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**“CRIMES AGAINST THE ORDER OF THE FAMILY,  
PUBLIC MORALITY, AND DECENCY”: SEXUAL VIOLENCE  
AND JURISPRUDENCE IN COAHUILA, MEXICO, 1871-1931**

by

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DISSERTATION

Submitted in Partial Fulfillment of the  
Requirements for the Degree of

**Doctor of Philosophy  
History**

The University of New Mexico  
Albuquerque, New Mexico

**July, 2016**

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## DEDICATION

Agradezco a *Elohim*, sin su amor, sabiduría, fidelidad, y favor esta obra no existiría.  
Dedico esta disertación para mi familia, en especial mi madre, Rosa María Sánchez Zamora y mis dos tesoros, Isabella Montserrat y Sebastian Mikel. En memoria de mis bisabuelos, Antonio Sánchez Cortes, minero de la Rosita y Florinda Lara de Sánchez.

## ACKNOWLEDGMENTS

I would like to acknowledge the academic and professional support that I received from my entire dissertation committee. I was very fortunate to work with amazing scholars who have dedicated their lives to producing rigorous historical scholarship. Two members in particular helped guide me through my entire doctoral program: my adviser, Dr. Kimberly Gauderman and Dr. Linda Hall. Dr. Gauderman's passion for women's issues and her unwavering encouragement kept me focused as I worked through various drafts. I am especially thankful to Dr. Hall's guidance from the start of my doctoral program. Committee members Dr. Barbara Reyes assisted me in obtaining invaluable teaching opportunities in the Department of Women Studies, all of which helped me develop theoretical ideas about gender and violence. Despite the long distance separating us, Dr. Sonya Lipsett-Rivera kept in touch via telephone calls and email to offer valuable feedback.

Funding for this study came from different sources. I benefitted from multiple years of funding from the Center of Regional Studies (CRS) under former director Dr. Tobias Duran. I also owe special thanks to Marina Cadena at the CRS. Grants from the Hispanic Women's Council Scholarship, Feminist Research Institute, Graduate Professional Student Association, Office of Graduate Studies, and the Latina/o Graduate & Professional Student Fellowship enabled me to carry out numerous archival trips. In my last year of study, the UNM-Andrew Mellon Doctoral Completion Fellowship allowed me the opportunity to focus on my dissertation.

Thanks to Magistrate Gregorio Alberto Pérez Mata, Supreme Tribunal of Justice, for granting me access to the criminal files used to carry out this study. Archivists and staff at the following institutions were also extremely helpful: María del Rosario Villareal and Ernesto Terry, Archivo Municipal de Saltillo; Ing. Jesús de la Garza, Archivo General del Poder Judicial; María de Lourdes Ángel Torres, Archivo del Congreso del Estado de Coahuila; Patricia Martínez García, Archivo Municipal de Sabinas; and to Nancy Brown-Martínez at UNM's Center for Southwest Research.

Friends and mentors at the University of New Mexico provided encouragement. I am especially grateful to Dr. Leila Flores-Dueñas, who adopted me as her student and who spent countless hours discussing this project with me. Dr. Adriana Ramírez de Arrellano provided encouragement. Dr. Alicia Romero and Dr. Claudia Lombana read and commented on drafts. Jim Wagner's good cheer and timely editing suggestions saved me from many blunders. Carlyn Pinkins and C. Estela Vasquez Guzman gave me many good suggestions. My sincere appreciation to my good friend, Marcial Martínez for the many meaningful conversations we have had over the years. Marcial, Kathleen McIntyre, and Melissa White made my journey at UNM fun!

Finally, I am thankful to my immediate and extended family. Gracias a Misael Menchaca, for accompanying me on numerous trips; my suegra, Aurora Díaz; sister-in-law, Blanca Menchaca, for housing me during my trips to the archives; my brother, Daniel, for his love; Pastor Ruben Guajardo, emeritus; and to Pastor Carlos Ruiz and members of Nueva Cosecha in Dallas for their prayers. But above all, to my mother, Rosa, it is her sacrifices that allowed me to fulfill my academic dreams. The shortcomings of this work are, of course, all mine. A todos: ¡mil gracias!

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MORALITY, AND DECENCY”: SEXUAL VIOLENCE AND JURISPRUDENCE  
IN COAHUILA, MEXICO, 1871-1931**

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**ABSTRACT**

This study focuses on how institutions, the law, and litigants of sexual crimes interpreted estupro (seduction/deflowering), rape, and incest crimes in the northeastern Mexican state of Coahuila during 1871-1931. The dissertation explores the diverse ways that liberal legislation proved disadvantageous to women and especially young girls. By taking a regional approach, I examine the role that Coahuila’s courtroom practices and laws had on the adjudication of sexual crimes. I argue that despite the liberal lawmakers’ intents to modernize criminal law, women and children were not protected from sexual predators. During the study’s period, two pieces of national legislation that governed penal law were passed—the national 1871 Criminal Code and its revised version, the 1931 Criminal Code. Coahuilense legislators modified the national 1871 Criminal Code, creating Coahuila’s 1900 Criminal Code, which remained in effect in Coahuila until 1932. However, Coahuila’s 1900 Criminal Code reduced the severity of penalties for sexual crimes. To access for how Coahuilense families, offended women, and defendants constructed their own notions of sexual honor and morality, I examined 282 criminal cases. In the majority of cases litigants claimed that the sexual crime was an offense

against their familial honor. In some trials involving child sexual crimes, the families labeled those as crimes against public morality and good customs. The majority of sexual victims were perpetrated against victims who were 18-years old and younger, which represent 63 percent of the litigants in this study. Yet, only 31 cases resulted in a punishment. Youth appeared to influence the prosecution of sexual crimes since 87 percent of the cases that received a guilty verdict involved a victim 18 and younger. However, the majority of case outcome resulted in acquittals often influenced by judiciary biases toward poor, educated, especially rural families, and female-headed households. Estupro and rape cases were also negatively impacted by high evidentiary burden of proof, the arbitrary judicial application of legal elements, and discriminatory courtroom practices. Consequently, the majority of litigants were not protected by criminal law.

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## INTRODUCTION

On July 26, 1916, in the Villa of Allende, Pedro Contreras stood before Desidero Canales, the second alternate judge, seeking an investigation into his 13-year-old niece's pregnancy.<sup>1</sup> Allende was a small municipality, composed of seven ranchos, located in the northern part of the state of Coahuila in northeastern Mexico.<sup>2</sup> Though Pedro was Angela Cardenas' uncle, he exercised *patria potestad* (paternal authority) over his wife's niece because he had adopted Angela when she was 7. Pedro told the court that his niece's pregnancy hurt him deeply. It tarnished the reputation of his home, of his conduct, and left his niece dishonored.<sup>3</sup> Angela was pregnant and therefore was placed in *depósito* (deposited) in a lodging where she would be protected during the course of the criminal proceeding. In such cases, the offended women were moved into the homes of respectable community members such as judges, female prisons, or were housed in a reformatory.

In the legal texts, sexual crimes were under the purview of "crimes against the order of the family, public morality, and decency."<sup>4</sup> In filing his complaint, Pedro used

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<sup>1</sup> Causa instruída contra Adelario González y Luis Contreras por violación. Archivo General de Poder Judicial de Coahuila (hereinafter AGPJC), Caja 1916 Penal, #575, 49, 5.

<sup>2</sup> Rita Favret Tondato, *Tenencia de la tierra en el Estado de Coahuila (1880-1987)* (México: Universidad Autónoma Agraria, 1992), 98-105.

<sup>3</sup> Queja de Pedro Contreras. Causa instruída contra Adelario González y Luis Contreras por violación, AGPJC, Caja 1916 Penal, #575, 49, 5. His words were: ". . . estar en estado de preñez cosa que en verdad le ha podido y le puede por juzgar manchada por tal acto la reputación de su casa; de su conducta así como deshonorada su referida sobrina."

<sup>4</sup> *Código penal para el Distrito Federal y Territorio de la Baja California sobre delitos del fuero común y para toda la República sobre delitos contra la Federación* (Veracruz: Impreso del Progreso, 1873), 215. *Código penal del Estado de Coahuila de Zaragoza* (Saltillo: Oficina Impresora del Gobierno del Estado, 1900), 152. I have translated *buenas costumbres* as decency. Other scholars have translated *buenas costumbres* as good habits or correct sexual practices. Webster defines decency as "Moral, and honest behavior and attitudes that show respect for other people." *Webster Dictionary*, accessed June 1,

the rhetoric of familial honor to justify a criminal investigation into Angela's rape. Moreover, as Angela's surrogate father, he described the crime in terms of how it affected him particularly; this was common legal practice in crimes of sexual violence during this era, 1871-1931, and such crimes were not defined by how they impacted the victim but rather how the family and community were affected.

Angela testified that days after moving to rancho El Salitre, she had been sexually assaulted by two men. The first assault occurred at the rancho, a property owned by Encarnación González.<sup>5</sup> The property owner's son, Adelario González, 43, had arrived at their ranch one morning while she was alone; her aunt had stepped away to speak with the goat shepherd, and her uncle was away in the city. Angela told the court that without warning, Adelario had tried to abuse her from behind, but she pushed him away. In their continued struggle, he pushed her onto a bed, held down her arms, and had sex with her. The information that Angela provided the judge was crucial, because to establish that a rape had occurred, a victim needed to prove that the sexual intercourse took place through moral or physical violence against the woman's will. Adelario was a married man; therefore, he made no offer of marriage. Following the rape, instead, he offered Angela 15 pesos, which she refused. The monetary offer angered her. By the time her aunt had returned from her walk, Adelario had left.

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2016, <http://www.merriam-webster.com/dictionary/decency>. Another source defines decency as "Conforming to a standard of propriety and modesty." *Random House Kernerman Webster's College Dictionary*, accessed June 1, 2016, <http://www.thefreedictionary.com/decency>. And, as an "Acceptable or expected ways of doing something." *Cambridge English Dictionary & Thesaurus*, accessed June 1, 2016, <http://dictionary.cambridge.org/dictionary/english/decency>. All these definitions refer to socially, and hence historically, established forms of morality and respectability that regulate diverse aspects of how individuals behave in particular, with respect to sexuality and sexual practices.

<sup>5</sup> The 1886 census listed rancho El Salitre in the municipality of Allende. Allende was a very small municipality with only seven ranchos; Allende's population, in 1900, was 4,509. See Favret Tondato, *Tenencia de tierra*, 98-105.

The story of Angela's sexual violence does not stop there. She testified that about 15 days following her rape, Luis Contreras, an 82-year-old widower, who was her uncle's father and a household member, had attempted to engage in sexual relations with her. He was unsuccessful because she was awake and defended herself. However, on two other occasions, Luis succeeded, as he caught her asleep, and she could not defend herself. Angela told the court that Luis had made no marriage offer to her. When the court inquired why she had not told her uncle or aunt what had happened, she replied that she lacked experience and had not realized that anything wrong was happening.<sup>6</sup>

Both men were arrested, and both denied engaging in sexual relations with Angela. Instead, Luis offered another explanation. He claimed that Angela did not like him very well, adding that on two occasions he had witnessed an exchange of embraces between Angela and Adelario. Luis testified that he had told his daughter-in-law and son what he saw, but they had instructed him to keep quiet because "Adelario was a decent person."<sup>7</sup>

The judge ruled that the case lacked merit due to deficient evidence. Both men were released but were warned that if further evidence arose against them, they would be retried. The judge's ruling in the case was typical of the majority of cases heard by Coahuila's courts from 1867-1938. Without further proof of Angela's rape, the case

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<sup>6</sup> Declaración de Angela Cárdenas. Causa instruída contra Adelario González y Luis Contreras por violación, AGPJC, Caja 1916 Penal, #575, 49, 5.

