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A Quest for Justice in Cuzco, Peru: Race and Evidence in the Case of Mercedes Ccorimanya Lavilla

The life of Mercedes Ccorimanya Lavilla renders a telling portrait about the pursuit of justice in Cuzco, Peru, revealing how courts of law can be key sites in the production and negotiation of racial and gender taxonomies. Mercedes (who was gang-raped as a young woman) illustrates the near heroic efforts necessary to mount and pursue rape charges in Peruvian courts, where rape victims largely manage the construction of evidence in lieu of the state. In the following article, I reconstruct the social circumstances and legal institutional setting surrounding the rape trial of Mercedes Ccorimanya Lavilla through the use of historical and ethnographic materials. In arguing that race often defines women's sexuality in rural Peru, I show how (in order to achieve a conviction) Mercedes had to develop a strategy in which she instrumentally employed the languages of race to distance herself from her own indigeneity, as well as that of her alleged attackers.

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Addressing the bleakness of modern life, Hannah Arendt (1968) noted that ordinary lives often radiate the most profound light. The life of Mercedes Ccorimanya Lavilla, a self-proclaimed campesino (indigenous peasant) who was gang-raped in the province of Cuzco, Peru, as a young woman, illuminates our world in many ways. Mercedes' case is exceptional because, out of the 250 cases filed under the rubric of rape that I examined in the superior court archive of Cuzco (spanning nearly a century, from 1909 to 2001), hers was one of only five violent rapes that ended in a conviction (Bunt 2006). Additionally, Mercedes' extraordinary resolve and her personal transcendence of the crime illustrate the near-heroic efforts necessary to mount and pursue rape charges in Peruvian courts—where victims largely manage the collection of evidence, in lieu of the state.¹ Although Mercedes' victory is an historical anomaly, it fits into a broader pattern of cases concerning women and sexual crimes in late 20th-century Peru, where courts of law are key sites in the production and negotiation of racial taxonomies. I argue that the evidence constructed in Mercedes' case discerns how women's sexuality is often defined by race in Peru.

In the following article, I reconstruct the social circumstances and legal institutional setting surrounding the rape trial of Mercedes Ccorimanya Lavilla through the use of historical and ethnographic materials. I show how, in order to achieve a conviction, Mercedes had to develop a strategy in which she employed the instrumental languages of race by positioning herself as less "indigenous" than her attackers. Mercedes' actual court case file and her own narrative, along with family members' sentiments,

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3 are intertwined in my account.² Mercedes' subjective experience is crucial because
4 it indexes the particular historical texture of Cuzco, Peru, where the discourses on
5 morality that surface in rape trials are intimately tied to race and to women's sexual
6 comportment. It also clearly illuminates how litigants understand the often irregular,
7 biased, and informal court practices that constitute the legal culture of Cuzco—where
8 age, virginity, and race (glossed as morality) are the chief factors in rape trials despite
9 what is written in penal statutes and mandated procedural codes.

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11 Legal theorizing about the “justice motive” and agency in the social sciences has often
12 focused on domination in the face of insurmountable structures.³ Mercedes' case,
13 however, takes on particular significance because it supports specific anthropological
14 arguments surrounding individual agency (Greenhouse 1994; Hirsh 2006; Merry
15 1990, 2005), while also highlighting the role of racial discourse in the pursuit of
16 justice. Along with Ann L. Stoler, I argue that race is produced in courtrooms,
17 which serve as analytical sites of anxiety (Stoler 2002), where tensions over social
18 hierarchies are worked out in litigants' discursive strategies that shape the impact of
19 evidence in rape trials. Additionally, Mercedes case occupies a fascinating position
20 vis-à-vis racial discourse and the law, because the strategies she engaged in court
21 expose not only how race is closely connected to women's sexual comportment, but
22 also how racial languages are usurped to achieve justice. Q2

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24 Since rape is a crime and often a source of deep social shame in Peru, locating rape
25 survivors who speak openly is rare. Before I met Mercedes, I already knew of her
26 popular radio program, heard throughout the southern region of Peru, *Warmikuna*
27 *Rimanchis* (As Women We Speak), which she hosted in Quechua and Spanish. The
28 day I met Mercedes, and many times thereafter, she opened her heart and home to
29 me, narrating the events of the rape she experienced as a young woman. I visited
30 her job, her home, and her community on several occasions, and I was allowed to
31 interview her husband, mother, and aunt. Our interviews were semi-structured and
32 informal: I arrived with a list of questions and a tape recorder, but Mercedes had a
33 gift for self-presentation, and her determination to let me know all of the facts in the
34 case usually took over. I accessed her case file at the courthouse after I had conducted
35 the interviews.⁴

36 37 38 **The Call to Justice**

39
40 Chocco, Mercedes' hometown, is a registered peasant community about 15 miles
41 from the urban city of Cuzco. Chocco's inhabitants are mostly agriculturists who
42 sell their surplus to nearby markets. The community is accessed by a main dirt road;
43 approximately fifteen houses are scattered up and down the road's winding path to
44 the high, farmable lands. Mercedes' family home is one of the first along the road. A
45 small river runs through Chocco. It must be crossed before reaching the steepest and
46 highest farmlands. As we walked to her field one day, out of nowhere, she pointed
47 to a spot on the road. Touching the rocky wall, she said, “It happened right here.”
48 This spot on the road was bounded on one side by a wall of rock leading to higher
farmland and on the other by a steep slope that stretched about seventy yards down

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3 to the riverbed. Mercedes then added, “I remember when it was all happening, if I
4 could have just thrown myself down into the river, I could have gotten away. But they
5 pushed me up against that wall, hard, and threw me to the ground—there were just
6 too many of them.”⁵

7
8 In 1983, as a young woman, Mercedes had just completed high school, earning
9 good grades. She also had a budding romance with a young man who was her
10 childhood companion. “I always wanted to be something more than who I was. I have
11 always dressed this way whereas the girls in my community wore polleras (traditional
12 indigenous layered skirts).”⁶ As a young woman, Mercedes’ life in Chocco consisted
13 of long walks to school, hours of homework, and lending a hand with the family’s
14 field and cattle.

