Maternity and Morality in Puebla's Nineteenth-Century Infanticide Trials

NORA E. JAFFARY

In late September 1838, 16-year-old, single, María del Carmen Camila confessed to a justice of the peace in the small town of San Jerónimo las Caleras, in the state of Puebla (Mexico) that she had exposed her newborn baby. Del Carmen declared that she had given birth, at 9:00 in the morning, in the alfalfa fields near the mill where she worked, to a baby girl whom she covered with some grasses and abandoned. That evening, she returned to the spot with a companion, Margarita Getrudis Rodríguez, who had agreed to take in the baby, but they discovered that the newborn had died. The two women placed it in a basket and buried it nearby. Subsequently Rodríguez informed her employer, Ana María Pineda, about the baby's birth and death. Pineda's husband ordered the corpse exhumed and initiated the legal case against del Carmen.[1] Del Carmen told her investigating judge that she had hidden her newborn in a field because of the "shame that she had felt for having given birth and that she did not want this known in the mill [where she worked]."[2] Her legal defender framed del Carmen as an ignorant innocent whose terrifying adoptive mother had ordered her to keep working and hide the baby's existence. Although convicted, because she had confessed to the crime, Puebla's criminal court sentenced del Carmen with considerable lenience; she was required to serve a 4-year sentence cleaning the city jail.[3]

1. Archivo Histórico Judicial de Puebla, Puebla, Mexico (hereafter AHJP), Penal, caja 634, exp. 19484.

2. AHJP, Penal, caja 634, exp. 19484, fol. 21v.

3. Del Carmen's sentence was typical for these cases, in which courts sentenced a majority of those convicted of infanticide to confinement for 4 years or less.

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María del Carmen Camila's case illuminates a number of issues represented in the body of twenty-seven trials for the crimes of abortion and infanticide that the Supreme Court of the Mexican state of Puebla prosecuted between 1825 and 1872.[4] This article examines this group of nearly thirty *poblano* (from Puebla) infanticide and abortion trials in order to study community and state perspectives of gender and crime in the first decades of postcolonial Mexico. These trials show that from a moral perspective, for community members and judicial officers alike, plebeian women's successful performances of the roles of dutiful daughter and virginal maiden were more important than the absolute certainty that they had not taken the lives of their fetuses or newborns.[5] Although Linda Arnold has described a culture of "moral outrage" surrounding the commission of infanticide in mid-nineteenth-century Mexico, the cases exhibit greater similarity to Kristin Ruggiero's observation that the public staging of female honor trumped any quandaries about the possible commission of neonatal murder in late nineteenth-century Argentina.[6] In the context of postcolonial Puebla, community members did take a more interventionist role in policing infanticide and abortion than they had in the preceding three centuries of colonial rule. Nevertheless, these cases show that both community members and judicial officials valued the public reputation of female honor above mothers' obligation to protect rather than to harm their offspring. In this context, female honor connoted the reputation for sexual virtue, honesty, and *buena conducta* (good behavior) that Silvia Lipsett-Rivera and others have discussed, but also a strong imperative to respect and obey parental authority.[7] This occurred despite the contemporary notion that the most important duty designated to women in the new

4. These are all the abortion and infanticide cases housed in the AHJP. Only one of the cases involved the charge of abortion; the rest were all for infanticide. The archives' extant holdings do not go beyond 1872. Excluded from this discussion are those cases that I determined involved accidental miscarriages caused though violent acts against pregnant women.

5. My findings parallel Kathryn A. Sloan's discussion of the augmented discourse of plebeian women's sexual honor in the mid-nineteenth-century Oaxaca in *Runaway Daughters: Seduction, Elopement and Honor in Nineteenth-Century Mexico* (Albuquerque: University of New Mexico Press, 2008).

6. Linda Arnold, "Why Pablo Parra Wasn't Executed: Courts and the Death Penalty in Mexico, 1797–1929" (paper presented at "The Death Penalty and Mexico–US Relations: Historical Continuities, Present Dilemmas, An International Symposium," University of Texas at Austin, April 14, 2004), 9. Kristin Ruggiero, "Honor, Maternity and the Disciplining of Women: Infanticide in Late Nineteenth-Century Buenos Aires," *The Hispanic American Historical Review* 72 (1992): 353–73.

7. Sonya Lipsett-Rivera, *Gender and the Negotiation of Daily Life in Mexico, 1750–1856* (Lincoln: University of Nebraska Press, 2012), 15.

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republic was the production of a healthy citizenry through childbirth and childrearing.[8] These attitudes were distinctive from those displayed in the contemporary United States, where Marcela Micucci describes a tendency in the public to view infanticide suspects as "immoral or inherently sinful 'unnatural mothers' who surrendered to sexual seduction."[9] In the Anglo-American context, several scholars have found that notions of women's depraved sexual inclinations colored community views of those charged with infanticide.[10] In contrast, in Latin America, courts and communities expressed that the imperative of maintaining women's honorable reputations predominated, evidence to the contrary notwithstanding.[11] The Puebla cases also show that legal attitudes awarding defendants the benefit of the doubt earlier in the century gave way to less tolerant attitudes toward suspects near its close.

This article also contributes to current scholarly discussions about the nature of popular practices of Catholicism in the first decades after Mexico secured its independence from Spain in 1821. Although Donald Fithian Stevens has recently raised valid questions about the extent to which Mexicans devoutly embodied Catholic piety in the early republican period, the infanticide and abortion trials examined here largely support Mathew O'Hara's finding of the powerful continuity of colonial religious identities and spiritual practices in the post-independence era.[12] *Poblanos* maintained colonial-era popular Catholic attitudes toward the crimes of infanticide and abortion, expressed in the legal and social disinterest in

8. Charles L. Briggs, "Introduction," in *Women, Ethnicity, and Medical Authority: Historical Perspectives on Reproductive Health in Latin America*, ed. A.S. Blum, T. Marko, A. Puerto, and A. Warren (San Diego: UC San Diego Center for Iberian and Latin American Studies, 2004), 3.

9. Marcela Micucci, "'Another Instance of that Fearful Crime': The Criminalization of Infanticide in Antebellum New York City" *New York History* 99 (2018): 87.

10. For the former associations, see Micucci, "'Another Instance of that Fearful Crime'"; and Annie Cossins, *Female Criminality: Infanticide, Moral Panics, and the Female Body* (New York: Palgrave Macmillan, 2015).