<sup>7</sup> Declaración de Luis Contreras. Causa instruída contra Adelario González y Luis Contreras por violación, AGPJC, Caja 1916 Penal, #575, 49, 5.

became one person's word against another's, which usually resulted in men not held accountable.<sup>8</sup>

Based on Angela's testimony, the court could have classified her sexual assault as an *estupro* (deflowering/seduction) or rape charge; both charges meant that sexual intercourse had occurred. Yet, the magistrate defined the crime as rape rather than *estupro*, because Angela had alleged that the sexual intercourse had occurred against her will through violent means. Seduction charges tended to apply to scenarios involving a couple who initiated sexual relationships after the man had exchanged a promise of marriage to his girlfriend and then reneged on carrying out the marriage. In this case, the court questioned Angela about whether a relationship existed between her and either of the men, whether they had offered a promise of marriage, and whether they had given her gifts. Those questions were typical of what magistrates asked an offended woman who claimed she had been seduced by her boyfriend. In this case, the court established that Angela did not have a relationship with either man.

What the magistrate did not consider was whether Angela's case also met the requirements of an incest charge. One of the accused men lived in the same household, and he was her uncle's father. Nevertheless, in this case, the accused was not a biological relative; Luis and Angela were connected through his daughter-in-law's marriage to his son, which meant their kinship relationship was not legally recognized as incest. Neither Angela nor her uncle said they believed an incest charge applied. Instead, the crime was classified as a rape, and the magistrate proceeded to seek evidence to support that charge.

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<sup>8</sup> Causa instruída contra Adelario González y Luis Contreras por violación, AGPJC, Caja 1916 Penal, #575, 49, 5.

Angela's case raises questions about how the law defined sexual violence. What legal elements guided magisterial decisions when defining violent sexual crimes, such as rape, and premarital sexual relationships, such as deflowering? Because sexual offenses fell under the rubric of crimes against the order of the family, public morality, and decency, who did Coahuila's legislators and judges seek to protect through sexual criminal law codes? What can sexual complaints tell us about how the Coahuilense family interpreted familial and sexual honor and morality? In addition, did a family's construction of sexual violence differ from what the law prescribed and from judicial interpretations? How did offended young women and defendants construct their own notions of honor in these criminal matters?

This dissertation focuses on a systematic, qualitative analysis of 282 judicial cases that occurred in urban and rural ranchos in the northeastern Mexican state of Coahuila. The cases—sexual crimes, estupro, rape, *rapto* (abduction), and incest that occurred in the years 1867-1938—are the temporal focus of this study. Those years overlap two major pieces of penal legislation passed at the federal level—the 1871 Criminal Code and the 1931 Criminal Code. Though the study overlaps both penal codes, one of this study's concerns is to understand how the national codes were adopted at the state level. Following revisions, the national 1871 Criminal Code became Coahuila's 1900 Criminal Code, which remained in effect until 1931. This study argues that despite the liberal government's intent to modernize penal laws related to sexual crimes, women and children did not benefit from those changes. Young women in deflowering complaints lacked written evidence to corroborate their claims that they had received a promise of marriage. Plaintiffs in rape cases were not believed because their testimonies alone were

insufficient to establish that sexual intercourse was unwanted. And, victims of child sexual crimes faced judiciary biases due to their age and to the level of credibility attributed to children's and especially girls' statements.

Women, families, and defendants used the law to construct the most effective legal argument. For instance, individuals drew on their own notions of familial and sexual honor to gain the courts' attention. Parents employed numerous strategies to procure justice for their daughters. Likewise, young women were not mere victims of the justice system; they, too, organized their complaints using familiar notions of honor by claiming they were virtuous. The women in the cases examined for this study displayed their own means of contesting sexual violence. Resisting sexual violence in some cases meant escaping it altogether or stopping further unwanted sexual intercourse. In other cases, paradoxically, women minimized bodily harm from their sexual attackers by not physically resisting; examples included women who kept quiet to avoid beatings and to preserve their lives when their attacker carried a weapon, such as a knife or gun. Judges, however, interpreted a woman's lack of resistance as consent to the sexual encounter. Magisterial decisions suggested that court practice deviated from the written law.

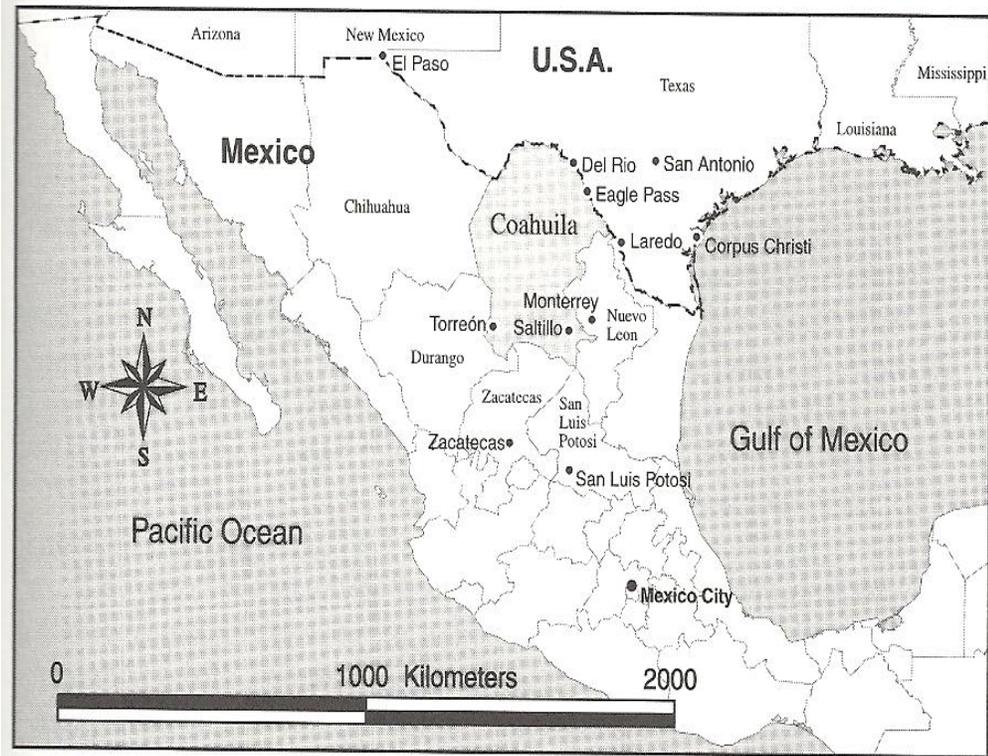


FIGURE 1. Map of Coahuila

Source: From Suzanne Pasztor, *The Spirit of Hidalgo: The Mexican Revolution in Coahuila* (Canada: University of Calgary Press, 2002), xi.



FIGURE 2. Map of Political Divisions of Coahuila

Source: From Georgina Rojas García, “Contrastes regionales en el norte: Principales cambios en las estructuras económicas de Monclova y Ciudad Acuña en las décadas recientes,” *Frontera Norte* 20, no.39 (enero-junio 2008): 109, accessed June 1, 2016, <http://www.scielo.org.mx/pdf/fn/v20n39/v20n39a4.pdf>.

## Sources and Methodology

The 282 legal cases were filed in one of five judicial districts: in the north, the Rio Grande de Zaragoza; to the center, Monclova de Múzquiz; the southwest (also referred to as the Laguna region), Viesca; in the southeast, Saltillo de Ramos-Arizpe; and in Parras de la Fuente.<sup>9</sup> Of those five districts, the majority of the cases occurred in the central and southeastern districts of the state. Each district had districtwide courts and lower courts.

The sources for this study include criminal court documents gathered from the Archivo General del Poder Judicial del Estado de Coahuila de Zaragoza, Coahuila's Judicial Archive located in Saltillo.<sup>10</sup> The Archivo del Congreso del Estado de Coahuila de Zaragoza contained legislative records of the congressional debates surrounding the adoption of the national 1871 and 1931 Criminal Code and state reforms to penal, civil, and procedural law. The research conducted at this archive focused on examining the adoption process that led to Coahuila's 1900 and 1941 Criminal Code. The Archivo Municipal de Saltillo contained primary works on Saltillo and the surrounding ranchos and haciendas; such works included legal codes, maps, and a newspaper and magazine collection for the state and nation. Other legal codes were obtained at the Archivo General del Estado de Coahuila and at the Universidad Autonoma de Coahuila Biblioteca de la Escuela de Derecho, the Autonomous University of Coahuila's Law Library. The

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<sup>9</sup> Esteban L. Portillo, *Anuario Coahuilense para 1886*. Constitución Política reformada del Estado de Coahuila de Zaragoza (Consejo Nacional Para la Cultura y las Artes, 1994), 78.

<sup>10</sup> Only recent civil and criminal cases, dating from the 1980s to the present, are stored at local judicial branches, such as Parras, Monclova, Piedras Negras, and Acuña. Therefore, I carried out all criminal court research at the Saltillo depository. In November 2015, the judicial archive in Saltillo was undergoing modifications. I was told that historical documents would be relocated to a new site. As part of the move, the workers hoped to establish a classification system. Though the archive at the beginning of 2015 had no catalog in place, the archive maintained a policy of not throwing away documents even when they had been contaminated by incidents such as fire and mold damage. Those files were placed in bags and kept, despite the poor condition of the documents.

law library also housed additional works on sexual crimes written by contemporary and modern legal scholars.<sup>11</sup>

As the criminal records in these archives have not been used in any previous study, this dissertation aspires to contribute to historical knowledge of Mexico by focusing on the understudied state of Coahuila. Because the judicial archive is normally closed to scholars, the research that I carried out at the archive required approval from the president of the Superior Tribunal of Justice. Documents were gathered over four summer research trips carried out from 2010-2013. On the first trip, I was granted access to a limited number of complaints, and I was not permitted to take notes. In subsequent trips, I was authorized to digitize documents. And in 2013, I was given a work space where the judicial documents were housed and given a wide latitude of freedom to select which boxes of materials to examine. The work space allowed me a greater ability to determine what sort of information was available.

One of the disadvantages of using uncatalogued boxes was an inability to generate a statistical count of the overall crime rate by year, location, and place. Given the disorganization of the files, it was not feasible to provide such a quantitative analysis. Further, there was no chronology or filing system for the storage of the boxes. The boxes containing civil and criminal cases were indiscriminately arranged. In spite of this, I selected a random sample size by pulling boxes from each year from the 1860s through the 1940s. The focus was to delve more deeply into the cases occurring in 1871-1931;

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<sup>11</sup> My visit to the Archivo Municipal de San Juan de Sabinas was not fruitful. For criminal records, I was redirected to the Archivo General de Poder Judicial de Coahuila (AGPJC). The AGPJC houses all criminal and civil legal records. I was informed that the local judicial archives maintain recent complaints in their possession.

those were the watershed years established by the national codes. However, to investigate continuity and changes in the criminal court records, I also examined criminal suits from the decade prior to and the decade following those watershed years. To obtain a broader distribution, my research includes cases from the capital region and from rural communities.

From the legal cases randomly selected, I conducted an analysis of sexual crimes by type, individual year, and decades. Crimes were organized according to the study's temporal frame to determine which law codes were used to evaluate cases that occurred prior to the implementation of the national code. Next, I examined criminal trials that took place following the passage of the national 1871 Criminal Code through 1900, when lawmakers in Coahuila revised the 1871 Criminal Code. Coahuila's 1900 Criminal Code remained in effect until the Federal District modified the 1871 Criminal Code. In 1932, Coahuila's legislators adopted the national 1931 Criminal Code.