15 On the night before the events that changed Mercedes’ life, her mother Rosa had
16 overindulged in alcohol. Rosa crept into bed with Mercedes’ grandmother, who
17 suddenly awoke, scolding Rosa for her excesses. After falling into a deep sleep, Rosa
18 was suddenly awakened by a terrible sensation: “I felt awful from the liquor. I had
19 a premonition in my dreams, I knew then something bad was going to happen, and
20 then it did.”⁷

21 On January 30, 1983, the community of Chocco was celebrating its annual founda-
22 tion as a registered peasant community. A soccer competition with the neighboring
23 community of Ccachona was in the works. During the festivities, chicha (corn-beer)
24 and cañazo (sugarcane liquor) flowed freely. As the festivities ended and dusk fell,
25 Mercedes headed up the road to her own house located up the path. Her mother,
26 too inebriated to accompany her, stayed behind at Mercedes’ grandmother’s house.
27 January is the peak of the rainy season in Cuzco, and according to Mercedes’ first
28 police statement, a heavy downpour was threatening in the already-darkened sky,
29 blocking out the moon. According to Mercedes, on her route up the winding dirt
30 road, she encountered a polite young man who cheerfully spoke to her in Spanish,
31 saying “Good evening Miss.”⁸ Acknowledging his smiling salutation and already
32 with her guard down, she kept walking as he approached her side. They exchanged
33 few brief words until Mercedes was grabbed from behind. Her hands were pulled
34 behind her back and her mouth covered. Mercedes’ declaration to the police a few
35 days later read:
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37 After enjoying myself at the festivities, I decided to head for my grand-
38 mother’s house, especially since my mother was drinking liquor; this
39 was at about 6:45 p.m. Before I could make it back to my house, I was
40 intercepted by a man with the last name of Huaman, who accompanied
41 me for a while, exchanging a few brief words in the road. At that precise
42 moment, I was surprised by six men, three of which grabbed me and
43 dragged me off further down the road. I was thrown to the ground, then
44 thrown up against a rock wall and knocked to my knees. Then one of them
45 started to undress me, ripping off my panties, while the others held me
46 down and covered my mouth. While they were taking off my clothes, the
47 skinniest man tried to penetrate my vagina, but he was not able. Neither
48 could the second man, who forced even harder. I resisted the penetration,

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3 applying all my physical strength, closing my legs. But there were so
4 many holding me down, because of this I began to feel exhaustion and
5 fatigue, and in this moment one of the men climbed on top of me and
6 penetrated my vagina. Upon finishing his act, a fourth man penetrated
7 my vagina, leaving a sticky substance inside me. Because of the intense
8 physical struggle I was fighting, I fainted, oblivious to the fact that the
9 other men standing by took this opportunity to have sex with me. As I
10 slowly recovered consciousness, the first man that had tried to enter me
11 was on top of me, penetrating me, his penis in my vagina rubbing up
12 against my inner thighs. I suddenly leapt up, hitting him on the head with
13 a rock, and then they all began to run off in different directions (CSC:3).

14
15 In their initial statements to the police, several of the accused confessed to either
16 viewing or participating in the violent gang rape. Gerardo Ccallo Champi, age 22
17 years, claimed that since his friends were raping Mercedes (and since he was drunk),
18 he “proceeded to rape her as well” (CSC:5). Benigno Granilla Sulca, age 18 years,
19 admitted to raping Mercedes, but noted that she was virtually unconscious when
20 he penetrated her, concluding that “I did not force her”(CSC:7). Vicente Cahuaman
21 Baca, age 22 years, admitted to seeing Mercedes grabbed and raped, but declared
22 that he did nothing that dark evening. Enrique Basilio Flores, age 19 years, admitted
23 that he raped Mercedes following the actions of others and then returned to his
24 home. Dionicio Humani Tacuri, age 22 years, claimed to have been an innocent
25 bystander, seeing nothing through the veil of darkness. Pedro Huaman Flores, age 28
26 years, claimed to have been so intoxicated that he could remember nothing. Finally,
27 Agripino Huaman Flores, age 21 years, stated that he, like his brother Pedro, saw
28 nothing and took no part in the alleged rape, claiming to be in the constant company
29 of his brother the entire evening in question.

30 The official police medical examination of Mercedes stated:

- 31
32 1. An examination of the genitals reveal a scarring of the hymen at the
33 six position, the tears are recent. 2. The apparent age seems to be about
34 seventeen or eighteen. 3. There is bruising on the right side of the back.
35 5. There is bruising on the back side of the left arm. 6. There are cuts on
36 the upper lip. 7. Pain on the scalp. . . (CSC:4)

37
38 The police concluded that Mercedes “had recognized all of her aggressors, yet in-
39 dicates that for a moment she had a near fainting spell, not noticing how they were
40 raping her, but she remembers everything else perfectly, including defending herself
41 by hitting one of them on the head” (CSC:10). The case, it seemed, was cut and
42 dried—composed of several confessions and compelling medical evidence.