11. On Latin America, infanticide, and honor, see Ruggiero, "Honor, Maternity and the Disciplining of Women"; Laura Shelton, "Bodies of Evidence: Honor, *Prueba Plena,* and Emerging Medical Discourses in Northern Mexico's Infanticide Trials in the Late Nineteenth and Early Twentieth Centuries," *The Americas* 74 (2017): 457–80; and Jhoana Gregoria Prada Merchán, "Un crimen por honor: El infanticidio en Mérida (1811–1851)," *Procesos históricos: revista de historia, arte y ciencias sociales* 21 (2012): 108–48.

12. Donald Fithian Stevens, *Mexico in the Time of Cholera* (Albuquerque: University of New Mexico Press, 2019); and Mathew O'Hara, *A Flock Divided, Race, Religion and Politics in Mexico, 1749–1857* (Durham, NC: Duke University Press, 2019). Stevens suggests that such popular early nineteenth-century practices as christening children with dozens of saints' names, rather than demonstrating piety, may have instead denoted the obligations of social and fiscal patronage.

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the militant prosecution of either crime through the nineteenth century. They maintained these attitudes despite the increased attention that the papacy was directing, in the context of growing evidence of popular uses of birth control in Europe, toward the defense the sanctity of marriage whose primary end was the procreation and education of children in such decrees as Pope Leo XIII's 1880 encyclical on marriage, *Arcanum Divinae Sapientiaie*.[13] The following discussion proceeds by first examining nineteenth-century legal perspectives on abortion and infanticide, assessing the prosecution of the crimes in Puebla within a temporal context, and then assessing both defendants' profiles and their own perspectives of these crimes in comparison with attitudes that their peers exhibited.

Legal and Medical Perspectives on Abortion and Infanticide

From a legal point of view, very little changed between the legal and medical perspectives on the crimes of infanticide and abortion that operated in colonial Puebla, and those adopted in the first five decades after independence. In Puebla, as in the rest of the country, formal codification of criminal law did not occur until after the 1871 passage of the Federal District's Penal Code, which individual states adopted largely verbatim shortly after its passage.[14] Before 1875, Puebla's judges relied on colonial law to rule on all criminal matters, including abortion and infanticide cases. The administration of law in the colonial era had rested largely in the hands of the provincial magistry, *alcaldes mayores* (who also acted as municipal authorities in non-judicial matters). In the postcolonial period, such judicial officers were often re-christened *alcaldes constitucionales*, but their tasks, as judges of first instance, remained the same. In even smaller communities, such as San Jerónimo de las Caleras, where María del Carmen Camila lived, the first level of judicial administration was handled by state-appointed justices of the peace. These men rarely had any formal education, legal or otherwise, but instead were individuals recognized in their communities as honest and upright. In one contemporary infanticide

13. Jacobe Kohlaas, "Constructing Parenthood: Catholic Teaching 1880 to the Present," *Theological Studies* 79 (2018): 615–16; and Fernanda Núñez B. "Imaginario médico y práctica jurídica en torno al aborto durante el ultimo tercio del siglo XIX," in *Curar, sanar y educar: enfermedad y sociedad en México: siglos XIX y XX,* ed. Claudia Agostoni and Anne Staples (Mexico City: IIH-UNAM, 2008), 127–62.

14. Puebla adopted the Federal District's 1871 Penal Code in 1875. Antonio A. de Medina y Ormachecea, *Código penal Mexicano: sus motivos, concordancias y leyes complementarias* Tomo I (Mexico City: Imprenta del Gobierno en Palacio A Cargo de Sabás A. y Munguía, 1880), vi.

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trial, for example, the justice of the peace of the town of Santa María Nepopoalco, José Gregorio Chaves, described his formal occupation as labrador.[15] Formal training in the law until at least mid-century was restricted to the men operating as prosecutors (*fiscales*), evaluators (*assessores*), and judges who staffed the state Supreme Court in Puebla.

At both the local and higher court levels, Puebla's nineteenth-century judicial officials continued until 1875 to rule on criminal cases through the application of *derecho indiano* (the law of the Indies) which derived both from peninsular and New World sources. Primarily, however, it centered on medieval and early modern Castilian legal codes, including the *Ordenamiento de Alcalá* (1348), the Laws of Toro (1505), the *Nueva Recopilación de Castilla* (1569), municipal charters (*fueros*), the *Fuero Real* (1255), and most importantly, the extensive legal code developed by King Afonso XI, the *Siete Partidas* (1265).[16] Nineteenth-century justices in Puebla continued to cite these peninsular legal codes until 1872. The codes treated both crimes severely. The text that judicial officers most often referred in nineteenth-century infanticide trials was the *Siete Partidas*. They repeatedly cited *leyes* eight and twelve of the eighth *título*, seventh *Partida* in their judgements. Law eight decreed that "the pregnant women who ate or drank herbs knowing they would expel the newborn should suffer the same pain as that for homicide [i.e. the death penalty],"[17] Law twelve specified that any person who killed a close family member should be whipped, and then enclosed in a leather sack with a dog, rooster, a snake and a monkey and thrown into the ocean or a nearby river.[18]

For expediency's sake, Mexican justices normally relied on a works of *doctrina,* legal tracts that summarized interpreted historic and current sources of law to justify their judgements. Among the most frequently used were *Febrero, ó libreria de jueces, abogados, y escribanos,* first published in 1834, and Spanish Jurist Joaquin Escriche y Martín's *Diccionario Razonado de Legislación y Jurisprudencia,* referred to in several of these cases and first published in Mexico in 1837 and in subsequent decades repeatedly revised and republished. *Febrero* included a reference list by

15. AHJP, Penal, caja 667, exp. 20629, fol. 1v.

16. Gabriel Haslip-Viera, *Crime and Punishment in Late Colonial Mexico City: 1692–1810* (Albuquerque: University of New Mexico Press, 1999), 37.

17. Gregorio Lopez, *Las siete partidas del sabio rey don Alonso el nono, nueuamente glosadas por Gregorio Lopez,* vol. 7 (Valladolid: en casa de Diego Fernandez de Cordoua, 1587).

