria Peralta," 15.

154. Julio Pedro Pablo Díaz, Motion of 4 Oct. 1968, "Proceso de Gloria Peralta," 17; Lic. Hugo González C. al Señor Jefe del Departamento de la Policía Judicial, Guatemala, 4 Oct. 1968, in "Proceso de Gloria Peralta," 23.

155. "Proceso de Gloria Peralta," 49–51.

156. *Ibid.*, 50.

157. *Ibid.*

158. *Ibid.*, 93.



*Figures 2 and 3.* Agents of the National Judicial Police Capture Gloria María Peralta Valderrama in Guatemala City. Julio Díaz traveled 200 kilometers from Quetzaltenango to help track down his “ex-concubine.” He took these photographs and submitted them to the criminal court that tried Gloria. Note the court seal stamped on each picture. Photos by Julio Pedro Pablo Díaz Díaz. “Proceso de Gloria Peralta,” 19, 21.

responsible for them.”<sup>159</sup> This occurred, Gloria said, at about one o’clock in the afternoon. Not until two days later, with her children safely in their father’s custody, she said, did she leave for Guatemala City.<sup>160</sup>

Finally, Gloria and her lawyer sought to undermine the credibility of the prosecution’s star witness—the man claiming to have discovered the “abandoned children” while knocking on the door of Gloria’s home-based laundry business on the morning of August 17. Gloria pointed out that this man was actually Julio’s “*compadre*”; the two men were such intimate friends that one was the godfather of the other’s child. Gloria backed this assertion by submitting the baptismal certificate of Julio and Cristina’s first son. Indeed, the witness was the child’s godfather. Gloria asked the court to disregard this man’s important testimony, since he was “an interested party.”<sup>161</sup>

Gloria’s efforts fell short. The court found her guilty and sentenced her to one year in prison.<sup>162</sup> Although this verdict surely pleased Julio, the court’s next move probably did not. Perhaps reflecting the murkiness of the facts, perhaps in response to a nascent women’s rights sensibility, or perhaps out of concern for Gloria’s children, who would surely have been unwelcome in their father’s marital home, the court suspended Gloria’s one-year sentence, pending good behavior. Prior to trial, Gloria had spent about two weeks in jail, mostly in Guatemala City. That would be the extent of her incarceration. After Gloria appealed her conviction unsuccessfully in the spring of 1969, the case ended. Gloria, Cristina, and Julio faded from historical view.<sup>163</sup>

The abandonment-of-minor-children prosecution that Julio brought against Gloria was atypical. Women, not men, initiated most family-re-

159. *Ibid.*, 50.

160. *Ibid.*, 50–51.

161. *Ibid.*, 49–51, 93–95.

162. The testimony of a local church pastor may well have been decisive. Gloria claimed that this man, on the afternoon of August 17, had witnessed Gloria and Julio’s alleged agreement to transfer custody of the children from mother to father. The pastor indeed admitted knowing Gloria and Julio and being aware of their domestic difficulties. After Gloria and the children moved out, he testified, he invited both her and Julio to join him for a “spiritual reconciliation” session. It worked, the pastor thought. Gloria agreed to move back home within twenty-four hours. Unfortunately for Gloria, the pastor claimed to be unaware of any arrangement regarding an exchange of child custody, since he believed that the couple was reuniting. A week later, the pastor heard that Gloria had left town and abandoned her two children. This testimony hurt Gloria’s chances. The reconciliation session that the pastor organized demonstrates that the legal system was not alone in seeking to buttress relationships of adulterous concubinage. Rather, the formal law—as expressed by the Family Court Act of 1964—was in tune with informal acts of community members, in this case the pastor. “Proceso de Gloria Peralta,” 110–11.

163. “Proceso de Gloria Peralta,” 113–19, 129–30.

lated criminal cases during this period. All such cases, however, should give pause to those who would characterize the criminal law as simply a system pitting “the state” against individuals. In Julio’s prosecution, as in the many “denial of economic support” criminal cases initiated by women around the same time, family members used penal justice as an arena of social contestation.<sup>164</sup>

Julio’s prosecution also illustrates the range of legal responses that Guatemalans employed after their extra-marital relationships unraveled. It dramatically (if atypically) demonstrates one way in which the legal system reinforced adulterous concubinage during the twentieth century. Just days after moving to Guatemala City to escape a failed relationship of adulterous concubinage, Gloria found herself back in Quetzaltenango, behind bars, awaiting criminal trial.

### Conclusion

Laws do not determine behavior. They can, however, affect behavior by establishing incentives and disincentives for different types of action and by reinforcing or undermining different values. By the late 1960s, a century’s worth of legal reform in Guatemala had, on balance, created a more hospitable legal environment for adulterous concubinage than had existed previously. Modernizing, anticlerical liberals in the 1870s had decriminalized husbands’ adultery. Egalitarian social reformers in the first half of the twentieth century had erased legal distinctions between “legitimate” and “illegitimate” children. Mid-twentieth-century “maternalist feminists” and others had shifted the emphasis of the nation’s legal system away from the defense of marriage and toward the protection of family units. These reforms affected Guatemalans in a variety of ways, many of them good. But they appear, on the whole, to have fortified the sexist institution of adulterous concubinage. As the story of Gloria and Julio demonstrates, adulterous concubinage, by the late 1960s, was easier to enter and tougher to leave than it previously had been.