43 For Mercedes, the rapists heralded a change in her life and in the way she would think
44 of her family, her community, and herself. The day following the rape, Mercedes’
45 mother Rosa madly canvassed the community of Chocco and Cchona, spreading
46 the word of the rape and summoning those involved to her house. “My daughter
47 isn’t an animal,” Rosa told me, reflecting on the moment she heard of the rape. “As
48 Christians, how could they have done this to my daughter? As a Christian, she should

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3 be respected; she's not an animal, not a dog, not a nobody."⁹ While Rosa did not
4 use these sentiments in court, it is arguable that her invocation of animality reveals
5 some of the sensibilities in rural Peru, which often equate being "Indian" to lesser
6 life form.

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8 Shortly thereafter, all of the accused appeared at her home to beg forgiveness. Mer-
9 cedes' outraged brother demanded a financial settlement, but his requests were re-
10 jected as too hefty. Incensed, he grabbed a few of the garments the accused wore as
11 evidence—along with other articles of clothing he had gathered from the scene of the
12 crime the previous evening. The family decided to wage a full court battle.

13 14 15 **On the Road to Oral Trial: The Moral Triad, the State, and the Plaintiff**

16 As it turned out, Mercedes' quest for justice was not so simple. My previous research
17 examining 20th-century rape prosecution in Peru shows that, in order to reach the oral
18 trial phase (in hopes of securing a conviction or verdict), a woman must prove three
19 things: her age, her virginity, and her "honor"—or what I have labeled elsewhere the
20 moral triad (Bunt 2006).

21
22 The penal code of 1924, which governed Mercedes' cases, had ushered in a new role
23 for the state in the prosecution of rape crimes and sexual assault (Basadre Ayulo 2003).
24 By law, victims under the age of eighteen (or who could not afford legal council)
25 should be aided by the district attorney's office.¹⁰ But, as every ethnographer knows,
26 the law is never practiced as written. The vast majority of cases that appeared on
27 the docket in 20th-century Peru under the rubric of violent rape, however, usually
28 involved statutory rape, broken marriage promises, paternity, and child support (Bunt
29 2006). "Real" rape cases like Mercedes' were rare and even more difficult to prosecute
30 because of the deep social stigma attached to the crime, in a region where victims
31 were historically prompted to commit suicide as a solution (Bunt 2006:48–50). At
32 the procedural level, as we will see, women faced humiliation and discrimination at
33 every step, even at the hands of the state agents designated to aid them.

34
35 As such, Mercedes' case was hazy; she had just turned 18 when she was raped.
36 While age is not a formal requisite of the law, in practice, it dramatically reveals the
37 bias that women face on the ground in court, where procedural irregularities are the
38 norm. As is frequently the case across many cultural settings (a phenomenon noted
39 by generations of legal anthropologists and other scholars), plaintiffs must strategize
40 against judicial and cultural bias, rather than maneuvering within the letter of the law.
41 However, defendants also strategize, using the plaintiff's age to argue (along with
42 popular norms) either that mature women cannot be raped or that they should have
43 known not to go out alone at night.

44
45 Although the state intervened fully in her case, and despite her meager financial
46 means, Mercedes and her family decided to hire a private attorney (on an ad hoc
47 basis) to help file court depositions and to muster witnesses. Yet, even with help
48 from private attorneys, plaintiffs in rape cases in Peru had to frame their depositions
in light of the moral discourse that pervaded judicial discretion in sexual assault

cases (Caro Coria and San Martin 2000; Rosas 1990). Most importantly, even in late-20th-century Peru, popular mores position virginity before marriage as central to a woman's personal and public prestige. In the popular rhetoric of Cuzco, and often in judicial rulings, a "dishonest" woman (i.e., a woman who is not a virgin before marriage) cannot be raped, regardless of age (Bunt 2006).

Other studies of rape in Latin America have certainly noted the importance of honor in crimes that involved sexual transgressions (Caufield 2000; Caufield and Chambers 2005), and the role played by sexual propriety in sex crimes trials is well documented in the developed world. However, what makes the moral triad particularly interesting in rural Peru is the way that plaintiffs framed the moral discourse in their depositions, glossing racial languages particular to Cuzco in order to sway judges. The core problematic that shapes judicial reasoning in Peru is the particular cultural grid against which judges assess rape claims. Similarly, Veena Das has argued that in rape cases in India, judges also take into account the degree to which rape victims "were sexualized" according to specific local cultural norms (Das 1995:2415; for a discussion of rape and judicial discretion in South Africa, see Herwitz 2003; for Indonesia, see Bennett 2005). Thus, what is at stake in analyzing a case like Mercedes' is to unpack the metaphor of morality by delineating the way in which it is used as a racialized strategy in court cases in order to secure a conviction. Q3