While I did not focus on the impact of the Mexican Revolution on the criminal justice system, I remained sensitive to the effect that the war had on the levels of violence and lawlessness experienced by the civilian society. Indeed, battles were fought on Coahuila soil. Adolfo Gilly identified small-scale uprisings in the state of Coahuila at the onset of the revolution in 1910. Gilly also shows that from 1913 to 1914, battles between the federales and Villa's northern divisions were crucial engagement phases of the revolution.<sup>12</sup> The corrido "La Decena Trágica" narrates how Villa's men captured the

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<sup>12</sup> Adolfo Gilly, *The Mexican Revolution*, trans. Patrick Camiller (New York: The New Press, 2005), 56 and 100-110. According to Gilly following the fall of Torreon the fate of the Huertist regime was sealed. See also Javier Villareal Lozano, *Coahuila: Semblanza histórica* (México: Universidad Autónoma de Coahuila, 1990), 39-44.

railway junction in Torreón and the nearby town of Sacramento.<sup>13</sup> Despite these battles, I did not observe a spike in the level of reported sexual violence, and this may be due to underreporting. To be sure, some soldiers were involved in rapto and estupro cases. Certainly, the record documented a horrific gang rape perpetrated by 20 soldiers.<sup>14</sup> Crimes committed by military defendants were transferred from local courts to military tribunals to determine which court held jurisdiction, but I found that these cases returned to criminal courts for adjudication.

There are benefits to utilizing criminal court documents. These type of sources provide an insight to historians into otherwise hidden voices, such as those of children and adolescents. Because these complaints recorded sexual violence in the children's original speech, their vernacular language lends credibility to the written declarations. Children used slang words to name sexual parts and referred to sexual penetration in literal terms.<sup>15</sup> In other court transcripts, children declared that a perpetrator told them they were going to play "*a la ranita*" (that they were frogs).<sup>16</sup> On the other hand, transcripts have limitations; they also are filtered and manipulated by members of the judiciary apparatus, such as court secretaries; by the questioning posed by magistrates meant to elicit particular responses; and by people's own desire to offer the most effective defense to obtain a favorable verdict on behalf of their interests. While

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<sup>13</sup> Unidad Regional Laguna. *La canción cardenche: tradición musical de La Laguna* (México: Dirección General de Culturas Populares, 1991), 125-127.

<sup>14</sup> Causa instruída por violación, AGPJC, Caja 1914.

<sup>15</sup> Declaración del joven Alfredo Flores. Causa instruída contra Simón Huerta por violación, AGPJC, Caja 1921 Penal, #508, 4. Flores, 12, described a penis as a "pilila." Denuncia de Esiquia Martínez Criminal contra Francisco Jaramillo por violación, AGPJC, Caja 1927 Penal, 1. Chávez, 5, accused the defendant of having poked or pricked him from behind. He said, "Me picó el ano."

<sup>16</sup> Declaración del menor Raúl Hernández. Causa instruída contra Manuel Muñoz Medina por violación, AGPJC, Caja 1936, J1PST, Exp. 1-21, 3. Hernández was 9.

historians need to exercise caution in analyzing court documents precisely because they are processed by different agents of the legal system, the records are a window into people's lives, Sueann Caulfield notes:

It is possible to read between the lines of formulaic legal language to find evidence of how victims, defendants, and witnesses describe not only the events that brought them to court, but also diverse social relationships and actions that they consider right or wrong. Even when they lie or invent moral stances, they do so in ways that they assume will be credible, and that therefore help trace the boundaries of commonly accepted morality.<sup>17</sup>

The manner that an individual creates a declaration reflects a personal point of view that is mediated by the social reality of the time period. After closely studying hundreds of criminal trial records, it is possible to identify when an individual's testimony departs from the formulaic standard response.

Indeed, court personnel influenced a legal verdict. Anthropologist Ana María Alonso points out that how secretaries jotted down an individual's testimony made a difference because once it became a part of the written record it shaped the outcome of the case. An appellate judge, for instance, based his decision largely on the written record to assess the evidentiary merits of a case. As Alonso states, "In legal cases . . . there is a paper trail: each declaration is ratified, witnesses are read their statements and asked to validate them, and statements can be reliably reproduced since they are written down."<sup>18</sup> Like in Chihuahua, in Coahuila, judges and secretaries read plaintiffs, defendants, and witnesses their statements, then asked individuals to ratify their declarations, and

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<sup>17</sup> Sueann Caulfield, *In Defense of Honor: Sexual Morality, Modernity, and Nation in Early-Twentieth-Century Brazil* (Durham: Duke University Press, 2000), 13.

<sup>18</sup> Ana M. Alonso, "Love, Sex, and Gossip in Legal Cases from Namiquipa, Chihuahua" in *Decoding Gender: Law and Practice in Contemporary Mexico*, ed. Helga Baitenmann, Victoria Chenaut, Ann Varley (New Brunswick: Rutgers University Press, 2007), 43-58. See section on "Gossip and Legal Discourse in Namiquipa: Points of Suture, 45-47.

following this verification process, all parties were required to sign their statements. Through this process, declarants could notify the court if they disagreed with how a secretary had recorded their statement.

Sexual crimes and legislation offer perspectives into family structures. The family was not a homogenous unit throughout Mexican society. The liberal laws of the 19<sup>th</sup> century portrayed the family unit as nuclear. The 1884 Civil Code enacted during the Porfirian period depicted a patriarchal family, headed by the father. But the meaning of marriage was changing as civil courts permitted a limited form of divorce. The conjugal relationship and the authority of the father as expressed through marriage codes were also progressively changing. The 1917 Law on Family Relations offered married women legal authority over their children and accorded an absolute form of divorce.<sup>19</sup>

While the written law permitted couples to dissolve their nuptial vows, from the 1870 Civil Code through the postrevolutionary period, a segment of the nation did not agree with the laws. In his opening commentary of the new family laws, jurist Eduardo Pallares condemned the modified laws as an attack against the family and marriage but also against the authority of the father. He wrote:

The form of individualism inspired by the law is a feminist individualism, which promotes an economic, social, and legal emancipation; attacking the unitary organization of the family, depriving the husband of the secular authority he formerly enjoyed, and erects within the home two rival authorities: the woman can now freely contract, freely appear in court, exercise over her children equal authority to the father, . . . [M]arriage has ceased to be a social institution and has become a simple private contract, easily celebrated and easily dissolved . . .<sup>20</sup>

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<sup>19</sup> Silvia M. Arrom, "Changes in Mexican Family Law in the Nineteenth Century: The Civil Codes of 1870 and 1884," *Journal of Family History* 10, no. 3 (Fall 1985): 307-311.

<sup>20</sup> Pallares says, "El individualismo que inspira la ley es individualismo feminista, que trae como bandera la emancipación económica, social, y jurídica; que ataca la organización unitaria de la familia, despojando al marido de la autoridad secular de que gozaba, y erige en el seno del hogar dos autoridades igualmente fuertes y, por ende, rivales: la mujer puede libremente contratar, libremente comparecer en

In reality, lawmakers had placed time restrictions on spouses filing a divorce petition and required that the couple meet with a judge on three occasions.<sup>21</sup> These legal clauses were designed to keep couples together and made it difficult for spouses to divorce.

### **Relevant Literature: Legal History, Gender History, and Sexual Violence**

This study engages with the scholarship of three edited volumes: *Hidden Histories of Gender and the State in Latin America*; *Honor, Status, and Law in Modern Latin America*; and *Decoding Gender: Law and Practice in Contemporary Mexico*.<sup>22</sup> I explore the diverse ways that liberal legislation proved disadvantageous to women with respect to sexual crimes—estupro, rape, and incest—in particular. The second theme focuses on the legal discourse of members of the judicial apparatus. As members of the middle classes, these magistrates held notions of normative femininity, masculinity, and family ideals, all of which biased judges against the plaintiffs who did not meet those standards. Verdicts handed down by a magistrate sometimes revealed priorities and values that differed from those of a young woman and her family. Still, young women and families resorted to the court system to redress grievances. These plaintiffs used courts as leverage against defendants, sometimes successfully. The third theme concerns a young woman and her parents’ notions of the familial and sexual honor at stake in these

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juicio, ejercer sobre los hijos una autoridad igual al padre . . . el matrimonio deja de ser una institución social para convertirse en un simple contrato privado, de fácil celebración y de fácil disolución . . . ” in Eduardo Pallares, *Ley sobre relaciones familiares: Comentada y concordada con el Código civil vigente en el Distrito Federal y leyes extranjeras* (México: Librería de la Vda. De Ch. Bouret, 1923), 8.

<sup>21</sup> Family laws specified that petitioners fulfill a one-year marriage prerequisite before becoming eligible for divorce. Couples seeking a divorce suit were mandated to attend three meetings with a judge. The law specified that each meeting was one month apart from the previous meeting altogether, these intervals alone added an additional three months to the waiting period.

<sup>22</sup> Elizabeth Dore and Maxine Molyneux, eds. *Hidden Histories of Gender and the State in Latin America* (Durham: Duke University Press, 2000). Sueann Caulfield, Sarah C. Chambers, Lara Putnam, eds. *Honor Status and Law in Modern Latin America* (Durham: Duke University Press, 2005). Helga Baitenmann, Victoria Chenaut, and Ann Varley, eds. *Decoding Gender: Law and Practice in Contemporary Mexico* (New Brunswick: Rutgers University Press, 2007).

sexual matters and examines strategies used to procure justice. The following section explores the historiography of relevant works in legal, gender, and sexual violence history that inform this study.

### **Legal and Gender History**

Liberalism constituted the dominant political philosophy guiding the vast portion of this study. Even following the Mexican Revolution, in Coahuila, the national 1871 Criminal Code—reformed as Coahuila’s Penal Code of 1900—remained in effect at the close of this study. Liberal perspectives influenced changes in laws pertaining to free trade, private property, and individual rights.<sup>23</sup> Interpretations of those legal changes brought by liberal governments range from those who believe there were subtle but significant benefits for women, to others who maintain that those laws accentuated rather than diminished gender inequalities.

In reviewing changes in family laws from the colonial period through the 19<sup>th</sup> century, Silvia Arrom concluded that women won rights but lost benefits formerly enjoyed under colonial laws. In her study, Arrom traces legal changes through the 1870 and 1884 Civil Codes. Those new legal protections did not apply across the board to all women, and they came with strings attached. For the most part, the civil codes benefitted single, separated, and widowed women—not married women. Lawmakers juggled liberal notions embodied in individual freedom against conservative ideals based on the woman’s place in the home and gender roles for marriages. Conversely, new notions about motherhood led to legal changes that affected the mother-child relationship. Those

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<sup>23</sup> Elizabeth Dore, “One Step Forward, Two Steps Back: Gender and the State in the Long Nineteenth Century,” in *Hidden Histories of Gender and the State in Latin America*, ed. Elizabeth Dore and Maxine Molyneux (Durham: Duke University Press, 2000), 9-12.

notions were reflected in laws concerning patria potestad, a limited form of divorce based on mutual consent, adultery laws, testamentary changes, and spousal choice for separate or community property.<sup>24</sup>

Liberal lawmakers were ambivalent about women's role in the home. While granting single women new legal rights, married women faced limitations. As mentioned, new perceptions of motherhood and childrearing, in addition to an expansion of individual freedoms, are attributed to redefinitions of patria potestad of children. Arrom notes, "This new empowerment of women challenged the basic principal that . . . only men rule."<sup>25</sup> In the colonial period, widowed women received limited guardianship over their children, but they did not enjoy full legal authority over their children. In fact, Arrom points out that unless a woman owned slaves, she could not exercise control over another person. The nineteenth-century laws legally offered patria potestad to single women, to some separated women, and to widows. For widows, their rights to patria potestad could be modified if she remarried, lived dishonorably, or if her husband had stipulated that his wife needed to consult with an adviser. Based on these conditions, then, a woman could lose her rights to patria potestad.<sup>26</sup>

Legislators expressed incongruities with the conferral of divorce. The 1870 and 1884 Civil Codes granted a limited form of divorce based on mutual grounds. Here again, these actions represented an expansion of individual will for personal happiness over familial obligations to keep the family together. But these legal changes came with

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<sup>24</sup> Arrom, "Changes in Mexican Family Law," 309.

<sup>25</sup> Ibid., 309. Under colonial laws, widowed and single women enjoyed the right to govern themselves and limited guardianship of children. Guardianship was not the equivalent of patria potestad.