18. Court officials referred to this section of the *partidas* in several cases, including AHJP, Penal, caja 679, exp. 21078, fol. 2v; caja 721, exp. 22524, fol. 29v; caja 1014, exp. 37572, fol. 34v; and caja 1096, exp. 42162, fol. 21v.

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which magistrates could rank the order in which to apply the various codes they were to use in judging their cases. The ranking began with legislation from Mexican congresses, and then acknowledged both decrees of the independence-era Spanish legislature, pre-independence *royal cédulas* (decrees), the *Recopilación de Indias*, and then several of the medieval codes mentioned previously.[19] Another work of *doctrina,* Rafael Roa Bárcena's *Manual razonda de práctica criminal y medico-legal forense Mexicana*, first published in 1859, likewise indicated that the most important of the Iberian legal codes were still relevant to the mid-nineteenth century where they "had the force of law in Mexico, as long as they did not contradict any element of our national laws."[20]

Although acknowledging the legal force of medieval texts, mid-nineteenth-century works of *doctrina* counseled justices to exercise greater leniency than these legal precedents in assessing infanticide and abortion. In an 1841 edition, *Febrero* cited the precedent of capital punishment for the crimes of both infanticide and abortion, but advised that judges should assess defendants generously, because "human civilization and not the perversity of a particular mother or father is the principal cause of infanticide" because social institutions "generated the notion that illegal conception (*fecundidad*) should be the object of shame and reproach." This situation meant that mothers who conceived out of wedlock were forced to choose between the conflicting obligations of maternal love and social honor. As a contemporary sonnet observed: "Two tyrants play with fate/ love winning against honor brings life/ honor winning against love brings death.[21]

Puebla's nineteenth-century magistrates wrestled with these competing obligations, and occasionally voiced their indignation that honor should trump maternal love. The *alcalde*, the first-instance judge who tried María Ambrosia in Tehuacán in 1825, commented in his opening summary of the case to his Superior Court supervisors that "the crime at the basis of this *sumaria* (investigation) … is one of the most horrific, and perhaps occupies first place in its opposition to nature itself."[22] In María de la Luz Díaz's 1864 trial, her investigating judge referred to Díaz's act of

19. M.G. Mirow, *Latin American Law: A History of Private Law and Institutions in Spanish America* (Austin: University of Texas Press, 2004), 126.

20. Rafael Roa Bárcena, *Manual razonado de práctica criminal y médico-legal forense mexicana: obra escrita con arreglo a las leyes antiguas y modernas vigentes, y a las doctrinas de los mejores autores, bajo un plan nuevo y al alcance de todos* (Mexico City: Imp. de Andrade y Escalante, 1860), 6.

21. Florencio García Goyena and Joaquin Aguirre, *Febrero: ó Librería de jueces, abogados, y escribanos: comprensiva de los códigos civil, criminal, y administrativo* Tomo VII (Madrid: Boix, 1842), 228.

22. AHJP, Penal, caja 357, exp. 10659, fol. 10.

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throwing her newborn in the *comunes* (outdoor communal toilets) as "the gravest aberration of nature, conspiring against its existence in the same solemn moments as she first became a mother."[23] Díaz's own defender submitted that, "a mother who killed her own child could only do this if she were deprived of reason."[24] He continued: "It is indisputable that there are denaturalized women who, deaf to the voice of humanity and drowning the powerful instinct that the creator has imprinted on the hearts of all mothers, to mediate in cold blood and cruelly execute the murder of their children only because they are a barrier to following the route of rampant vice."[25] Although such behavior may have been true of other women, he argued, it was not true of his client.

Despite the presence of such attitudes, however, justices' rulings showed their overwhelming compliance with legal tracts' counsel that they should extend leniency to defendants. In an 1852 edition of his text, Escriche cited both the *Siete Partidas* and the *Fuero Juzgo* both of which counseled that parents convicted of intentional infanticide, the killing of a viable fetus in the womb of the mother or shortly after an infant's birth, should be sentenced with the same punishment as homicide: either the death penalty, or failing it, blinding.[26] Women, he advised, whom courts judged to be of "corrupted customs or of *mala fama* (ill-repute)," those who committed the crimes merely for convenience, or because of aversion to their husbands, should experience the full rigor of the law.[27] However, citing the influence of English liberal philosopher and advocate of penal reform, Jeremy Bentham, Escriche acknowledged that judges should show some compassion to mothers who committed infanticide when prompted by their fears of public infamy, "the indignation of a severe father," or when their abandonment by an unfaithful lover pushed them into a state of "heinous delirium and provoked them to make the fruit of their carnal weakness disappear."[28] In such cases, Escriche commented that judges should sentence mothers indulgently "with only reclusion for a greater or lesser period depending on the attenuating circumstances."[29]

23. AHJP, Penal, caja 1215, exp. 48483, fol. 24.

24. Ibid., fol. 28v.

25. Ibid. The *fiscal* serving in Puebla's Supreme Court in Petra Sevilla's 1836 case, AHJP, Penal, caja 595, exp. 18169, fol. 50v characterized Sevilla as a "monster." Maria Josefa Sosa's legal defender also used similar language, AHJP, Penal, caja 634, exp. 19484, fol. 40.

26. Joaquin Escriche, *Diccionario razonado de legislación y jurisprudencia* (Paris: Librería de Rosa, Bouret y Compañía, 1852), 856–57.

27. Ibid., 857.

28. Ibid.

29. Ibid.

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It was likely Escriche's reference to Bentham that informed a *juez de letras* (professional judge) working in the city of Puebla in 1864 who tried the infanticide case of María de la Luz Díaz. This official, observing that although he had concluded that Díaz was guilty of infanticide, determined that he would not impose the death penalty on her because, because "the celebrated jurist" Bentham, (and here his paraphrase virtually quoted Escriche) had advised that imposing "the death penalty for infanticide committed by the mother was a blatant violation of humanity because of the disproportion between the vileness of the crime and the vileness of the penalty."[30] The justice noted that Bentham had observed that the death of a child "whose life ended before he had begun to live could only elicit sympathy for the perpetrator, who, for reasons of either modesty or compassion had not wanted to prolong a life that had begun under such sad circumstances." It was barbarous, he continued, to impose such a punishment on a miserable and blind woman who in desperation had hurt no one more than herself when "resisting the sweetest instinct of nature," had harmed her unborn or newly born child.[31] The judge, while restraining himself from imposing the death penalty on Díaz, nevertheless did find her guilty and sentenced her to 6 years of reclusion and labor in the city's hospice. In this case, the state Supreme Court overturned this decision and reduced Díaz's sentence to 3 years.[32] A second judge, operating in the state Supreme Court, similarly cited Bentham as an explanation for his support of a merciful 3-year sentence for defendant María Brigida, convicted of infanticide in 1872.[33]