Moreover, Marisol de la Cadena, in her work on 20th-century cultural history of Cuzco, has decisively shown that the languages surrounding morality are the most salient factors shaping identity in the region; these languages are entrenched in racial formations, which necessarily supersede notions of class and other economic gradients (de la Cadena 2000). Equally important, de la Cadena has also shown (in her ethnographic research) that "women are more Indian," or rather that their comportment (especially sexual) is subjected to greater scrutiny and speculation in the localized debates that shape the meaning of race in the provinces of Cuzco (de la Cadena 1996). In fact, debates on the morality (glossed as sexual behavior and urbanity) of so-called indigenous women have always been the lynchpin of racial taxonomies in 20th-century Cuzco, where female indigeneity is akin to lasciviousness (Bunt 2006). Q4

What defines a moral life in Cuzco, and thus what makes one "less indigenous," is sexual propriety, education, and urbanity (de la Cadena 2000). In the case of Mercedes, I will demonstrate that the evidence in her case was explicitly constructed around these racialized cultural perimeters and was especially contested because all the litigants in the case were from the same socio-economic background—and also because Mercedes was a semi-indigenous woman from a semi-urban community outside the urban center of Cuzco.

Gatekeepers of Justice: The Police and State Agents

The first procedural threshold Mercedes had to cross was getting her case to oral trial or convincing the judge of the first instance that it merited elevation to the high court tribunal in the city of Cuzco. Mercedes recounted to me that, "At the PIP (police

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3 station), the police officers felt my nipples when I denounced the crime, asking if I
4 was sure it were my first time, because they should still be a little hard if I hadn't
5 had sexual relations, then they started touching me . . . sometimes I think it might be
6 better for a women to spend all that money on a psychologist rather than the judicial
7 process, at least that way not all of your problems get aired out in public."

8
9 Within days of the first court deposition, under the tutelage of lawyers, the accused
10 began to change their versions of the events in question. Some claimed that they were
11 coerced by the police to confess, or that their functional illiteracy prevented them
12 from reading and understanding the final declarations they had signed (CSC:153).

13 Mercedes' strategy in pushing for oral trial involved sustaining claims about her
14 "moral" character, as well as the marshalling of evidence and witnesses on her behalf.
15 After she had reported the crime at the police station, in her first deposition to the
16 court, she outlined her claims, making seven major points. The first claim she made
17 was that she was a young woman with "flawless (*intachable*) conduct," who was
18 still studying at a college preparatory institute in the nearby city of Cuzco (CSC:35).
19 Second, she justified her physical presence outside during dusk on the evening in
20 question and asserted that she had never met her attackers before the rape. Third, she
21 recounted the way in which she was surprised by the accused. Fourth, she detailed
22 the number of men who attacked her and the kind of force they used to overwhelm
23 her, grabbing her by the arms and covering her mouth. She also exactly described
24 all of her efforts to resist her attackers at every turn. Fifth, she assigned particular
25 acts to each of the accused:

26
27 the one who took off my orange-colored panties was Vicenete Ccahauna,
28 who I have discovered has a prior criminal record for raping (*violando*)
29 María Secca Tupa in the same way. This act was followed by the first
30 man that made me suffer the sexual act the first time, this person was
31 Enrique Bacilio Flores, who broke my hymen . . . as for the rest of the
32 persons, one covered my mouth, two held each arm and another two held
33 down each leg, while each of them took their turn practicing the sexual
34 act with me; in the end, seven people raped me. Enrique Bacilio Flores
35 took two turns (CSC:36).

36 The sixth tactic in Mercedes' strategy was to identify her attackers again by name.
37 Finally, she gave exacting details of what she was wearing, "The day of the rape,
38 I was wearing a sky blue-colored dress, a sweater, a white scarf, and closed-toe
39 shoes the color of blue, which were destroyed by the dirt as a consequence of being
40 thrown to the ground, where my socks were also torn. . . ." (CSC:36). In a subsequent
41 deposition, Mercedes submitted the clothes she wore that evening to the judge as
42 evidence:

43
44 1. A dress the color of sky blue, embellished with figures where there
45 appear stains from the dirt. 2. A white scarf stained with dirt and blood. 3.
46 A marine blue-colored sweater, also soiled by dirt. 4. A pair of closed-toe
47 marine blue shoes, which were completely destroyed due to the force I
48 exerted in trying to defend myself during the rape (CSC:69).

Mercedes also added at the end of her deposition that “in order to certify her flawless conduct, dedication to school work, and that she has never been involved with or been courted by any of the rapists,” she would present more witnesses and evidence. The two other major pieces of evidence she introduced were the clothing her attackers lost the night of the attack (seized by her brother at the crime scene) and her grades from school. The description of the clothing of the accused, much like the description of her own, was detailed and assigned to its owners:

As proof of the identity of the men that raped me, I present to this court the following items of clothing, which correspond to the accused: 1) A coffee-colored hat which belongs to Gerardo Ccallo Champi. 2) A green-colored cap with white and orange flaps which belongs to the accused Enrique Granilla Sullca. 3) A red sun-visor, brand-name “Power,” which belongs to the accused Benigno Granilla Sullca. 4) A sky blue-colored indigenous cap (*chullo pasa-montaña*) with multicolored strings that belongs to Dionicio Humani Tacuri (CSC:93).

Mercedes argued that these pieces of clothing offered irrefutable evidence as to the guilt of the accused. Also, the contrast of her clothing (decidedly non-indigenous, i.e., a long skirt and close-toed shoes) versus the Humani’s *chullo pasa-montaña* is a move to position herself as more urban and mestiza (of mixed Spanish blood).