<sup>26</sup> Ibid. Arrom notes that under colonial laws, women could enjoy limited guardianship of children but not patria potestad.

restrictions. Couples needed to have been married for two years before being eligible for divorce. Spouses underwent mediation with a judge who made attempts to reunite them. The separation was not absolute; it was a temporary separation of room and board. Laws involving adultery also contained a double standard. While female adultery was always grounds for separation, male adultery was grounds for separation only if it occurred in the conjugal home or caused public scandal.<sup>27</sup> Female adultery was deemed problematic because it jeopardized male honor by questioning whether his children were his legitimate heirs and were entitled to his inheritance rights.<sup>28</sup> Thus, while broadening legal rights, the law limited the number of women who benefitted from those legal changes.

For this reason, Elizabeth Dore interpreted liberal laws as increasing, rather than decreasing, gender inequalities. With respect to patria potestad, Dore emphasized how women's rights were circumscribed. Married women were excluded from authority over their children. Thus, married women and minor children remained under the husband/father's control and "forfeited juridical personae."<sup>29</sup> Indeed, the authors in *Decoding Gender* identify ways that legal discourse and processes construct overt and covert forms of discrimination. To be sure, civil and criminal codes of the late-nineteenth and early-twentieth-centuries offered disparate legal treatment to women based on their

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<sup>27</sup> Ibid. Other exceptions included if the man took a lover as a concubine and if the lover insulted the legitimate wife. By these clauses, the lawmakers were pointing out a long-term versus a single-instance or more temporary affair that was viewed as a peccadillo.

<sup>28</sup> Ibid. Arrom mentions two other major legal changes: choice of separate or community property and testamentary modifications. The first disadvantaged wealthy women because under colonial laws women were able to keep property ownership and enjoy half of a husband's goods in case of separation or widowhood. The nineteenth century codes said the woman could administer her own property if she forfeited her half of community property. This change appeared to benefit poor women's ability to administer income but was disadvantageous to affluent women.

<sup>29</sup> Elizabeth Dore, "One Step Forward, Two Steps Back: Gender and the State in the Long Nineteenth Century," in *Hidden Histories of Gender and the State in Latin America*, ed. Elizabeth Dore and Maxine Molyneux (Durham: Duke University Press, 2000), 3-32.

age, marital status, and economic conditions. In some cases, laws endorsed conservative gender roles and promoted normative notions of femininity and masculinity. For instance, Alonso's discussion of deflowering cases in Chihuahua shows that the complainants' rulings reinforced judiciary ideology. This included portraying normative femininity as sexual passivity and constructing female honor based on sexual virtue. Hence *pudor* (decency) reflected norms of sexual propriety. By the same token, Alonso shows that courts criminalized masculine expressions of virility that ran counter to heteronormative descriptions of masculinity.<sup>30</sup> Similarly, Ivonne Saasz's work argues that sexual laws are informed by lawmakers' values and thus cautions against utilizing sexual categories that establish some practices as normal and others as abnormal.<sup>31</sup>

Given the vast discriminations against married women, scholars focused their attention on the significance of divorce. As mentioned, while courts granted a limited form of divorce in the Civil Codes of 1871 and 1884, Ann Varley's work focused on the postrevolutionary changes to the marital home and on Supreme Court interpretations that defined the conjugal relationship based on male and female duties. For men, this translated into economic duties to be the home's provider or breadwinner, and for women, it brought a duty to obey her husband to administer or run the home.<sup>32</sup> Rulings

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<sup>30</sup> Ana M. Alonso, "Love, Sex, and Gossip in Legal cases from Namiquipa, Chihuahua," in *Decoding Gender: Law and Practice in Contemporary Mexico*, ed. Helga Baitenmann, Victoria Chenaut, and Ann Varley (New Brunswick: Rutgers University Press, 2007), 43-58.

<sup>31</sup> Ivonne Saasz, "Sins, Abnormality, and Rights: Gender and Sexuality in Mexican Penal Codes," in *Decoding Gender: Law and Practice in Contemporary Mexico*, ed. Helga Baitenmann, Victoria Chenaut, and Ann Varley (New Brunswick: Rutgers University Press, 2007), 59-74.

<sup>32</sup> Ann Varley, "Domesticating the Law," in *Decoding Gender: Law and Practice in Contemporary Mexico*, ed. Helga Baitenmann, Victoria Chenaut, and Ann Varley (New Brunswick: Rutgers University Press, 2007), 145-161.

made by the Supreme Court upheld that the marital home was a nuclear unit and thus omitted extended family members and other individuals living in the home.<sup>33</sup>

Other historians analyze sexual crimes from the perspective of the offended woman. For example, Eileen Findlay's study in Ponce, Puerto Rico, draws from 211 rapto and 15 rape cases occurring there between 1880 and 1898. Using the metaphor of a theater, Findlay analyzes the discourses of courtroom personnel, doctors, victims, perpetrators, parents, and through community testimony. Findlay finds that testimonies revealed plebian understandings of sexuality through the ways that individual's construct their own versions of honor. Findlay's legal analysis does a fine job of explaining the diverse elements of rapto codes. Of the 15 rape crimes she examined, only two resulted in prosecutions, and one of them was an incest case. Findlay's study also offers a difference between how rape was codified in Puerto Rico versus in Mexico under the national 1871 and 1931 Criminal Codes. She explains that the penal code in Puerto Rico defined rape as physical coercion; therefore, victims who claimed moral coercion as a factor were not able to prove their cases. Findlay concludes that Ponce courts had difficulty accepting rape charges because of the cases' resemblance to rapto crimes that were consensual. As a result, courts failed to view rapes as nonconsensual sex. Men appeared to manipulate heteronormative views of masculinity, as intrinsically sexually aggressive, to justify their actions in Ponce courts. Other men blamed their behavior on stress, alcohol, or simply denied the charge. Finally, Findlay's work illustrates the importance that the field of medicine exerted on magistrate final rulings. Medical examinations of victim's bodies

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<sup>33</sup> Ann Varley, "Women and the Home in Mexican Family Law," in *Hidden Histories of Gender and the State in Latin America*, ed. Elizabeth Dore and Maxine Molyneux (Durham: Duke University Press, 2000), 238-261.

proved crucial in confirming rapes, thus exemplifying how science gained prominence in Puerto Rico.<sup>34</sup> In sum, nineteenth-century laws limited women's rights in the family sphere. The laws also reflected heteronormative views about men's and women's gender roles and sexuality, which appeared to impact the outcome of court cases.

### **Crime in Mexico, Class, and Race**

Other scholarship focused on the modern period addresses the construction of crime in the Federal District. One major concern running through the work of scholars involves the impact of elite notions of crime on the legal system. Pablo Piccato's study details how elite perceptions of the urban poor constructed criminality. Using zoning maps of Mexico City's barrios, Piccato explains how the socially affluent drew a connection between these poor areas and high crime rates. Both in the courtroom and on the street, poor defendants resisted and negotiated elite perspectives on crime. Using community dispute resolution, poor communities exercised their own forms of grassroots justice.<sup>35</sup>

Similarly, James Garza examines elite perspectives regarding criminality in Porfirian Mexico. Garza uses Benedict Anderson's concept of imagined communities to argue that urban elites in Mexico City imagined an underworld of crime to separate themselves morally from the poor. This divide, according to Garza, is carried out in the geographic landscape of the city. Through his class analysis, Garza portrays elite concerns connecting urban crime with zones inhabited by the poor. Juxtaposing poor

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<sup>34</sup> Eileen Findlay, "Courtroom Tales of Sex and Honor," in *Honor Status and Law in Modern Latin America*, eds. Sueann Caulfield, Sarah C. Chambers, and Lara Putnam (Durham: Duke University Press, 2005), 201-222.

<sup>35</sup> Pablo Piccato, *City of Suspects: Crime in Mexico City, 1900-1931* (Durham: Duke University Press, 2001).

neighborhoods with those of the middle classes, he discusses how elites viewed the former as dangerous, unhealthy, and morally corrupt in comparison to their own, which encompassed civility and technology. Drawing from six major criminal cases occurring from 1888-1908, Garza addresses urban crime in terms of Porfirian and elite discourses of criminality. Among the six cases he examines, three contain a focus on sexual violence—the famous case of the Chaquelero (a serial rapist and killer), a crime of sexual passion, and an abortion case.<sup>36</sup>

Other works analyze the impact that liberal tenets exerted within the Mexican penal system. Robert Buffington examines how legal theory assisted elites in the stigmatization of criminals during the post-Independence to the 1930s period. He explores how liberal to positivist to revolutionary rhetoric linked criminal activities to marginal, lower-class social groups.<sup>37</sup> Historian Beatriz Urías Horcasitas' notes that though the 1871 Criminal Code sought to secularize and homogenize criminal proceedings through the removal of social, economic, and racial markers of the accused racist ideas toward indigenous peoples remained a part of legal practice.<sup>38</sup> Horcasitas links discriminatory practices against indigenous groups with the rise of social sciences, such as anthropology. Anthropometric studies viewed indigenous groups as a

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<sup>36</sup> James A. Garza, *The Imagined Underworld: Sex, Crime and Vice in Porfirian Mexico* (Lincoln: University of Nebraska Press, 2008).

<sup>37</sup> Robert Buffington, *Criminal and Citizen in Modern Mexico* (Lincoln: University of Nebraska Press, 2000).

<sup>38</sup> In the cases I examined, I was unable to determine whether any complaints involved indigenous plaintiffs and defendants. Though in a couple of cases, some racial marker was noted by the plaintiff. See chapter 3 for these cases.

degenerative race needing social control, thereby justifying the use of stiff criminal penalties until indigenous peoples could be modernized through education.<sup>39</sup>

In a similar vein, Latin American scholar Analisa Taylor explores how state organizations and various cultural mediums construct indigenous identity. Following the Mexican Revolution, Taylor discusses how the Partido Revolucionario Institucional (PRI) utilized the notion of indigenismo to create a national identity while at the same time framed the unassimilated, unacculturated “Indian” as a national problem. Taylor’s research explains how government institutions such as the National Indigenist Institute and literary/cultural indigenista discourse constructed the “Indian” as other.<sup>40</sup>

Mexican scholar Elisa Speckman Guerra’s work further examines the theme of liberalism. Through her study on Mexico City from 1872-1910, Speckman Guerra explores the relationship between criminal legislation and actual practice via the administration of the legal system. Unlike other historical analyses of criminal codes, her work seeks to understand how, through legislation, lawmakers reveal their conceptions of crime, proper comportment, and reinforced gender roles. For instance, in her analysis of crimes against the family, Speckman Guerra finds that, through these codes, legislators reflected their own notions of the family and the familial/moral behaviors considered appropriate for men and women. Thus, she states that in regulating behavior, lawmakers used the principle of separate spheres. This concept created a binary for men and women, through the definition of men as aggressive, rational, and sexual, and women as passive,

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<sup>39</sup> Beatriz Urías Horcasitas *Indígena y criminal: interpretaciones del derecho y la antropología en México, 1871-1921* (México: Universidad Iberoamericana, 2000).

<sup>40</sup> Analisa Taylor, *Indigeneity in the Mexican Cultural Imagination: Thresholds of Belonging* (Tucson: University of Arizona Press, 2009).

intuitive, and sexless/passionless beings. This separation of spheres affected both the actual law as well as the administration of justice. Focusing on adultery cases, she argues that there was a double moral standard. Male and female adultery were not treated the same. For men, it was more permissive, while women were held to a higher moral standard, and women who departed from that standard were punished differently from the men who committed the crime. Speckman Guerra reasons that this difference is reflected in legislators' prosecution of crimes that blemish feminine honor and, by extension, the family. Finally, she stresses the importance that the concept of honor wielded in crimes against individuals as well as against the family. Judges were sympathetic to single women charged with infanticide and abortion when they claimed they acted to preserve their honor. Honor served as a mitigating factor that reduced their sentences, whereas married women who committed these same crimes did not have this option.