Although both nineteenth-century *doctrina* and the older precedents of the *Siete Partidas* largely informed how *poblana* judges assessed the cases they tried, they also referred to other, more localized forms of legislation. In María Ambrosia's 1825 abortion investigation, the Supreme Court's *assessor* recommended, as mandated in the state of Puebla's earliest post-independence decrees, that the first-instance judge form a jury in order to formulate a judgment against the defendant.[34] The state's first Constitutional Congress had passed legislation in 1824 specifying that in cases of murder or robbery, judges had the option of forming a jury to help make a determination of guilt or innocence. The jury of nine was to be drawn from a pool of candidates who should be male, married citizens of good reputation over the age of 25 and who had resided for more than 6

30. AHJP, Penal, caja 1215, exp. 48483, fol. 21v.
31. Ibid., fol. 22.
32. Ibid., fols. 23, 33.
33. AHJP, Penal, caja 1496, exp. 62017, fol. 50.
34. AHJP, Penal, caja 357, exp. 10659, fol. 23.

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months in the region.[35] In Ambrosia's trial, the only one in which courts employed the institution in this body of cases, the jury determined that the documented evidence against Ambrosia was inconclusive, and so recommended her acquittal.[36]

As will be discussed further, the chief reason why justices sentenced defendants with comparative lenience was that legal texts encouraged the notion that it was more important to value the public exhibition of honor than the private embrace of maternity.[37] However, other factors also played a part. Legal defenders' arguments about the innocence and ignorance of the plebeian and often indigenous women alleged to have committed the crimes often persuaded courts to reduce the severity of their sentences by arguments. Defenders frequently claimed that as "rustic," "ignorant," and "uncivilized" indigenous Mexicans, their clients could not be held to the civilized standards of the law expected of the rest of the population, and they explicitly directed judges to question witnesses—who normally complied with such strategies—in ways that would reveal such traits.[38]

When he was briefed on her case, for example, María Getrudis Lucas's legal defender asserted that the court should be required to interview Lucas's peers so that they might explain, "what knowledge they had of my client in terms of her absolute ignorance of even the most basic principles of morality." He also wished them to "comment on her stupidity and lack of discernment." He instructed the court to invite witnesses to discuss whether "they know that among those who are called indigenous, principally in those of the weaker sex, the respect and fear that children have

35. *Colección completa de las leyes, decretos y órdenes o acuerdos legislativos del estado de Puebla desde la primera época que la Nación adoptó el Sistema federal republicana hasta nuestros días* Tomo 1 (Puebla: Tip. Moneda Portería de Santa Clara núm. 6, 1894), 17–18.

36. AHJP, Penal, caja 357, exp. 10659, fol. 28.

37. Lenience at least in comparison with the contemporary United States and England. Courts sentenced several enslaved women in nineteenth-century Pennsylvania, Kentucky, and Virginia for infanticide; while in Ohio between 1806 and 1879, 29% of white women executed were so sentenced for the crime of infanticide. David V. Baker, *Women and Capital Punishment in the United States: An Analytic History* (Jefferson, NC: McFarland and Company, 2016), 100, 117. In England, although awarding the death penalty for infanticide waned after the mid-eighteenth century, judges continued occasionally to sentence mothers with capital punishment for the crime through the nineteenth century; Ian Lambie, "Mothers Who Kill: The Crime of Infanticide," *International Journal of Law and Psychiatry* 24 (2001): 73–74.

38. This finding is similar to one that Victor Uribe-Uran discovered characterized justices' attitudes toward indigenous men who committed uxorcide during the Colonial Era. See his "Innocent Infants or Abusive Patriarchs? Spousal Homicides, the Punishment of Indians and the Law in Colonial Mexico, 1740s–1820s," *Journal of Latin American Studies* 38 (2006): 793–828.

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of their parents is almost servile."[39] As her defender anticipated, all of the witnesses whom Mino interviewed asserted that Lucas's ignorance and rusticity explained why she might have committed the crime. One *labrador* (manual worker), José Osorio, speaking through a Spanish interpreter, told the court that Lucas was a "poor, innocent girl, or better said, an ignorant imbecile, so little instructed and [poorly] raised that she did not know or perceive [her crime] and for this reason, she is not capable of discernment."[40] Osorio declared that Lucas's parents were poor peons who had given their daughter little instruction, and said she was "timid and cowardly, so much so that she has a terrible fear of her mother, beyond what is normal among indigenous people … because of the severity of her mother."[41] A second witness, also a worker, called Lucas an "idiot girl" but "of good conduct because in the town she never gave anyone anything to talk about." He also commented that she was timid and excessively fearful of the severity of her mother.[42] Witnesses provided nearly identical testimony in María del Carmen Camila's 1838 trial, again within the context of questions her legal defender had requested that the court initiate.[43]

Most often, women's legal defenders initiated such lines of argument, but occasionally, defendants devised them on their own. When María Getrudis Lucas defended her actions before José Sixto Mino, the court notary recorded that even before she had been assigned a legal defender, the justice had asked Lucas what had prompted her to commit such a grave crime. "She said that she did not see it as so grave, and that she only did it to protect herself from the severity (*rigor*) of her mother."[44] In a subsequent appearance, which also occurred before the court had assigned her a legal defender, Mino asked her if she understood how seriously the court viewed the crime of infanticide and Lucas replied that "as an innocent and rustic, mired in poverty," she had not known.[45]

One issue that confounded courts was the problem of distinguishing whether mothers had engaged in intentional abortions or neonatal murder, because of the legal and medical difficulties in accurately detecting the causes of newborn and fetal death during this era. High infant mortality rates, the private nature of both crimes, and the difficulty of detecting the difference between miscarriages and intentional abortions, and even of confirming the state of pregnancy in the first trimester, all contributed

39. AHJP, Penal, caja 631, exp. 19361, fols., 38, 42v.
40. Ibid., fol. 48v.
41. Ibid.
42. Ibid., 50. Espridion Gutiérrez, the third witness, provided much the same testimony.
43. AHJP, Penal, caja 634, exp. 19484, fols. 31v-34v.
44. AHJP, Penal, Caja 631, exp. 19361, fol. 10v.
45. Ibid, fol. 39.