Shortly after this deposition, she insisted the accused be medically examined, especially for scratch marks she may have left on their faces. In this dogged pursuit of an oral trial, she also introduced copies of her report card, which reveal high to mid-range marks for her class grades, as well as high marks for her conduct in the classroom. Other such evidence included witnesses that could verify her studiousness, such as by petitions signed by fellow students in her book club. Neighbors also attested to her family’s solvency and moral fiber (CSC:166). Finally, the president of Chocco’s administrative council reaffirmed Mercedes’ studiousness and social conduct, as well as her commitment to the community. (CSC:168).

Mercedes strategically used the languages surrounding morality or social “decency” embodied in civic service, education, and urbanity (de la Cadena 2000), although she was essentially from a family of agriculturalists. Thus, in her statement to the police she cited her age as eighteen, claimed she was a virgin before the attack, and gave exact details attesting to the nature of the violence of the rape (signaling the lack of consent). Mercedes was able to back up her claims at this point in the trial with her initial medical examination after the rape, which revealed a recent scarring of the hymen, arguably proving the recent loss of her virginity.

The defense, however, launched a counterattack on Mercedes’ moral claims. This attack formed the centerpiece of their legal strategy. During this phase of the trial, accusations started to fly about Mercedes’ lack of proper moral conduct in Chocco.

Reflecting on this time, Mercedes protested that “lowdown people tried to say that I provoked the rape. They even claimed that I took off my panties right before the rape and came looking for the men without them on.” Several of the accused managed to gather witnesses who made similar, though less theatrical, claims about Mercedes’

behavior during the trial. A witness for Gerardo Callo Champi claimed, “I also know the alleged victim. She is a girl that is left unsupervised by her parents, which is why she wanders the roads up until the late hours of the evening. She lacks shame (*pudor*) with members of the opposite sex; constantly partying, she likes to drink” (CSC:51).

Other witnesses for the accused claimed Mercedes was seen drinking with them on the night in question (CSC:124). Some also claimed to have seen her selling chicha (corn-beer) at the soccer game and to have seen her in an inebriated state (CSC:129–131). In a culmination of their attacks against her behavior, the accused had one witness testify that “the alleged victim came into the hotel Colón, where he worked, accompanied by a boy and asking for a bed, a request that was denied because they had no identification. Also, on various other occasions, he had seen her accompanied by boys, meaning that she is not an innocent girl (*una muchacha honesta*)” (CSC:125). A deposition signed by Enrique Basilio Flores, who previously confessed to raping Mercedes in his police statement, later stated:

The alleged victim, Ms. Mercedes Ccorimanya, is legally an adult, and she exhibits conduct that is completely negative. The case in point being that she walks around alone at night in isolated and dark areas after nine o’clock. In addition, the alleged victim has not presented her birth certificate to the court, knowing full well that she is over the age of twenty-one . . . The alleged victim wanted a payoff; she asked for thirty thousand soles, but I refuse to pay for a crime I did not commit, I have been falsely accused (CSC:87).

In addition to launching an attack on Mercedes’ moral character, the accused tried to bolster their claims of innocence by producing their own moral claims about themselves, as well as by introducing exculpatory ideas in the debates over their own guilt. While their strategies varied, in responding to Mercedes’ claims, the defendants were also trying to distance themselves from their own alleged indigeneity, using the tropes of urbanity, education, and respectability. One defense witness, verifying the proper behavior of Vicente Cahuana Baca, claimed that “it is possible they gave him alcohol, not realizing the later consequences and he did not realize what he was doing” (CSC:68). Citing drunkenness as an excuse for the rape (or as limiting culpability in sentencing) was also the strategy of Agripino Huanmi Flores (CSC:88). The president of Ccachona’s administrative council, a witness for Gerardo Ccallo Champi, argued that he was an “honorable” person and “what is more is that he has a wife and five small children. . .” (CSC:62). Enrique Basilio Flores argued that, even in the case of his guilt, his age of nineteen limited his ultimate culpability. Other witnesses claimed that Gerardo was a “homebody” and that surely this accusation was slander (CSC:58).

The vast array of terms used to describe the various accused men included the following: “a sensible boy exclusively dedicated to farming” (CSC:79); “a young man of irreproachable conduct”(CSC:90); “a calm sportsman . . . who quit school for lack of financial means” (CSC:77); “marked by behavior that always fell within the boundaries of honesty and decency” (CSC:76); “a sensible boy who plays sports and is dedicated to his studies” (CSC:56); and someone “who never had problems with

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3 the police, nor any trial that would have interfered with his sound labor as a farmer”
4 (CSC:78).

5 Things looked bleak for Mercedes. After submitting their witnesses and depositions,
6 the defendants, all in jail since Mercedes’ formal complaint at the police station,
7 petitioned for release. Her moral claims were refuted, calling into question her vir-
8 ginity and “honor” prior to the rape. In addition, she had yet to produce her birth
9 certificate verifying her age; although the penal code makes no stipulation to limits
10 on age concerning violent rape, the defendants clearly use the trope of age against
11 her. Further, the fact that her brother had attempted to procure a financial settlement
12 tainted her motives, substantiating the defendants’ claims of a profit motive.
13