In addition to considering the mentalité of lawmakers, Speckman Guerra's analyses focuses on how institutions and popular culture impacted views on crime. She is one of the few scholars to address the role of the Catholic Church on the family. Utilizing religious magazines as sources, Speckman Guerra provides insight into Catholic leaders' attitudes toward sexual morality. Then, she explores how popular media, such as newspapers, impacted readers' views of criminality via its coverage of sensationalist cases. Finally, her literary, text, print, and music analyses offer a unique view of consumption by popular masses.<sup>41</sup>

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<sup>41</sup> Elisa Speckman Guerra, *Crimen y castigo: legislación penal, interpretaciones de la criminalidad y administración de justicia* (Ciudad de México, 1872-1910) (México: El Colegio de México, Universidad Nacional Autónoma de México, 2002), 41-45.

Kathryn A. Sloan's monograph focuses on the crime of raptó (runaways or, essentially elopement cases that sometimes appeared as deflowering and/or seduction cases) in Oaxaca. Using 212 raptó cases, occurring during the 1870s to 1890s, her study shows that many young women were complicit in their abductions and that Mexican couples used raptó to force their parents' approval of a relationship they opposed. She argues that intergenerational conflicts explain differences between children and parental marriage choices. As in Buffington's and Urías Horcasitas' research, Sloan's study reflects an interest in how liberal doctrine impacted criminal law. Noting the state's strong political leadership under Benito Juárez and Porfirio Díaz, she adds that while other states in the postindependence period continued to operate under their former colonial justice systems, in the state of Oaxaca, lawmakers were among the first to develop their own new civil codes, later adopted by Mexico City. Sloan's study considers the role that community, surveillance, and gossip exert as forms of social control. These three elements were captured in various trials brought to the court's attention by meddling neighbors.<sup>42</sup>

### **Sexual Violence**

In Brazil, Caulfield's research draws from 450 police investigations and trials of sexual crimes occurring from 1918-1940 in Rio de Janeiro. As in Sloan's and Findlay's research, the majority of Caulfield's sources consist of deflowering complaints. She also examines the crimes of seduction/deceit and rape. To dispel the myth that rapes by

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<sup>42</sup> Kathryn A. Sloan, *Runaway Daughters: Seduction, Elopement, and Honor in Nineteenth-Century Mexico* (Albuquerque: University of New Mexico Press, 2008), 136-139. In terms of Mexico City, this is important because most states model their own codes after this territory and with few notable exceptions make any changes.

strangers are more common, Caulfield points out that the few rape cases that appear in her study did not involve force, nor were they stranger rapes. As in the works of Sloan and Findlay, Caulfield's study shows a great deal of victim-blaming through men's court testimonies. Caulfield explains that even if a woman were a virgin, her behavior and level of independence could be invoked by a man as behavior that relieved them of responsibility. Women, in Caulfield's analysis, are not simple victims of a patriarchal system. Some women used raptos to their advantage to make their parents accept their chosen mate. Further, Caulfield found that women actively participated in filing criminal complaints. Women were either directly involved because they filed the complaint, or indirectly, because they urged their husbands or partners to file the complaint. Overall, Caulfield's study portrays women as assertive independent agents who did not view the loss of virginity as dishonorable.<sup>43</sup>

Nonetheless, Caulfield explains that jurists punished deflowering because of their belief that the loss of virginity negatively impacted a woman's ability to marry and also encouraged prostitution. Caulfield attributes this juridical interpretation as a desire to protect larger social institutions, not individual citizens. Mexican legal interpretation, however, perceived sexual crimes as an offense to the family (1871 Criminal Code) and later, defined them as an affront to the individual involved (1931 Criminal Code). In Brazilian legal interpretation, sexual crimes were first labeled as an offense to the family and later were redefined to protect social customs and morality. Thus, Caulfield's study indicates that for Brazil, legal preoccupation lay in the protection of public and social

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<sup>43</sup> Sueann Caulfield, "The Politics of Freedom and Virginity," in *Honor Status and Law in Modern Latin America*, eds. Sueann Caulfield, Sarah C. Chambers, and Lara Putnam (Durham: Duke University Press, 2005), 223-245.

interests. Caulfield's essay also considers how judges shifted from defining women as passive beings to sexual agents.<sup>44</sup>

As part of the changes occurring in Brazil, jurists made modifications to deflowering laws. Under Brazil's 1940 Penal Code, seduction laws no longer included a marriage promise or proof of honesty. Caulfield found that jurists' desires to modernize the courts took into account changing gender norms. She concludes that the 1940 Penal Code reflected societal changes in Brazil.<sup>45</sup>

Historians working outside of Latin America have expanded our understanding of rape and family violence. Using 446 criminal cases from Ontario, Canada, from 1880-1929, Karen Dubinsky's monograph undertakes an ambitious study about heterosexual intimacy (sexuality, courtship) through her analysis of sexual relationships. Dubinsky details how gendered sexual and moral standards were created in 25 rural southern and northern Ontario counties. Further, she explores how the Canadian state incorporated sexuality into its nation-building and economic-renewal project. Dubinsky defines sexual violence more broadly as rape, attempted rape, carnal knowledge, and indecent assaults. Her framework uses discourse analysis to unpack rape myths, the concept of moral panic to understand discourses surrounding sexual crimes, and the connection between violence and geography to understand how the region has historically influenced social definitions of sexuality, morality, and crime. In doing so, she demonstrates that what is feared—

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<sup>44</sup> Ibid., 238-239.

<sup>45</sup> Ibid., 238.

foreigners, strangers, isolated areas—are not the only places where women experienced violence.<sup>46</sup>

In the United States, historian Linda Gordon's study on family violence from the late nineteenth to the mid-twentieth century, 1880-1960, examines cases of child abuse, neglect, incest, and domestic violence. Drawing from the case records of three child protection agencies in Boston, Gordon argues that the treatment of these crimes depended on the historical period's definition of that problem. Her thoughtful views on the crime of incest reveal the differential power, authority, and dependency dynamics that characterized these relationships. Gordon's work contextualizes the crime of incest from the perspective of the victim involved, while at the same time fleshes out the positions of other family members. Her analysis of incest shows that, by social worker standards, the crime was attributed to poor immigrant families. Fathers who committed these crimes were deemed sexual deviants. Incest cases, for social workers, served as an example of the moral and social inferiority of the lower classes.<sup>47</sup>

Similar to Gordon's argument, historian Georges Vigarello's study in France from the sixteenth century to the twentieth century examines cultural changes toward sexual violence from the ancient régime to the present. His analysis of rape indicates that a society's level of violence or approach to violence impacts attitudes toward rape. Vigarello's monograph discusses the crimes of rape and incest from juridical, religious, and moral standpoints. Vigarello's contribution to the treatment of child rape in France

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<sup>46</sup> Karen Dubinsky, *Improper Advances: Rape and Heterosexual Conflict in Ontario, 1880-1929* (Chicago: University of Chicago Press, 1993).

<sup>47</sup> Linda Gordon, *Heroes of Their Own Lives: The Politics and History of Family Violence: Boston, 1880-1960* (New York: Viking, 1988).

spans four centuries. Through his meticulous archival research, he found that though child rape occurring in the ancient régime did not have a legal category, as it does today, these types of cases were more likely to be prosecuted than rape cases involving adult victims. Still, legal protection from abusive family members proved difficult. Tracing child rape cases through the modern period further revealed a growing public preoccupation with the arrest and punishment of child molesters and rapists.<sup>48</sup>

### **Overview of Chapters**

This dissertation is organized in the following manner. Chapter 1 is divided into two sections. In the first, I take an institutional approach to examine how national codes, and sexual legislation in particular, were adopted from the Federal District within the state of Coahuila. This section is based on research conducted at Coahuila's congressional archives and on criminal codes compiled from numerous archives—the congressional, Saltillo's municipal, Coahuila's state archives—and the University of Coahuila's Autonomous Law Library. This chapter explores the modifications that the 1871 Criminal Code underwent at the state level. Based on that analysis, I utilize the passage of this criminal code as a lens to understand how Coahuila's legislators conceptualized sexual crimes and whether there were stark differences in how these crimes were defined within Coahuila's 1900 Criminal Code. The chapter also examines how local authority functioned. While there were cases of judiciary corruption, ineptitude, and a lack of legal knowledge through the use of *oficios* between courts, judges were able to execute successful arrests and receive legal consultation from

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<sup>48</sup> Georges Vigarello, *A History of Rape: Sexual Violence in France from the 16<sup>th</sup> to the 20<sup>th</sup> Century*, trans. Jean Birrell (Cambridge: Polity Press, 2001).

superior judges to carry out their duties. This finding suggests that even remote areas, such as ranchos, had a legal system where families resorted to for assistance.

Chapters 2, 3, and 4 focus on a thorough examination of individual sexual crimes to understand diverse ways that laws and legal practice disadvantaged plaintiffs and their families. Through these analyses, the sections explore how magisterial priorities and moral values departed from what the families and young women perceived as a legal wrong or social harm. Chapter 2 examines complaints involving estupro to show the difficulty that young women faced in proving that they received a promise of marriage. Instead, as part of the liberal ideology, judges upheld men's individual rights. Yet the practice of raising estupro complaints by families and young women revealed that verbal promises were meaningful in customary practice. Familial responses to maintain family honor, to avoid public scandal, and to secure the welfare of pregnant daughters are addressed in this section. Daughters also rejected parental wishes and continued in legally compromising relationships that often crossed paths with adultery lawsuits filed by aggrieved wives. This chapter also notes that by comparing the language of seduction used by male defendants in estupro proceedings against the language used by an injured husband confronting an unfaithful spouse reveals a fluid version of male honor. The language of seduction and deception in estupro complaints also reveals a female side of sexuality that transgressed normative stereotypes of female passivity. These complaints suggest that some families wanted to avoid these entanglements when they voiced disapproval of a daughter's relationship with a man known to have a family. Estupro crimes that intersect with raptó and adultery criminal suits offer another line of investigation into cases involving married men and their injured wives. Cuckolded men

were willing to remain in bad marriages to preserve public honor within their communities.

Chapter 3 addresses discriminatory practices that judges used in rape cases. Legal practice set evidentiary standards that victims were unable to meet. Though rape statutes acknowledged moral violence and psychological pressure, in actual cases, these circumstances were insufficient to demonstrate that sexual relations were coerced and unwanted. In these cases, judges interpreted continued sexual relations or a failure to physically resist sexual assault as evidence of consensual relations. Judicial interpretations about what constituted free will and consent demonstrates that the legal element concerning moral violence was a slippery slope in legal practice. Moreover, judges continually evaluated cases based on the social status of victims, using social markers such as married, single, and working women. Offenses involving a married woman were defined in terms of how the violence impacted their husband, yet cases involving a single woman were discussed in terms of how it impacted their families.

Chapter 4 explores constructs of the family, the legal definition of minors, societal perspectives on children, families, and parental roles. Middle-class notions of the family and childhood as a protected stage in an individual's life are examined in magisterial rulings. I argue that conceptions of childhood as deserving of special protections reflected an ideal of legislation that was not enforced in legal practice because of judiciary biases. Incest crimes are juxtaposed against child sexual crimes perpetrated by nonfamily members to highlight that cases occurring outside of the home were interpreted differently. No longer viewed as simply threatening the order of the family, these crimes harmed public morality and community members reacted to these crimes more vocally

because Coahuilenses viewed these crimes as a danger to good customs and the social order.