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to a climate encouraging judges to err on the side of extending defendants the benefit of the doubt.[46] As physician Juan Maria Rodriguez commented in his widely circulated *Guía clínica del arte de los partos* (Clinical Guide to the Art of Childbirth, 1869), "the existence of pregnancy is almost impossible to detect during the course of the first four months, until the cervix has dilated and one can touch the egg."[47] Nevertheless, with respect to the issue of medical expertise involved in the detection of intentional abortion versus accidental miscarriage or misbirth, we can see change over time toward an attitude of heightened suspicion over mothers' guilty involvement in both crimes, and greater legal confidence in the reliability of medical assessments of mothers' criminal guilt or innocence.

As the nineteenth century progressed, justices at all levels of Puebla's court system demonstrated greater faith in the expert opinion of physicians consulted in these trials, even when the scientific foundations for such opinions do not seem to have altered significantly. In one of the earliest cases in this group, Francisca Torres' infanticide investigation of 1829, for example, near the trial's opening, the examining judge ordered that the newborn corpse be exhumed and subjected to a medical examination. The physician who performed the examination concluded that it was likely that the infant had suffered either a "blow or strong compression" on the right side of its throat, suggesting that the infant had been intentionally murdered.[48] Nevertheless, the judge pursued a lengthy investigation into the infant's death, suggesting that he did not understand this opinion as definitive. Similarly, in María Juana's 1855 trial, two medical experts (*facultativos*) who examined the corpse of her newborn that had been exposed in a yard concluded that the infant had been born at term, naturally and spontaneously, and that the cause of death was likely suffocation or asphyxiation.[49] Nevertheless, the first instance court ruled that the evidence against Juana was insufficient to convict her for infanticide.[50]

Judges' early and mid-century ambivalence about the credibility of the evidence provided by medical experts contrasts with the attitude that court officials exhibited two decades later. In María Brigida's 1872 trial, by the time her neighbors had spotted her baby's corpse on a plot of land near her home, several dogs had already devoured the top half

46. Micucci, "Another Instance of That Fearful Crime," 71, found that similar ambiguities of evidence meant that authorities and juries were reluctant to convict women of infanticide in antebellum New York City.

47. Juan María Rodríguez, *La Guía Clínica de partos*, cited in Fernanda Núñez B., "Imaginario médico," 14.

48. AHJP, Penal, caja 434, exp. 12745, fol. 16.

49. AHJP, Penal, caja 1041, exp. 39046, fol. 26.

50. Ibid., 49v.

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of the infant's body.[51] The two physicians who examined the remains of the corpse determined that it had been born at term. Perplexingly, given they would have had little evidence from which to work, they also asserted that the infant must have "been left abandoned from maternal care" and that this abandonment had caused its death.[52] The judge assessing this case, despite the obvious weak foundations of the physicians' assessment, cited their conclusion in his conviction of Brigida, determining that she was guilty of the crime of infanticide for having "abandoned" her baby.[53]

The climate of increasing medical scrutiny over mothers' active involvement in inducting abortions or committing infanticide is also traceable in some contemporary medical literature. One source that allows for a mid-nineteenth-century perspective of this question is María Magdalena de Flores's 1854 transcription of physician José Ferrer Espejo y Cienfuegos's second-year obstetrical course taught in Mexico City. His lectures focused on teaching students how to distinguish between accidental abortions (those caused by illness), spontaneous abortions (those produced by physical or emotional violence to the mother), and intentional causes of abortions.[54] The latter case involved "those criminal maneuvers that women execute to make themselves abort, even with danger to their own lives either through violent exercise, taking harmful drinks, or attempting any means possible to abort."[55] Espejo also discussed the question of whether, by examining their patients' symptoms, medical practitioners could distinguish between the simple "restoration of the menses" after they had been suspended because of disease, and the occurrence of a "true abortion." He observed that medical experts in the past had unsuccessfully distinguished between the two states because the external signs—principally the onset of heavy vaginal bleeding—were shared by both. Further, he observed that the French midwife Marie LaChapelle had correctly indicated that in intentional abortions, the cervix was likely to be more dilated, and labor pains normally preceded rather than followed hemorrhaging. Espejo's detailed attention to the difficulty of discerning between intentional and unintentional miscarriages suggests that by mid-century, medical practitioners had begun to examine more insistently pregnant women's intentional provocation of misbirths.

The medical preoccupation with accurately detecting the occurrence of intentional versus spontaneous abortions is even more explicit in

51. AHJP, Penal, caja1496, exp. 62017, fol. 3.

52. Ibid., fol.16.

53. Ibid., fol. 41.

54. José Ferrer Especjo y Cienfuegos, "Lecciones de obstetricia, dadas oralmente para curso de segundo año," Wellcome Library, WMS Amer. 122, fol. 15v.

55. Ibid., fol. 18v.

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Francisco de S. Menocal's 1869 medical thesis, *Estudio sobre el aborto en México*. In this text, Menocal distinguished between "spontaneous" and "accidental abortions," and his text was devoted almost entirely to understanding the medical reasons for the provocation of unintentional abortions. Nevertheless, he indicated at the opening of his text that accidental miscarriages might be provoked by exterior causes or manual manoeuvers, whose goal could be medicinal, therapeutic, or of criminal intent.[56] Further, he indicated that it was important for the medical community to better understand the causes and practice of abortion because of its ubiquity in contemporary Mexico.[57]

Prosecution and Conviction across Time and Place

If detecting possible abortion had become a preoccupation in mid-nineteenth-century Mexico, during the colonial era, a distinctive attitude prevailed. In Puebla, as elsewhere in the viceroyalty of New Spain (current day Mexico) both infanticide and abortion went virtually undenounced and unprosecuted during the period when the territory was under Spanish rule. The holdings of nine archives, including the largest collection of colonial-era documents in Mexico, contain a mere fourteen criminal investigations into the crimes of infanticide and abortion in all of New Spain for the period between 1521 and 1821.[58] In viceregal Mexico, the crimes of abortion and infanticide either did not register with community members or judicial authorities, or these groups chose not to pursue criminal investigations into their occurrence.[59]

This changed in the post-independence era. Although investigations for both crimes continued to represent a small proportion of overall criminal prosecutions in all regions of post-independence Mexico, the prosecution of abortion and infanticide increased in the nineteenth century, particularly

56. Francisco de S. Menocal, *Estudio sobre el aborto en México: tesis para el concurso á la plaza de adjunto á la cátedra de clínica de obstetricia de la Escuela de Medicina de México* (Mexico City: Imprenta de José M. Lara, 1869), 2.