14 Mercedes’ case merited a visual inspection by the judge of the first instance. In such
15 cases, the judge must physically survey the scene of the crime in order to substantiate
16 or negate the accusations of the plaintiff and the defendants. The veil of dusk, the
17 impending storm, and the isolated location of the rape in question were crucial factors
18 that could tip the scales of justice. “As a child, I had had experience with the police,
19 my uncle had been murdered,” Mercedes continued to recount. “I knew how they
20 would try to reconstruct a crime scene. People are lowdown. When I asked the district
21 attorney’s secretary if the ocular inspection would be conducted the same way (for
22 her case) he said smugly, ‘Don’t worry, we are going to reconstruct the rape just as it
23 happened.’ Imagine how I felt on the inside.” Luckily, the accused never showed up
24 for the scheduled visual inspection to recreate the crime scene as the court bureaucrat
25 had suggested. Mercedes recounts:
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28 They are pigs—the court clerks. People will sell themselves for a buck.
29 How can you believe in this kind of country, in Peru, you are going to help
30 people? How? If a person is summoning all their courage to denounce
31 the crime, in spite of the shame? It’s not what you feel at home with your
32 friends, it’s a kind of shame that you feel in public. It’s like entering a
33 valley of ice and snow, and once the you feel the cold enveloping you,
34 you think it is better to stay here than to go any further. It’s like you
35 lose the ability and strength to go on . . . you start to think it would have
36 been better not to denounce the crime and to stop denigrating myself and
37 facing so much shame, and how many women do you think do exactly
38 this? The majority.
39

40 The presiding judge of the first instance verified the crime scene as an isolated and ele-
41 vated spot, partially obscured from the view of the community of Chocco (CSC:208).
42 Yet, interweaving the depositions of Mercedes and the accused, he negated Mer-
43 cedes’ claim that the spot was completely isolated. He noted that several “houses”
44 seemed to be under construction in the immediate area and that the road itself led
45 to a brick factory, indicating vehicular traffic. He also contradicted her judgment of
46 the measurement of distance from the community where the alleged rape took place,
47 shedding doubt on her ability to accurately attest to the facts during the night in
48 question.

2
3 Further contesting Mercedes' version of the event, the judge noted that "her claims
4 are false. In being victimized, she would have necessarily screamed for the help of her
5 neighbors. Similarly, she claims they threw her against the dirt wall. The very same
6 wall she claimed to be composed of loose gravel, which would have automatically
7 generated open bleeding wounds. The wall is composed of packed dirt. Finally, if
8 she had tried to flee, there are plenty of footpaths" (CSC:208). The final blow to
9 Mercedes' claims was summed up by the judge's accreditation of the defendants'
10 version of events concerning her struggle to ward them off:
11

12
13 On the other side, as has been stated, the place where the plaintiff claims
14 to have been assaulted is covered by loose rocks that are easily in hand's
15 reach, which, if the event were against her will, she could have used
16 to defend herself . . . the plaintiff claims she never knew her attackers
17 beforehand . . . all defendants say it was raining that night, yet both parties
18 fail to note that there is no electricity in the area, or rather there are no
19 street lamps (CSC:208-9).
20

21 The trial was turning against Mercedes, her own strategies used against her. Reflecting
22 on these moments, Mercedes remembered that, "You can lose the will to go on. You
23 lose hope and want to go back." She even admitted a futile attempt at suicide during
24 this time. Yet, according to her, fate intervened in her case:
25

26
27 There really exist positive, as well as negative forces. Here in our Andean
28 World, we believe our Apus, in the spirit of the land. We also believe
29 in God. I am very much a believer in the Lord, one must believe in
30 something large . . . I am very strongly anchored to the positive forces of
31 nature. For example, one of the accused was a Judas (referring to Huamni,
32 who first greeted her before the ambush). He sold me like Judas. I didn't
33 know that others were hiding while he distracted me. He tried to fix the
34 trial. This is the best way to explain it. The people that raped me had a
35 prior record . . . it was this very same one, who sold me like Judas, who
36 was a caretaker where they held the wakes. After one of the wakes, he
37 took out one of the cadavers and began to sexually abuse it . . . it all had
38 an explanation everyone knew about, that was the downfall of them all.
39

40 I could never find any reports in the newspaper verifying the rumors about Huaman's
41 necrophilia nor did they show up in official court documents. Midway through the
42 case file, however, during Mercedes' bleakest moments, I found a telegram that had
43 been received from Lima. The slow modernization of the judiciary had yielded
44 at least one beneficial element to the administration of justice. Computers now
45 logged databases of previous convictions, which are paired to national identification
46 numbers, established in conjunction with obligatory military conscription. Drawing
47 on the databases, the telegram revealed that Nicanor Huaman Flores had a previous
48 conviction for the statutory rape of a twelve-year-old girl (CSC:212).

The Point of No Return and the Superior Court of Cuzco

During the bleakest moments of the trial, Mercedes turned to her high school sweetheart for support—Wilbert, the man who is now her common-law husband, and with whom she has three children. Trying to overcome the ordeal, Mercedes recalls, “I used to walk, just to walk. He helped me a lot . . . I admire how he endured all of this.” Mercedes and Wilbert had known each other since childhood. Before the rape, they had a budding romance. They had grown up during the turbulent years of Velasco’s land reform and bitter conflict over land titles. Then, Mercedes was raped. Wilbert connected his own position vis-à-vis this conflict with the attack on Mercedes:

I think the rape was planned; it was revenge. They knew she was my girlfriend. It felt as if they had done it to me, not to her, but to me . . . Then we reported it. I said, we’re not going to drop this. They have to be punished . . . we tried to keep her going, to keep her spirits up.¹¹

I asked him what he thought about the barriers Mercedes faced in court. He simply stated:

Machismo is a plague. When I am finished with my work, I help out with the chores of the house. I have lived it in the flesh, and it’s a lot. I think both men and women should share with the chores of the house. A woman, though, is trapped because of her reproductive situation. Nepotism, machismo, alcoholism and abuse. And illiteracy. They are very closely related—alcoholism and machismo. The poorer a person is, the more they drink. This is the way I see it. It may not be this way for the middle class, but here in Peru, that is the way is for the vast majority.