## CHAPTER 1

### COAHUILA’S LEGISLATIVE AND JUDICIARY APPARATUS: CONGRESS, JUDGES, AND LOCAL AUTHORITY IN COAHUILA

We have innumerable codes from the *Fuero Juzgo* . . . to the [Novísima Recopilación] and other laws enacted by our own authorities, our own legislation is in chaos because it is not possible to follow order and the path of truth, the law’s wisdom is darkened and confused as well as vague and indeterminate resisting the time in which it was enacted it is largely incompatible with our current institutions and modern civilization. This is why it is necessary to adopt the aforementioned codes for the reasons cited, because it is a complete work with a uniform body of doctrines, for its precision and generality to all the things that a legislator should bear in mind.<sup>49</sup>

Those thoughts were delivered in 1874 by the Supreme Tribunal of Justice during Coahuila’s congressional session. The code to which the tribunal referred was the 1871 Criminal Code developed in Mexico City that marked an important moment in state formation and legal modernization. The 1871 Criminal Code was enacted on December 7, 1871, yet was not adopted in Coahuila until January 1, 1875. On that date, Coahuila’s

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<sup>49</sup> The original congressional documents lack Spanish accents but I have added these accent marks for clarity. The documents also abbreviate the word *plenario* with a P and I have chosen to spell out the word in the citations. III Legislatura. Primer Período Ordinario. Comisiones de Gobernación Justicia, Industria, Gran Gurado [sic], Constitucionales y Colonización. 1874. Legajo No. 1, Exp. 30, Archivo del Congreso del Estado de Coahuila de Zaragoza, from here on ACECZ. This passage reads in Spanish: “Actualmente entre nosotros son innumerables los códigos que tenemos a partir del *fuero juzgo* . . . hasta la *nov. Recop* y demás leyes expedidas por nuestras autoridades propias, viniendo a ser nuestra legislación un verdadero caos en que no es posible seguir el orden y la huella de la verdad, y del acierto sin la ley de la cronología oscura y confusa como vaga é indeterminada esta solo si no que resistiéndose del tiempo en que se expidió es incompatible en su mayor parte con nuestras instituciones actuales y civilización moderna. Por lo que no solamente es del todo necesario la adopción de los códigos mencionados por las razones referidas, sino también por ser unas obras que no dejen que desear por su cuerpo uniforme de doctrinas, por su precisión y generalidad a todas las cosas que debe tener presente el legislador.”

congressional session declared that the civil, penal, and procedural codes from the Federal District and the Baja California territories would also apply in Coahuila. For approximately three years, Coahuila's judicial system had utilized laws dating to the *Fuero Juzgo* (thirteenth century), the sixteenth century Spanish Conquest, and through the *Novísima Recopilación* (1805).<sup>50</sup> This delay in implementing national codes at the state level illustrates the snail-like momentum at which Coahuila's legislators and judges implemented laws. Colonial historian Charles Cutter concluded that given the distance and isolation of northern provinces, these peripheral areas developed a legal culture distinct from the rest of the viceroyalty.<sup>51</sup> The recent work of Laura Shelton concurs with Cutter's interpretation and demonstrates how Sonorans relied on judges to maintain social harmony within the early republican period.<sup>52</sup> Cutter and Shelton's historical analysis, rather than emphasizing chaos and ineptitude within the judicial system, points out how, despite the lack of resources and legally trained personnel, officials carried out their court duties. Both authors found that magistrates relied on informal mechanisms, such as hands-on experience, and looked to local mediators for assistance in settling legal matters.

This chapter builds on the ideas adopted by these scholars to examine Coahuila's agents of justice. Coahuila's government had a separation of powers through executive, legislative, judiciary, and local officials. The dreams of republican spokesmen such as Miguel Ramos Arizpe for a superior tribunal had materialized through Coahuila's

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<sup>50</sup> III Legislatura. Primer Período Ordinario. Comisiones de Gobernación Justicia, Industria, Gran Gurado [sic], Constitucionales y Colonización. 1874. Legajo No. 1, Exp. 30, ACECZ.

<sup>51</sup> Charles Cutter, *The Legal Culture of Northern New Spain, 1700-1810* (Albuquerque: University of New Mexico Press, 1995), 60.

<sup>52</sup> Laura M. Shelton, *For Tranquility and Order: Family and Community on Mexico's Northern Frontier, 1800-1850* (Tucson: University of Arizona Press, 2011), 3-4.

Supreme Tribunal of Justice, and this body also overheard appeals. The case analysis indicates, as Cutter and Shelton argue, that judges did their best to fulfill their responsibilities. As evidenced by the cases filed, community members, in most cases, recognized that reparation of harm and punishment could be obtained through the judicial system.

To address distances between remote areas in Coahuila, a system existed so that the courts and the police could communicate. This system operated through *oficios* sent to an official and a request that an *orden de aprehensión* (arrest) be executed. In cases involving fugitives, such as in a *rapto*, where the suspect might be hiding at a *rancho*, *oficios* were the mechanism that assisted the judiciary in finding the abducted young woman and in arresting her captor. In cases where the suspect crossed a state line, the state governor would write an official letter bearing the state seal to verify that the request to arrest the suspect was legitimate. *Oficios* also were used to communicate between lower and higher courts and assisted judges who needed legal assistance. Hence, *oficios* helped deal with the lack of resources and legally trained individuals by establishing a system of communication to assist lower court judges who were uncertain with how to proceed with a proceeding. Further, higher courts exercised supervisory functions to ensure a certain level of formality and that judicial protocol was in place.

Nonetheless, as the opening quote illustrates, there were quirks and problems in the management of trials that resulted from colonial influences still in effect. Coahuila's legislators also encountered obstacles in implementing various legal codes because the review of laws passed at the federal level and adopted at the state level did not proceed as smoothly and quickly as the legislators desired. Coahuila's legislators regularly failed to

meet the deadlines established by previous congressional sessions and thus did not attain their own goals to review national codes and to modify them. Further, after Coahuila's 1900 Criminal Code was enacted, legislators reduced the severity of penalties for sexual crimes. Consequently, Coahuila's laws became more lenient than national laws—essentially trivializing sexual violence, as we shall see in this chapter.

### **The Quest for a Criminal Code: Law during the Early Republic in Coahuila**

Every two years, 11 delegates and 11 alternates were elected to serve as Coahuila's congressional delegates. There were two ordinary plenary sessions. The first began on August 15 and concluded on November 11 of the same year. The second session lasted two months, beginning on March 15 of the following year and concluded on May 15 of that year.<sup>53</sup> However, if a law or decree demanded additional consideration, the governor extended the session.<sup>54</sup> At Coahuila's congressional sessions of 1833-1834, lawmakers voiced concern that the state lacked a criminal code. In fact, lawmakers appointed a commission to study French and Spanish penal codes to guide them as they worked to create codes for Coahuila.<sup>55</sup> Impeding this, however, was the political climate in Coahuila. At the time, the territories within Coahuila included Tejas, but that changed a few years later when the forces of Texas battled Mexican Gen. Santa Anna.<sup>56</sup> The battles at the Alamo and San Jacinto led to Texas independence with the signing of the

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<sup>53</sup> Portillo, *Anuario Coahuilense para 1886*, 83. See Article 44.

<sup>54</sup> Portillo, *Anuario Coahuilense para 1886*, 83. See Article 45.

<sup>55</sup> Cuarto Congreso Constitucional. Segundo Período Ordinario. Comisiones de Gobernación, Hacienda, Justicia, Industria, Colonización, Gurado [sic], Milicia y Seguridad 1833-1834, Legajo No. 6, Exp. 22, s/n, ACECZ.

<sup>56</sup> Laura Gutiérrez, "La cuestión tejana," in *Breve Historia de Coahuila*, ed. María Elena Santoscoy, Laura Gutiérrez, Martha Rodríguez, Francisco Cepeda (México: El Colegio de México, 2000, 172-187.

Tratados de Velasco in 1836, and in 1845, Texas was admitted to the Union.<sup>57</sup> This period of Mexican and U.S. political instability was exacerbated in 1846-1848 with war between the United States and Mexico, which resulted in further loss of territory once belonging to Mexico.<sup>58</sup> Then, Mexican sovereignty was attacked by the French-imposed empire from 1862-1867.<sup>59</sup> Following years of instability, the 1871 Criminal Code embodied modern legislation for Mexico. Lawmakers considered the newly developed penal law as the embodiment of the best legal minds of Mexico and Europe. Comparable to the centralizing impact of the Napoleonic Code in France, the 1871 Criminal Code was deemed a worthy monument to Mexico.<sup>60</sup>

Hence, members of Coahuila's congress embraced the 1871 Criminal Code in the spirit of uniformity for the Mexican Republic. Nonetheless, Coahuila's legislators intended to review and modify these codes.<sup>61</sup> After the Federal District enacted a criminal, civil, or procedural code, states either adopted those statutes as is or modified them incrementally over time. Though states such as Oaxaca created civil codes for their state prior to the enactment of the 1870 Civil Code by the Federal District, Coahuila's jurists failed to do the same. In Oaxaca, jurists had created the state's first civil code in 1827-1828 and a second revised civil code in 1852, but even Oaxaca adopted the national

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<sup>57</sup> José Fuentes García, *Coahuila: Historia de las Instituciones Jurídicas* (México, D.F.: Universidad Autónoma de México, Senado de la República, 2010), 39-44.

<sup>58</sup> Laura Gutiérrez, "Las tropas estadounidenses en el territorio de Coahuila," in *Breve historia de Coahuila*, ed. María Elena Santoscoy, Laura Gutiérrez, Martha Rodríguez, Francisco Cepeda (México: El Colegio de México, 2000), 188-199.

<sup>59</sup> Oscar Flores Tapia, *Coahuila: La Reforma, la Intervención, y el Imperio* (México: Gobierno de Coahuila, 1989), 93-121.

<sup>60</sup> III Legislatura. Primer Período Ordinario. Comisiones de Gobernación Justicia, Industria, Gran Gurado [sic], Constitucionales y Colonización. 1874. Legajo No. 1, Exp. 30, ACECZ.

<sup>61</sup> III Legislatura. Primer Período Ordinario. Comisiones de Gobernación Justicia, Industria, Gran Gurado [sic], Constitucionales y Colonización. 1874. Legajo No. 1, Exp. 30, ACECZ.

1870 Civil Code.<sup>62</sup> Given Coahuila's tumultuous political climate, the state had attempted to create its codes prior to the 1870s, but had failed in its mission. Further, the state at the time, when it had attempted to create penal laws, had been preoccupied by other pressing concerns, such as Texas secession. And after Coahuila's legislators agreed to adopt the national codes, lawmakers were confronted with the reality that not all regions had penitentiaries or other penal institutions, specified by the codes, for the incarceration of delinquents. Areas that lacked a system of penal corrections could modify their sentencing laws and instead of incarceration could sentence criminals to perform public works.<sup>63</sup> In fact, as Laurence Rohlfes' study of penal practice explained, due to funding and other obstacles, Mexico City did not inaugurate its penitentiary until September 29, 1900.<sup>64</sup> Therefore, not all Mexican states were equipped to house inmates. The local legislators anticipated that the new criminal code would stay in effect for only about one year. Finally, congressional sessions between 1877 and 1884 reported progress with the task of amending the codes.<sup>65</sup>

### **Enacting the Civil Code and Code for Civil Procedures**

In addition to the obstacles encountered with the criminal code's pending reforms, not all courts were applying the 1871 Criminal Code. Not only were judges not uniformly

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<sup>62</sup> Sloan, *Runaway Daughters*, 136-139. See "The History of Oaxaca's Civil Codes."

<sup>63</sup> III Legislatura. Primer Período Ordinario. Comisiones de Gobernación Justicia, Industria, Gran Gurado [sic], Constitucionales y Colonización. 1874. Legajo No. 1, Exp. 30, ACECZ.

<sup>64</sup> Laurence John Rohlfes, "Police and Penal Correction in Mexico City, 1876-1911: A Study of Order and Progress in Porfirian Mexico" (PhD diss., Tulane University, 1983), 311. See also Robert M. Buffington, *Criminal and Citizen in Modern Mexico* (Lincoln: University of Nebraska Press, 2000), 95. Belén served as the site of the national jail. Buffington says that the prison system itself was thought to contribute to crime.