57. Ibid., 3.

58. In addition to Mexico's Archivo General de la Nación, the archives consulted include the records of the municipal archives of both Mexico and Oaxaca City, the Archivo Histórico Judicial de Oaxaca (hereafter AHJO), the state archives of Yucatán, Oaxaca, Puebla, and Tlaxcala, and the AHJP. Several other cases of alleged abortion during the Colonial Era are discussed in Nora E. Jaffary, *Reproduction and Its Discontents in Mexico: Childbirth and Contraception from 1750 to 1905* (Chapel Hill: University of North Carolina Press, 2016), but they are mentioned in inquisitorial investigations for other crimes rather than involving criminal prosecutions for the crime of abortion.

59. See Nora E. Jaffary, "Reconceiving Motherhood: Infanticide and Abortion in Colonial Mexico," *Journal of Family History* 37 (2012): 3–22.

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in its closing decades. The Tribunal Superior del Distrito Federal, the appellate court for all cases originating in Mexico's national capital, for example, although prosecuting only one case for abortion and nineteen for infanticide in the first five decades after Mexico's 1821 independence revolution, tried seventy-nine cases for abortion and eighty-three for infanticide between 1870 and 1900. A similar pattern characterized prosecutions in the Gulf Coast state of Yucatán, where no cases for either crime are represented in the colonial holdings, but where the judiciary prosecuted ninety cases for both crimes in the first century after independence, with most of the cases (more than 73%) unfolding between 1860 and 1910.

The holdings of Puebla's Judicial Archives do not extend beyond 1872, so we cannot draw conclusions about prosecution rates in the last decades of the century there. Nevertheless, the comparatively early and harsh prosecution of infanticide in the nineteenth century is clearly identifiable in the Puebla holdings. In Puebla, all but one of the twenty-seven cases in the archival holdings were initiated before 1870, and in Puebla, the first-instance court conviction rate of just under 80% was significantly higher than the overall conviction rate of 26% represented in sixty-two infanticide cases from elsewhere in Mexico between the 1820s and 1890s.[60] This higher conviction rate was possibly the result of Puebla's long tradition of individual Catholic piety and institutional ecclesiastical power.[61]

Although Puebla's courts convicted more frequently than elsewhere, justices nevertheless sentenced more leniently—to periods of confinement, normally while cleaning and cooking in the city jail, although occasionally in *recogimientos*, confinement houses for "wayward" women—than advised by Iberia's medieval and early modern codes. Justices often invoked defendants' youth and "rusticity,"[62] and they discussed how the available evidence was sufficiently ambiguous that they did not feel justified in applying the law in its strictest measure,[63] as specified in law 26, title 1, of the 7th *Partida*. This passage stated that judges, when assessing cases involving the death penalty, should apply the highest standards possible to the irrefutability of evidence presented in the case.[64]

60. Jaffary, *Reproduction and Its Discontents*, Table 4, 107.

61. See Frances L. Ramos, *Identity, Ritual, and Power in Colonial Puebla* (Tucson: University of Arizona Press), 66–90.

62. AHJP, Penal, caja 1014, exp. 37572, fol. 34v.

63. AHJP, Penal, caja 434, exp. 12745, fol. 64.

64. AHJP, Penal, caja 721, exp. 22524, fol. 10v; the state Supreme Court also referred to this section in of the *Partidas* in AHJP, Penal, caja 876, exp. 29752, fol. 27.

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Defendant Profiles

Who were the women to whom judges applied such assessments in nineteenth-century Puebla? Defendants' biographical portrait in the poblano infanticide and abortion trials resembled that of María del Carmen Camila. All twenty-seven defendants were women and all were single at the time of the crime, although one was a widow. The average age of defendants was 20, with the youngest defendant being 15 and the oldest being 27. All but one were mothers of the deceased newborns. In the remaining case, an indigenous midwife, Juana Revis, was charged (although later acquitted) with professional negligence leading to neonatal death.[65] A large proportion of the accused women were indigenous, as indicated by the fact that they required Spanish translators when they presented evidence before criminal courts. A majority of the trials originated in small towns, although a handful were opened in the state capital, the city of Puebla. Defendants were uniformly poor women. Most labored as domestic workers either for their parents or in others' houses.[66] Petra Sevilla, a 17- or 18-year old indigenous woman accused of infanticide in 1835, for example, worked as a *pilmama*, a nursemaid, on a large estate.[67] Like several other defendants, María Brigida, tried in 1872, insisted that she had not murdered her newborn baby, but that it had been stillborn, likely because she had exerted herself fetching water and carrying heavy loads of cooking firewood right up to the end of her pregnancy.[68] Most of the accused argued that because their babies had been stillborn, their only crime was that they had improperly buried their children, and after its legal implementation in 1857, that they had not registered their births in the Civil Registry, which required that all births, deaths, and marriages be formally and publicly recorded. The only defendant charged with abortion in this group of trials also had to answer to allegations that she had consumed abortifacients to provoke her baby's misbirth.[69] Defendants frequently confessed that the fathers of the deceased infants were men (often married men) from their own communities. None of the parties involved in the cases—denouncers, witnesses, defendants, alleged fathers, or court officers—considered that the men involved bore any responsibility for the crimes.

65. AHJP, Penal, caja 1240, exp. 49923.

66. Their profile was thus consistent with those women convicted of infanticide later in the nineteenth century in Sonora whom Shelton studied, "Bodies of Evidence," 469.