Both Wilbert and Mercedes link their perceptions of the trial to larger issues in Peruvian society. Mercedes does not, however, believe that the rape was an act of vengeance concerning land disputes. She still believes it was a random act of violence by drunken and unrefined men. The rape also changed how she understood and navigated her feelings towards men and intimacy, which were only exacerbated by the process of the trial. She confessed that the larger part of her still struggles with this because, “on one side, it means you can no longer trust a man.” On the other hand, this lack of trust in men raised an even larger question for her: how can you trust anyone? At one point during the trial, one of accused even tried to propose marriage in order to escape punishment, which used to be allowed by law. But Mercedes stood her ground and continued to pursue a conviction. In fact, her learnedness of using the law (bolstered by Wilbert’s experience with land reform and aspirations to study law at university) may have also been a contributing factor that marked her as less indigenous in the eyes of the court.

Shortly after Huaman’s criminal record surfaced, Mercedes finally introduced her birth certificate into evidence. At the time of the rape, she was in fact eighteen years old. “If I had been even a year older, I doubt the judge would have heard the case,” she asserts, again acknowledging the prejudice older women face in court, despite the mandate of the law.

1 Page 298
2
3 During this phase, Mercedes' mother defiantly joined the defense of her daughter,
4 confronting the accused as well as the presiding judge in the case. In her deposition to
5 the court, she recounted the version of events as Mercedes had told her immediately
6 following the rape. Like Mercedes' testimony, Rosa's narrative is filled with graphic
7 details and also peppered with a few Peruvian literary references underscoring the
8 sentiments of an outraged mother (as well as again invoking the metaphors of animal-
9 ity): "These vultures of love (*buitres del amor*) grabbed her violently. Perpetuating
10 their sexual instincts, these delinquents ripped off her clothes, and committed the
11 carnal act one after another" (CSC:181). Rosa is a frail but strong-willed campesino,
12 who seamlessly mixes Quechua and Spanish when she speaks. Her resolute person-
13 ality gave Mercedes the gift of endurance during the trial. "I may not know how to
14 read or write," Rosa told me:
15

16
17 but I know that as person you denounce such a crime. You make people
18 respect you. She was not an animal. I even went to see the judge. I told
19 him that I was poor. But I am no silly-faced fool. I tangled a few coins
20 from my pocket, showing my poverty. We took it all the way to the
21 Superior Court in Cuzco.¹²
22
23

24 **The Road Back to Chocco**

25 Despite the presiding judge's conflicting sentiments over the visual inspection, pic-
26 tures tell a thousand words. The court secretary had taken photographs of the crime
27 scene, which were included in the case file. Taken from various angles, one from the
28 banks of the river up towards the road, another at the exact crime scene, the photos
29 reveal an area rocky and steep, an isolated terrain in which escape from an ambush
30 would have been nearly impossible. The angles of the photos also reveal how Mer-
31 cedes' perceptions of distance would have changed, given the fact that she was forced
32 to the ground. This negated the first judge's claim that she may have miscalculated
33 the events the night of the rape (CSC:220-4).
34

35 Reviewing such evidence, along with other depositions, the district attorney argued
36 for the guilt of the accused and pushed for oral trial (CSC:226). Fighting for their
37 freedom, the accused launched another round of attacks against Mercedes, claiming
38 that the dark conditions the evening in question prevented them from being positively
39 identified (CSC:254). Attacks against her character got more vicious, coupled with
40 attacks against her moral (sexual) behavior and suggestions that her flirtatiousness
41 might be influencing the higher judges or district attorney. Charges of a profit motive
42 were again launched against her. The Peruvian code of penal procedures requires
43 that the alleged rape victim confront her attackers in court or in the presiding judge's
44 chambers. Mercedes, supported by the strength of her family, valiantly retold her
45 version of the events while the accused looked on. The tension in the case increased
46 with these claims before the oral trial. The defendants pushed the judge for release
47 from jail where they had been housed for nearly two years, as the trial dragged on,
48 now having entered in May 1984.

1 November 2008 Page 299
2
3 Finally, on November 2, 1984, the tribunal court of Cuzco handed down its verdict.
4 It convicted all of the accused of rape and sentenced them each to thirty months
5 in prison (with time already served). The presiding judges also set a shared civil
6 settlement in the sum of one million four hundred soles.

7
8 The evidence that most swayed the judges consisted of the following: (1) the fact
9 that the accused were physically proven to be in the area the night in question; (2)
10 the inebriated state of the accused; (3) the way in which the photographs from the
11 visual inspection revealed that Mercedes had not strayed far from her home in the
12 dark; (4) the premeditated and brutal gang-force used against her; (5) the medical
13 evidence of a recently ruptured hymen; (6) the fact that the accused went to apologize
14 to her; (7) the fact that the accused later confessed; and finally, (8) the cynical attitude
15 the accused displayed and the contradictory statements they made during the trial.
16 The judges also pointed out several discrepancies in the collective testimony of the
17 defendants (CSC:369–372).