<sup>65</sup> III Legislatura. Segundo Periodo Ordinario. Comisiones de Gobernación y Justicia. 1874-1875. Legajo No. 4, Exp. 19, ACECZ. The time to review the code and make modifications was extended to the beginning of the following July. At the IV Legislatura. Primer Período Ordinario. Comisiones de Gobernación Hacienda, Justicia, Industria, y Agricultura. 1875-1876. Legajo No. 1, Exp. 33, ACECZ. Members of the fourth legislature believed that the 1871 code's review process required additional time.

using the code, but judges in Coahuila's courts did not follow the same procedures. For this reason, Coahuila's legislators admonished the president of the Supreme Tribunal of Justice that the 1871 Criminal Code was in effect and that the juzgados were expected to adhere to this law. Coahuila's legislators were troubled by variations in the tribunals, and some members viewed this as "anarchy in judge's resolutions."<sup>66</sup> Failing to use the civil codes was due in part to the executive branch not publishing a sufficient number of copies of the code for distribution. Even in the state's capital, attorneys in Saltillo complained that the judiciary lacked sufficient copies of the procedural codes for distribution. It was no wonder, then, that the criminal justice system in Coahuila was weak and sometimes ineffective.

### **Modifying the Code for Criminal Procedures**

At the eighth legislature, in 1883, before Coahuila's Congress finished revising the penal code, lawmakers shifted their attention to the Code for Criminal Procedures.

Congressional members noted,

"... it is truly imperative because our current laws . . . are defective and incomplete. The judiciary stumbles at every step in criminal procedures with serious difficulties and day to day an urgency is felt to correct all voids in that branch of our local legislation."<sup>67</sup>

To fill the void and need for a Code for Criminal Procedures that fit the demands of the state, the legislature appointed another commission. Yet other pressing concerns—laws

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<sup>66</sup> IV Legislatura. Primer Período Ordinario. Comisiones de Gobernación, Hacienda, Justicia, Industria, y Agricultura. 1875-1876. Legajo No. 1, Exp. 34, ACECZ.

<sup>67</sup> The original wording is: "Es verdaderamente imperiosa porque las leyes vigentes para arreglar esta importante materia en el estado son del todo defectuosas e incompletas. El poder judicial tropieza a cada paso en los procedimientos criminales con gravísimas dificultades y día en día se hace sentir la urgencia de que se promulgue un código que corrija todos los defectos y llene todos los vacíos en este ramo de nuestra legislación local." VIII Legislatura. Comisiones de Gobernación y Justicia. Tercer Período Ordinario 1883. Legajo No. 4, Exp. 39, Decreto 628, ACECZ.

regulating public instruction, police and other civil servants, and fiscal matters—diverted lawmakers’ attention from procedural law. Ultimately, revisions to the Code for Criminal Procedures were made concurrently with the changes made to the criminal code. This time, the redactions applied to *libertad preparatoria* (early release), not to sex crimes. A defendant who served three fifths of a prison term, exhibited good behavior, and obtained employment could request parole.<sup>68</sup>

Later, at the legislative sessions from 1886 through 1894, another commission to reform the criminal code was named. By 1894, Coahuila’s congressional members noted the time lapsed, more than 19 years, since the criminal codes were enacted, and the legislators expressed concern that the codes had yet to be reformed.<sup>69</sup> Another six years passed before Coahuila’s Congress finally, in 1900, approved the penal code that was to take effect in September of that year.<sup>70</sup> Decades passed before Coahuila’s lawmakers approved the 1924 Civil Code of Procedures and then, in 1933, the Civil Code.<sup>71</sup>

### **Comparative View of the Prosecution of Sexual Crimes**

Coahuila’s congressional members proposed a commission led by attorneys to study the situation and to offer their perspectives on needed modifications to the penal

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<sup>68</sup> *Código de procedimientos penales* (Saltillo: Congreso del Estado de Coahuila de Zaragoza, 1884), 63-71.

<sup>69</sup> IX Legislatura. Primer Período Ordinario. Comisiones de Gobernación, Justicia, Agricultura, y Puntos Constitucionales. 1886. Legajo No. 1, Exp. 19, ACECZ. XIII Legislatura. Segundo Período de la Comisión Permanente. Comisiones de Gobernación, Hacienda y Justicia. 1894. Legajo No. 7, Exp. 71, ACECZ.

<sup>70</sup> XVI Legislatura. Segundo Período Ordinario. Comisiones de Gobernación, Hacienda, y Justicia. 1900. Legajo No. 3, Exp. 23, ACECZ.

<sup>71</sup> XXX Legislatura. Comisión de Justicia. Código Civil Para el Estado de Coahuila. 1933. Legajo Único, ACECZ. While the 1933 Civil Code took effect, the D.F.’s Civil Code of 1928 was in effect. *Código de procedimientos civiles* (Saltillo: Congreso de Coahuila de Zaragoza, 1924). *Código civil para el Estado de Coahuila de Zaragoza* (Saltillo: Congreso de Coahuila de Zaragoza, 1932).

codes.<sup>72</sup> The criminal code's proposed changes dealt with *abigeato*, the crime of cattle theft. Of all the Mexican states, Coahuila ranked third in territorial size, occupying 151,572 Km<sup>2</sup>, and 64 percent of its land was used for cattle raising.<sup>73</sup> In 1877, there were 86 haciendas and 168 ranchos; by 1900, statistic counts reported 140 haciendas, 953 ranchos, and 15 congregations.<sup>74</sup> Revisions to the penal codes did not modify sexual crimes but rather focused on laws relegated to agriculture and ranching, which represented important economic interests to the state. Coahuila's legislators who reviewed *abigeato* noted that Coahuila's rate of cattle theft was higher than that in the Federal District, where livestock were better watched.<sup>75</sup> Legislators had focused their legislative initiatives on the care and protection of livestock, instead of on other legislation related to criminal law.

Local anxieties helped explain the differences in jurisprudence across Mexican states. There were three main distinctions between the national 1871 Criminal Code and Coahuila's 1900 Criminal Code with respect to *estupro*, rape, and *rapto*. For crimes related to incest, however, sentencing laws remained the same. One major difference pertained to *estupro* crimes and involved the category of crimes committed against a girl younger than 10. Under the 1871 Criminal Code, the guideline stated that the defendant faced an eight-year prison term, whereas Coahuila's codes sentenced that defendant to six

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<sup>72</sup> IV Legislatura. Primer Período Ordinario. Comisiones de Gobernación, Hacienda, Justicia, Industria, y Agricultura. 1875-1876. Legajo No. 1, Exp. 34, ACECZ.

<sup>73</sup> Favret Tondato, *Tenencia de la tierra*, 2-4.

<sup>74</sup> See Favret Tondato, *Tenencia de la tierra*, 29 and 122. The 1877 statistic is based on the Estadísticas Sociales del Porfiriato, and the 1900 counts were conducted by the Censo y División Territorial del Estado de Coahuila.

<sup>75</sup> V Legislatura. Segundo Período Ordinario. Comisionario de Gobernación, Justicia, P Constitucionales, Agricultura, Colonización y Minería. 1877-1878. Legajo No. 4, Exp. 13, ACECZ.

years.<sup>76</sup> Coahuila’s laws on rape also reduced rapists’ prison terms. For example, under the 1871 Criminal Code, a suspect who raped a woman older than 14 faced a six-year prison term, but under the state’s laws, that defendant faced a five-year term. Again, under the 1871 Criminal Code, a suspect charged with raping a girl younger than 14 faced a 10-year prison term, but under Coahuila’s laws, it was an eight-year sentence.<sup>77</sup> There also were sentencing differences in cases of raptos. Under the 1871 Criminal Code, raptos were punished by a four-year prison sentence, but under Coahuila’s laws, abductors were given three years of incarceration.<sup>78</sup> As MacLachlan notes, “How a society seeks to identify and control deviant elements in its midst inevitably reveals its norms.”<sup>79</sup> Applying MacLachlan’s interpretation, Coahuila’s codes were more relaxed toward sexual offenders. Without further information about the legislators’ reasoning, we can only infer that perhaps Coahuila’s lawmakers believed that federal sentences were too harsh. To provide a legal context to understand courtroom practice in Coahuila the following section examines how criminal proceedings functioned.

### **Criminal Proceedings in Coahuila**

Criminal law authorized two means for initiating a judicial proceeding: *de oficio* (automatically) or by *querrela* (by complaint).<sup>80</sup> These two procedures for initiating an investigation into a legal case separated offenses into two categories: public crimes and

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<sup>76</sup> *Código penal para el Distrito Federal* (1873), 219. Marcela Martínez Roaro, *Delitos sexuales: Sexualidad y derecho* (México: Editorial Porrúa, S.A., 1982), 110. See Article 794, for national code and see Article 782. *Código Penal del Estado de Coahuila* (1900), 155.

<sup>77</sup> *Código penal para el Distrito Federal* (1873), 220. Martínez Roaro, 111. See Article 797. *Código penal del Estado de Coahuila* (1900), 155. See Article 786.

<sup>78</sup> *Código penal para el Distrito* (1873), 222-223. Raptos also carried a 50-500 peso fine. See Article 809 in Martínez Roaro, 113. See Article 799 in *Código penal del Estado de Coahuila* (1900), 157.

<sup>79</sup> Colin M. MacLachlan, *Criminal Justice in Eighteenth Century Mexico: A Study of the Tribunal of the Acordada* (Berkeley: University of California Press, 1974), 7.

<sup>80</sup> *Código de procedimientos penales* (1884), 15. See Article 35.

private crimes. Public crimes disrupted the public order and harmed society overall. Examples of public crimes included homicide, banditry, and vagrancy. *Denuncias* (formal accusations) of public crimes could be filed by any *hijo del pueblo* (community member). After an official received a notice about a crime, it was mandatory that the official investigate the crime. Public crimes, then, did not require a particular victim to make a formal complaint. Sexual crimes—deflowerings, abductions, rape, and incest—fell under the sphere of private crimes, crimes that offended the domestic order rather than the public order. In actual practice, crimes crossed into both spheres: A sexual offense such as estupro could cause public scandal. In such cases, sexual crimes were viewed as particularly onerous, alarming the community and gaining a judge’s attention.<sup>81</sup>

To start an investigation into a private crime, such as rape, penal law required that the offended woman or her legal representatives, i.e., parents or guardians, submit a formal complaint to judicial authorities. The majority of complaints were filed by immediate family members in written form.<sup>82</sup> The statements were brief and varied from

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<sup>81</sup> Kathryn A. Sloan, “The Penal Code of 1871: From Religious to Civil Control of Everyday Life” in William H. Beezley, ed. *A Companion to Mexican History and Culture* (Malden: Wiley-Blackwell, 2011), 305.

<sup>82</sup> However, in a few cases, neighbors, extended family members, and public officials such as the municipal president, mayor, and police initiated accusations; still, the aggrieved party needed to come forth; otherwise as already indicated, without this complaint, the legal investigation into the matter stopped. In most cases, it is not possible to determine who exactly wrote the complaints because the author’s name is absent from the document. In a few instances, it was possible to determine that the complaints had been written by the plaintiff because the stylistic language of the complaint followed a vernacular use of language that was personal and the plaintiff signed their name. Complaints written by the plaintiffs themselves are the exception. See *Averiguación instruída por rapto contra Roman Grimaldes*, AGPJC, Caja 1889.

In most instances, the plaintiffs were illiterate and unable to sign their name. The documents suggest that plaintiffs paid a scribe or other community member to write the initial petition asking that an investigation begin. For instance, one entry concluded with the following closing, “Por Francisca Dueñas,” and underneath her name, “Eduardo López”; here, no additional title was offered; therefore, it is not

half a page to a page and a half. Typically, the plaintiffs directed the statement to the judge in charge of their jurisdiction. Within the complaint, family members clarified their relationship with the victim, such as the young woman's mother, father, or guardian. The statement included the date, time, a description of the events surrounding the crime, and named the accused suspected of the crime against the family and daughter. Likewise, plaintiffs identified the crime by its legal name and cited articles from legal codes, such as procedural law and criminal law. The last two notations indicated that families, prior to initiating a legal proceeding, were informed about legal elements that judges would study prior to reaching a verdict.<sup>83</sup> In cases involving raptos, in which a young woman eloped with a defendant, families carried out their own investigations, and in their complaints, the families stated where the couple lived or relocated to if they were out of state.