67. AHJP, Penal, caja 595, exp. 18168, fol. 4.

68. AHJP, Penal, caja 1496, exp. 62017, fol. 24.

69. AHJP, Penal, caja 434, exp. 12745.

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In many of these cases, as in that of María Getrudis Lucas, community members initiated investigations when they discovered newborn babies' corpses in wells, aqueducts, or, most disturbingly, in *los comunes*. In other instances, neighbors or family members found newborns' corpses in yards, public lands, streets, or rubbish heaps near their homes. Most of the accused were charged with having drowned, throttled, or suffocated their newborns, or else with having left them to die from exposure. Normally, neighbors or coworkers exchanged news about the discovery of a newborn corpse and shortly thereafter selected a (possibly more educated) representative to report the matter to the local judicial authority. In the investigation into alleged infanticide against María Ambrosia in the town of Tehuacán in 1825, for example, a *vecina* (citizen) of the town, Vicenta Pérez, presented herself before the first-instance judge after having learned from a traveling beggar that a baby had been found drowned in a local aqueduct, and sharing this news with several of her peers.[70]

Defendants rarely commented explicitly on their own behavior, so we must make inferences about their attitudes toward the crimes they had allegedly committed. The predominant impression that the documents convey is that the women did not feel that they had acted morally reprehensibly, or at least did not feel compelled to demonstrate to the courts that they felt ashamed of these acts. Instead, both defendants and court officials agreed that the end of protecting their reputations for sexual honor justified any means of securing it. This is manifest in the circumstances surrounding women's dispositions of their infants' corpses. Most of the accused left the corpses of their newborns on plots of land that were short distances from their houses. María Rosa left her newborn where she had birthed him, in the street between her own house and her aunt's house, described as "two *varas*" (roughly two yards) apart from one another.[71] María Brigida left the corpse of her baby in the courtyard of her own house.[72] Others, who dumped bodies into communal water sources, chose very public locations to dispose of the bodies. All of these women, no doubt, were desperate, rattled, and exhausted when they abandoned the infants, whether living or dead. They may have felt that they had no other option than to leave the bodies where they did. Nonetheless, we can reasonably assume that those who had long understood that they were pregnant and had months to contemplate the moment of childbirth and its aftermath would have realized that the newborns' corpses would be soon discovered. In such small communities, where peers and family members kept close

70. AHJP, Penal, caja 357, exp. 10659, fol. 2.
71. AHJP, Penal, caja 1014, exp. 37572, fol. 22.
72. AHJP, Penal, caja 1496, exp. 62017, fol. 3v.

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watch over one another's movements and interactions, that must have understood that they would soon be identified as the mothers of the dead newborns.[73] If such speculation is correct, then we may infer that these mothers assumed that upon discovery of the corpses, their peers, rather than reporting them to judicial authorities, would accept or ignore their actions as they had apparently been doing for centuries prior.

Defendants resisted acknowledging the immorality of committing infanticide, even when the court aggressively pushed them to admit to contrition over the deaths of their children. In María Juana's 1840 trial, her interrogating judge asked her if she did not know that "killing someone else is a crime and that it is more grave if the victim is a family member, and especially, as in this case, if it is a baby who dies before being baptised. She replied that she knew nothing about what the question asked."[74] Although defendants easily admitted to contrition over losing their public honor, they did not feel (or at least declined to admit to feeling) shame about harming or neglecting their newborns or about failing to provide them with proper burials. These cases therefore suggest that the shame associated with harming a newborn or not correctly treating its body after death was significantly less than the shame associated with the loss of sexual honor.

The trial of 17-year-old Petra Sevilla, accused of infanticide in 1836, is one of the few that hints at a defendant's emotional state. When she was brought before the investigating judge, the notary's transcriptions reads: "She was asked why she left the house of don Gregorio Mujica without giving notice on 17 July. Without providing any response, she started to cry. Asked why she was crying instead of answering the question, she did not answer and continued to cry."[75] Sevilla may have been feeling contrition over her alleged murder of her newborn, but it is more likely she was instead frightened and intimidated by the judicial investigation itself. She soon recovered her voice, and in response to the judge's third question, that she should provide all the details concerning the birth and death of her child, she replied, "that she had not given birth, but rather miscarried."[76] María Getrudis Lucas, whom a notary described as responding to the judge's inquiries with a "tremulous and stammering voice," faced the court with similar fear and anxiety, but she, too, denied having killed

73. For further discussion of community scrutiny of daily life in this period, see Sonya Lipsett-Rivera, *Gender and the Negotiation of Daily Life in Mexico, 1750–1856* (Lincoln: University of Nebraska Press, 2012).

74. AHJP, Penal, caja 667, exp. 20629, fol. 23.

75. AHJP, Penal, caja 595, exp. 18168, fol. 15.

76. Ibid.

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her newborn and confessed only to having thrown it into a well after it had died on its own.[77]

Community Attitudes

Witnesses did not divulge much about their attitudes toward either these crimes or their alleged perpetrators, so it is also challenging to characterize denouncers' motivations for initiating these cases. Nevertheless, trial transcripts also reveal that neighbors, family members, and coworkers for the most part reluctantly rather than enthusiastically participated in the prosecution of abortion and infanticide. Witnesses rarely offered moral condemnations of the crimes or their authors in their depositions, and often asserted that they had had no knowledge of women's pregnancies. María Rosa's mother declared, for example, that she had not noticed that her daughter, investigated for infanticide in 1854, was pregnant, even though they lived together.[78] This may have been a strategy that those sympathetic to defendants used to bolster the claim some defendants made that they had never been pregnant, or it may have been an attempt to deter the perception they were complicit. Family members may also have genuinely failed to notice the pregnancies of women in their midst, although one witness's allegation that she had not known her niece had given birth even though she had been in the same room during the event, seems far-fetched, the aunt's advanced age notwithstanding.[79]

Public discovery of newborns' corpses rendered the legal discussion of such states inevitable. These discoveries impelled denouncers to report the deaths to judicial authorities, officers in whom they must have felt reasonable confidence, perhaps more than they had felt in the colonial period when there is no record of them making such allegations. In some cases, concerns that the corpses might contaminate communal water sources might have prompted them to act.

In two of the cases examined, denouncers appear to have been ashamed or intimidated by the idea of initiating their denunciations, because they did so in the form of anonymous notes sent in to local authorities. In 1829, in the small town of Chiautla, parish priest don José Calletano received an anonymous letter requesting that his parishioner, Francisca de la Torres,

77. AHJP, Penal, caja 631, exp. 19361, fol. 9.

78. AHJP, Penal, caja 1014, exp. 37572, fol. 10v. Family members also denied knowledge of women's pregnancies in several other cases: AHJP, Penal, caja 1041, exp. 39046, fols. 12v, 16; caja 1473, exp. 57143.1, fols. 10v-11, 15; and caja 631, exp. 19361, fol. 8v.