18 Mercedes' personal triumph and the elixir of her radio program provide her with
19 as much solace as her day in court. To date, she is famous in Southern Peru as an
20 advocate against domestic violence:

21
22 Thanks to these difficulties, I have grown too. It has made me almost
23 like an authority. They are asking me to be a political candidate, but I
24 don't know, I don't want to get mixed up in politics . . . I have read a
25 mountain of books . . . I think the fact of managing these social topics
26 gives one a sense of society and the ability to love oneself and grow
27 much more . . . With this problem that I had (the rape) and all the other
28 problems that have come my way, I had to find a way to overcome . . . I
29 think I have overcome a lot, I have overcome a lot . . . I have endured this
30 situation and I think the very fact of speaking out about it, the laws, how
31 people treat you after something like this happens, the very women in
32 your community, your very family, your friends, I think for me it has been
33 an enormously therapeutic experience. The very fact that I have spoken
34 out about this problem has made me feel that I am not a woman who
35 feels guilty, because many women feel responsible for being raped. I
36 went through this phase; I felt ashamed. A person at this moment feels
37 hideous, psychologically dead, like your soul is gone . . . I think the very
38 fact of making it to this (radio) program has helped me tremendously. I
39 am a success, I have triumphed.¹³

40 41 Conclusion

42
43 A soiled sky-blue dress, a recently ruptured hymen, details of brutal force, a young
44 age, and finely textured narratives of morality form the landscape of justice in this
45 Peruvian case. In addition to exercising agency with regard to the legal system
46 itself, women have to contend with racially coded cultural tropes that center on
47 age, virginity, and morality. Mercedes' experience demonstrates the barriers women
48 encounter in Peruvian courts at every turn, where they face humiliating physical

exams and procedural irregularities at the hands of state agents. Additionally, her case shows how in order to succeed in rape cases, a victim must (1) manage the collection of evidence by gathering physical evidence; (2) muster witnesses; and (3) negotiate an informal legal culture that operates outside the letter of the law.

In navigating this legal system, Mercedes' case reveals how the female civil "plaintiff" can mobilize the law in Peru through her resolute pursuit of punishment for the men who raped her. This kind of use of the courts, by the gendered, racialized underclass of Peru, stresses a point made in current debates on the law in Latin America as a whole: that one of the defining features of burgeoning democracies that deserves more consideration is the "civil actor." Civil actors such Mercedes "represent an innovative form of politization in the region," as opposed to "state agents who have historically undermined the law" (Peruzzotti and Smulovitz 2006:3).

Most importantly, Mercedes case underscores how race in Peru is neither a fixed idea, "nor radically contingent and wholly up for grabs" (Stoler 2002:205). Rather, it shows how "race" is produced in the context of competing and conflicting discourses in courts of law where its most cogent expression is through localized tropes concerning feminine sexuality. In mobilizing the power of the state in the instance of sexual crimes, women like Mercedes who arguably act as "plaintiffs" in criminal cases (instead of acting as witnesses, due to lack of appropriate state intervention) exercise a novel kind of agency that is intermediate between that of the private, civil plaintiff and that of the public, state prosecutor. In sum, despite the fact that such women must distance themselves from their own indigeneity (and often community), they achieve their own brand of justice by negotiating often highly discriminatory cultural lexicons in their legal claims.

Notes

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1. It is also demonstrative of the so-called "life of the law" (Nader 2002) in 20th-century Peru as it is expressed and created by women in rape cases who become "plaintiffs" in criminal court cases where state intervention is lacking.
2. The following article is derived from taped interviews I conducted with Mercedes Ccorimanya Lavilla in May and June 2002 and many informal meetings. Everyone interviewed agreed to have their names appear in published form. All transcriptions and translations are mine.
3. For a discussion of the justice motive and evidence in Latin America, see Mendez 1999; Eckstein & Wickham-Crowley 2003; Snodgrass Godoy 2006.
4. Although nearly seventeen years have passed since the rape occurred, Mercedes has spoken over the years in public forums hosted by NGOs about her ordeal; thus the events are fresh in her memory and also form her current public persona as an advocate against domestic violence.

5. Informal interview with Mercedes Ccorimanya Lavilla, May 2002.
6. Taped interview with Mercedes Ccorimanya Lavilla, May 2002.
7. Taped interview with Rosa Lavilla Salazar, May 2002.
8. Corte Superior del Cuzco (CSC): Case Number: 0598: Initiated on February 15, 1983 in Cusco; “Gerardo Callo Champi, Benigno Granilla Sullca, Vicente Cahuana Baca, Enrique Basillo Flores, Dionicio Humani Tacuri, Agripino Huamani Flores, Pedro Nicanar Human Flores; Delito: Violación Sexual, Agravio: Mercedes Ccoimanya Lavilla,” p. 3.
9. Taped interview with Rosa Lavilla Salazar, May 2002.
10. For reference to this clause see CD number 2 in *Archivo Digital de la Legislación Peruana* (Version 2.0, 1999) under the section “*Delitos Contra Las Buenas Costumbres: Titulo I. Delito Contra la Libertad y el Honor Sexuales.*”
11. Taped interview with Wilbert Ccorimanya, May 2002.
12. Taped interview with Rosa Lavilla Salazar, May 2002.
13. Taped interview with Mercedes Ccorimanya Lavilla, May 2002.

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