Although the legal buttressing of adulterous concubinage was a result that nobody sought, it was a logical consequence of a series of legal reforms, the best of which sought to aid poor women and children. These reforms strengthened the legal standing of concubinage largely because they strengthened the legal standing of poor women—the class from which most concubines came.<sup>165</sup>

164. Salvatore et al., eds., *Crime and Punishment in Latin America*, 13.

165. On the class dimensions of concubinage, see Smith, “Race-Class-Gender Ideology in Guatemala,” 723–49.

Adulterous concubinage is a tricky issue for reformist lawmakers because it forces class hierarchies and gender hierarchies to play a zero-sum game. In economic terms, adulterous concubinage has exerted at least a small leveling effect on Guatemala's exceedingly un-level society. It has redistributed affluent husbands' resources from wives and their children (who tend to be *comparatively* well off) to concubines and their children (who tend to be comparatively poor). At the same time, however, the institution clearly has reinforced the power of men over women. The challenge for Guatemala's next generation of egalitarian reformers is to combat both hierarchies at once. Reducing inequalities of wealth and increasing women's educational and employment opportunities would be a start.

In the years following Julio and Gloria's brushes with the law, legal reform continued. A group of women attacked Guatemala's sexist legal treatment of marital infidelity. They triumphed in 1996, when the nation's Constitutional Court used equal-protection reasoning to strike down both the wife-only crime of adultery and the husband-only crime of concubinage. This ruling purged the Penal Code of two of its most overtly discriminatory provisions. It also completed the decriminalization of marital infidelity that began in the 1877 Penal Code.<sup>166</sup> Another reform from the 1990s ended one of the last remaining legal legacies of the old "legitimacy-illegitimacy" distinction. It allowed paternally unrecognized children to assume their single mothers' two surnames.<sup>167</sup>

Census figures suggest that adulterous concubinage continued to be a noticeable domestic institution in Guatemala. Recall that, in Guatemala's 1964 census, "attached" (married or united) women outnumbered attached men by over 23,000. In that year, Gloria and Cristina were among the 6.38 percent of attached Guatemalan women who may have been sharing men. By 2002, attached women outnumbered attached men by 190,000. If accurate, this figure would mean that up to 18 percent of attached Guatemalan women may have been sharing men in 2002. These census figures demand extreme caution, of course. Most importantly, between 1964 and 2002, male-dominated migration to the United States, along with political (and other) violence, contributed to the feminization of Guatemala's resident population. Males dropped from 50.4 percent of the total reported population in 1964 to 48.1 percent in 2002. This shift surely amplified the

166. Guatemalan Constitutional Court, Expediente 936-95, decision of Mar. 7, 1996. The court ruled that the existing laws governing adultery and concubinage violated the 1985 Constitution's Article 4: "In Guatemala all human beings are free and equal in dignity and rights. Men and women, whatever their marital status, have equal rights and responsibilities."

167. Decreto 38-95 (1995), reforma al Art. 4 del Código Civil decreto ley 106. My thanks to Quetzaltenango attorney Mercedes Argueta for this citation.

reported surplus of “attached” women in the 2002 census. Even discounting for out-migration, however, adulterous concubinage appears to have remained a significant presence in Guatemala.<sup>168</sup>

In Guatemala City, in the summer of 1982, Julia Díaz Peralta did something that neither her mother nor her mother's mother nor her grandmother's mother had done: she got married. She had come a long way since the summer of 1968 when, as a three-year-old, she either (if you believe Gloria) passed consensually from her mother's care to her father's, or (if you believe Julio) remained alone with her younger brother while her mother left town. Aware of her mother's adventures with adulterous concubinage and the law, Julia opted for a different sort of adventure: marriage. She did so with her mother's blessing.<sup>169</sup>

168. *VII Censo de Población, 1964* (Guatemala: Dirección General de Estadística, 1971), 80–81; “Cuadro 8. Población de 12 años y más de edad, según sexo y estado conyugal actual. Censos 1981, 1994, y 2002,” *Características de la población de los locales de habitación censados* (República de Guatemala, Instituto Nacional de Estadística, Censos Nacionales XI de Población y VI de Habitación, 2003), 23.

169. Julia's marriage is noted in the margins of her birth certificate, available in the Registro de Nacimientos, tomo 77, p. 518, número 31, Registro Civil, Quetzaltenango. Julia's full name was Gloria Julia Díaz Peralta, but she went by Julia. “Proceso de Gloria Peralta,” 9. The statement that Gloria approved of her daughter's wedding is based on Guatemalan marriage law, which required Gloria to authorize her daughter's wedding, since Julia was not yet eighteen years of age. Parents of children under eighteen years of age had to give their consent before their children could wed. *Código Civil de la República de Guatemala, 1964*, Arts. 81–82. Recall that the Guatemalan Civil Code gave unmarried mothers preference over unmarried fathers in terms of parental authority. *Código Civil de la República de Guatemala, 1964*, Arts. 252–53, 255, 261.

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