79. AHJP, Penal, caja 795, exp. 25817, fol. 17.

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be punished for sacrilege and for consenting to the murder of her newly born baby. The note's author (later revealed to be Torres' sister-in-law) said she knew who had killed the child, and declared that Torres had "tricked your honor by denying her pregnancy," claiming instead only to be ill when she had taken communion the previous Sunday.[80] Calletano submitted the note to a local judge who initiated a legal investigation into Torres' crimes that stretched out over the next 4 years. Similarly, Petra Sevilla's 1836 infanticide trial was initiated through an anonymous note, this one directed to the higher order judge, the *Juez de Letras*, *licenciado* (licentiate) don Miguel Tagle of Puebla, charging that Sevilla had thrown her newborn baby into the communal toilet on a nearby estate; subsequently, two workers cleaning the facilities had discovered the dead infant.[81] In this body of trials, only occasionally was the denouncer a social superior (landlord or employer) of the accused. This occurred at the trial of María Rosa del Carmen, of the town of Huachinango, who was denounced in 1842 by the owner of the house where she lived. The cook María de la Luz Díaz, charged in the city of Puebla in 1858, was also denounced by her employer, although he had been alerted about the discovery of the newborn corpse by one of his other servants. An identical pattern occurred in María de la Luz Cortéz's 1864 trial proceedings.[82]

Only occasionally did witnesses explicitly volunteer why they had denounced these crimes, and when they did so, these were often rooted in the desire to promote the maintenance of Catholic ritual practice in their communities. Rosalia Florestina Sánchez, later revealed to be the author (if not the scribe) of the Francisca Torres' denunciation, told the court that she had been prompted to act over her disturbance at the sacrilege Torres had committed in taking communion while pregnant with an illegitimate child and lying to her confessor about her state.[83]

The strength of community members' beliefs in the social requirement of adhering to Catholic sacraments is also apparent in María Rosa's 1854 infanticide trial, which originated in the small town of Epatlan. In this case, Rosa's 30-year-old neighbor, María Pascuala, testified that she had been walking one morning toward the home of Rosa's mother to get a light for her fire when she discovered a newborn baby lying in the street. The baby was still alive, although dogs had partially eaten one of its legs.

80. AHJP, Penal, caja 434, exp. 12745, fol. 1.

81. AHJP, Penal, caja 595, exp. 18168, fol. 6.

82. AHJP, Penal, caja 721, exp. 22524, fol. 2; caja 1096, exp. 42162; caja 1215, exp. 48483, fols. 2-4v. Juana Rivas's 1865 trial was initiated by a police constable, but he had been informed of the newborn's death by one of her neighbors. AHJP, Penal, caja 1240, exp. 49923, fol. 3.

83. AHJP, Penal, caja 434, exp. 12745, fol. 10v.

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She alerted Rosa's mother (the baby's grandmother), and the two women decided it was unlikely that the baby had been baptized. Securing its baptism became their first priority. They carried the ailing infant to a nearby midwife because such women were qualified to perform baptisms when they judged newborns to be near death.[84] However, midwife María Gerónima, perhaps fearful of being implicated in foul play, refused to baptize the child and sent the two women on to the community *fiscal* (lay assistant) in order that he might alert the parish priest. The baby died in María Pascual's arms before the two had arrived at the *fiscal*'s home.[85] In María del Carmen Camila's trial, the defendant declared that her companion to whom she had shown the dead newborn she had left lying in an alfalfa field had exclaimed that, "God would punish us for what she had done and we will no longer have food to eat."[86] One *poblano* justice also expressed a similar view. The first-instance judge in Francisca Torres' 1829 trial asked her if she did not know that if she had taken abortifacients to provoke a miscarriage, then she was sending the soul of the baby she carried to limbo because he had died before being baptized.[87]

Current-day political battles over abortion in Mexico revolve around the case of Paulina del Carmen Ramírez Jacinto, a 13-year-old girl raped by a heroin addict who broke into her family's home in Mexicali, Baja California in 1999. Although the State Attorney's office gave permission to the Mexicali General Hospital to perform an abortion on Ramírez after learning that her rapist had impregnated her, Ramírez was, in the end, forced to give birth because, according to the director of Mexicali's General Hospital, no physician's Catholic conscience permitted his or her performance of the procedure.[88] The infanticide cases studied here, however, convey a sense of the alternative Catholic perspectives that both plebeian community members and state judicial figures expressed in the course of these criminal trials.

The powerful association among Catholicism, the sanctity of human life, and the condemnation of control over reproduction is a creation of the twentieth century. Criminal trials for the crimes of infanticide and abortion processed in nineteenth-century Puebla reveal both the endurance of older

84. Ignacio Segura, *Avisos saludables a las parteras para el cumplimiento de su obligación. Sacados de la "Embriología Sacra" del Sr. Dr. D. Francisco Manuel Cangiamila, y puestos en castellano por Dr. D. Ignacio Segura, Médico de esta corte* (Mexico City: F. de Zúñiga y Ontiveros, 1775), 4.

85. AHJP, Penal, caja 1014, exp. 37572, fol. 6.

86. AHJP, Penal, caja 634, exp. 19484, fol. 10.

87. AHJP, Penal, caja 434, exp. 12745, fol. 54v.

88. Marta Lamas and Sharon Bissell, "Abortion and Politics in Mexico: 'Context is All,'" *Reproductive Health Matters* 8 (2000): 14.

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colonial era Catholic attitudes toward these crimes, and novel nineteenth-century preoccupations, but neither of these led to harsh condemnations of the crimes and their authors. Nineteenth-century judicial officials and legal scholars, like their Argentine counterparts whom Kristin Ruggiero has studied, sought to encourage Mexico's development of a modernizing, civilizing legal framework. Considering the ambiguity of compelling evidence for convictions, they encouraged the adoption of comparative leniency toward female defendants, but above all, they, like members of Puebla's broader public, considered the public performance of female honor (rather than, necessarily the private defense of the sanctity of human life), of tantamount importance. Demonstrating female honor or *buena conducta* in mid-nineteenth-century Puebla meant showing deference and even fear to one's parents, and preserving the reputation (if not necessarily the biological fact of) virginity before marriage.

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