In some criminal complaints, families filed an investigation immediately, and in other cases, complaints occurred months, even years, after a crime. For example, one rapto case was filed three years after the alleged crime took place. Judges in Coahuila did not appear to enforce a time period for plaintiffs to lodge a criminal suit. But a few cases were dismissed after the case had exceeded a time period, suggesting a statute of limitations went into effect once a proceeding started. In the case involving the young woman who had eloped three years earlier with her boyfriend, the continued pursuit of

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possible to assess if he was a public scribe. In this case, Eduardo López was well versed in the law because the complaint mentions the crime by its legal name, "rapto," and, more significantly, cites the information found in Article 814 of the code that would indicate the individual possessed some legal knowledge. Still, López was not a member of the judiciary, such as a judge, legal secretary, or an attorney, because if he had held any of those positions, the complaint would have indicated such a title. See *Causa instruída por rapto contra Marcelino Álvarez*, AGPJC, Caja 1880, No. 308. Another complaint written on behalf of Valentina Delgado signed by another individual contained similarities in the language the complaint employed, citing a legal code, but here again, there was no title or position attached to the author of the complaint. See *Averiguación instruída por rapto contra Aurelio Cortez*, AGPJC, Caja 1880, No. 27.

<sup>83</sup> Families either had a priori legal knowledge or received legal information from the individual who assisted them in writing their formal complaints.

her whereabouts, even after years had elapsed, suggests that families did not forget their runaway daughters and attests to the strength of family bonds. Cases such as these remind us of the human element involved in these proceedings. In the presence of the judge, the accused, and her estranged daughter—whom she had not seen in more than three years—the mother told the judge about the day that her daughter went missing. The mother explained that her husband had died just a few days before the couple fled, and having no one to turn to for help, the mother was unable to continue the search. Still, she affirmed that she did not want the couple to marry. The young woman, then 18, echoed her mother’s words, when she told the judge that she did not want to marry the defendant and instead asked to be reunited with her mother.<sup>84</sup>

In other cases, plaintiffs enlisted the help of a municipal president, an elected official, and he then forwarded the written complaint to the judge. In the meantime, the municipal president took action by placing a defendant under police custody, depositing the offended woman in a safe lodging, and notifying the substitute judge of that jurisdiction.<sup>85</sup> Time was of the essence in raptos cases, and it behooved parents to go to a public functionary, other than a judge, when such officials were geographically more accessible. Other parents did not wait to draft a written complaint; one father headed directly to the local judge to inform him that “Amado del Bosque took his daughter thus, committing the crime of rapto.”<sup>86</sup> These examples suggested that not all querrelas were submitted in written form, as is today’s standard practice.

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<sup>84</sup> Averiguación instruída contra Félix Arellano por rapto, AGPJC, Caja 1873.

<sup>85</sup> See Averiguación instruída por rapto contra Hilario Adriano, AGPJC, Caja 1880.

<sup>86</sup> See Averiguación instruída por rapto contra Amado del Bosque, AGPJC, Caja 1879, No. 167.

Once a judge received the complaint, the plaintiff received a notification to appear in court and testify. The secretary of the *juzgado* (court) or the judge, accompanied by *testigos de asistencia* (attesting witnesses), issued first the notifications in person.<sup>87</sup> If the plaintiff were not home, the notifications were handed to another family member, domestic servant, or someone else living in the plaintiff's dwelling. If no one was present to receive the notification, the law instructed leaving the notice with the nearest neighbor.<sup>88</sup> If the residency was unknown, judges printed the notification three consecutive times in the state's government newspaper, called *El Coahuilense* and later renamed the *Periódico Oficial*, which was published biweekly.<sup>89</sup>

In the next phase of the judicial proceedings, judges carried out the *diligencias* (evidentiary proceedings). A court secretary read the initial complaints and asked the representative, legal guardian to ratify the statement and then if possible to sign it. These three steps provided individuals with opportunities to verify the accuracy of their testimony and to object to incorrect recordings by the court secretary. Next, the offended woman provided a statement about the crime and her relationship with the accused, depending on the type of crime.<sup>90</sup> The legal codes suggested that these interrogations were conducted separately. In fact, procedural rules dictated that cross-examinations with

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<sup>87</sup> The attesting witnesses were present during notifications and interrogations, but they were not witnesses to the crime.

<sup>88</sup> *Código de procedimientos civiles* (Saltillo: Tipografía del Gobierno en Palacio, 1898), 12-13. See Articles 72-74. The code states that the secretary or judge should ensure that the residence belongs to the plaintiff by asking two neighbors. Ideally, the notice would be left with a literate neighbor.

<sup>89</sup> In addition to printing *juzgado*'s announcements, the *Periódico Oficial*, contained ads from the civil registry (statistics on the number of births, marriages, deaths by municipality), laws and decrees, municipal construction projects, crime statistics, and printed judicial verdicts.

<sup>90</sup> Based on the court transcript, it is difficult to assess whether parents were present during their daughter's testimony. In some cases, they were present because the offended person was a minor and no other *curador* (special counsel) for the minor was available.

multiple witnesses were to occur one at a time. If at that point in the proceedings the accused had been arrested, then the defendant would be questioned about his knowledge of the crime and his involvement with the young woman. In cases where the defendant had not been detained at this stage of the investigation, an order for his arrest was issued by the judge. *Careos* (cross-examinations) eliminated inconsistencies between the offended woman, parents, witnesses, and the defendant. These cross-examinations occurred face to face, and more than once, at the judge's discretion, the cross-examinations ended when the judge determined that no agreement between the parties was possible.

In fact, meeting the legal requirement for an investigation to proceed was rarely an issue. Once a defendant was arrested, the judge asked the defendant to select a defense attorney, or the defendant could request that the judge appoint counsel. Defense attorneys proved to be agile legal experts who often successfully defended their clients against charges or reduced the defendant's sentences. Defense attorneys also pointed out discrepancies and flaws in the plaintiff's testimony, argued that the accused did not commit the crime, sought to reduce the criminal charge, processed release by *fianza* (bail), and fashioned their client's appeal. The next section addresses the specific roles of judges, judicial hierarchy, and includes a look at other agents of justice.

## **Judiciary Authority in Coahuila: Higher and Lower State Courts**

### **The Supreme Tribunal of Justice**

The Supreme Tribunal of Justice, the first-instance judges, and local and minor judges made up the judiciary.<sup>91</sup> The tribunal was comprised of three delegate magistrates, three supernumerary judges, and one prosecutor, all elected to four-year terms. Each magistrate presided over one of the three courtrooms. The tribunal exercised numerous functions as the head of the judiciary and intermediary functions between the judiciary and the legislative and also the judiciary and the executive branches of the state. Among the judiciary, the tribunal held administrative and judicial authority. For example, when the first-instance judges, akin to circuit court judges and district court judges, were uncertain about how to proceed in a court matter, those judges turned to the tribunal magistrates for legal assistance. Therefore, the tribunal could become involved in civil and criminal proceedings during the second-instance or third-instance phases of a case. During appeals, if a tribunal magistrate's legal decision differed from a lower court ruling, the tribunal's decision was final and reversed all lower court rulings.

As noted, the tribunal linked the judiciary branch to the legislative and executive branches. When the judges of first instance voiced concerns about a code or procedure, the tribunal reviewed the lower court's legal opinions, and, if the tribunal magistrates found discrepancies within the law, the judges asked Coahuila's Congress to redress

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<sup>91</sup> *Portillo, Anuario Coahuilense para 1886*, 86. Article 62 of Coahuila's Constitution delegated the power to initiate laws to the legislative, executive, and judicial branches and to local forms of government. According to Article 62, congressional delegates, the governor, and the Supreme Tribunal of Justice had the authority to initiate laws. The Supreme Tribunal of Justice could call for reforms to civil or penal legislation, judicial proceedings, and the administration of justice. Local government, such as city/town councils or municipalities, could request laws regulating police and planning of resources to cover municipality costs.

those laws. In this manner, by pointing out flaws in legal procedure or by asking for reforms to existing codes, the tribunal worked to coordinate the civil, penal, and procedural codes by making them more cohesive. Adoption of the 1871 Criminal Code resulted partly from the tribunal's reforms in criminal law. This suggested that the magistrates were not disconnected from Mexico City but were knowledgeable about legal practices in effect at the national level. Finally, the tribunal reported to the governor through monthly reports and collected information from first-instance judges, which included lists of ongoing civil and criminal trials. Through these diverse mechanisms, the tribunal connected lawmakers with the actual implementation or practice of the law.

Within the legal community itself, the tribunal also had sway. The tribunal reviewed both attorney and notary candidates' qualifications for those individuals seeking titles to practice law, which meant that the tribunal had influence over those who entered the legal profession.<sup>92</sup> In Coahuila, judges relied on witnesses and court secretaries to carry out the function of a notary. Similarly, Laura Shelton notes that in Sonoran courts, during the republican era, due to a shortage of notaries, judges resorted to using lay personnel and witnesses to notarize court documents.<sup>93</sup> Likewise, in Coahuila, the law recognized the use of secretaries and witnesses during the notifications process.

### **The Magistrates of First Instance**

Next in the hierarchy were first-instance judges. Compared to the number of magistrates who served on the tribunal, there were a greater number of first-instance judges. Coahuila's state articles do not cite an actual number and instead note that each

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<sup>92</sup> Portillo, *Anuario Coahuilense para 1886*, 102-105. See Articles 117, 118, 125, 128, 129.

<sup>93</sup> Laura M. Shelton, *For Tranquility and Order: Family and Community on Mexico's Northern Frontier, 1800-1850* (Tucson: University of Arizona Press, 2011), 18.

district should have only the number of judges necessary for the administration of justice. First-instance judgeships were elected through popular election to two-year positions. Qualifications included citizenship in Coahuila, a law degree, and having practiced law for more than one year. Ideally, the elected judge presided over either civil or criminal matters, yet given the population of a region, the same person might serve as a first-instance judge for both categories of the law. Judges of first-instance resolved legal issues—procedural matters and even clarification of the law—that arose in the courtrooms of the lower court judges. These first-instance judges reported directly to the tribunal through the previously cited monthly reports, which documented pending court cases, and the judges ensured that the tribunal’s final judgments were followed. Through this system of checks and balances, the first-instance judges ensured that the lower courts adhered to the tribunal’s rulings and prevented local judges from issuing arbitrary judgments.<sup>94</sup>

### **Lower court judges**

While the *juez local* (local judge), *juez menor* (minor judge), and *juez auxiliares* (auxiliary judges) ranked lowest on the judiciary totem pole, they were vital administrators of justice within their municipalities and communities. The local and minor judgeships were popularly elected for one year, and each judge had two alternates.<sup>95</sup> Auxiliary judges were appointed by the local authority, and these men also held office for one year. Unlike the magistrates, who served on the tribunal and as first-instance judges, the auxiliary judges were not required to have legal training. The

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<sup>94</sup> Portillo, *Anuario Coahuilense para 1886*, 105-106.

<sup>95</sup> The differences between these two types of judges were not clear, only that municipalities had one or the other. Portillo, *Anuario Coahuilense para 1886*, 106.

qualifications to serve as an auxiliary judge specified only that male citizens be literate, older than 21, possess a good reputation, live honestly, and hold residency in the jurisdiction where he would serve. Smaller congregations, ranches, and haciendas, as well as small towns not part of the *cabeceras de municipalidad* (main municipality), used auxiliary judges.<sup>96</sup> The *ayuntamientos* (city/town councils) divided municipalities into sectors of 500 habitants, and an auxiliary judge headed each section.<sup>97</sup>

Lower court judges enlisted the help of judges of first instance on procedural matters. To illustrate, on December 7, 1911, Andrea Quintero, widowed and 70, accused Jacobo Galván, 36, married and employed as an agricultural worker, of kidnapping her granddaughter, María de Jesús Jiménez.<sup>98</sup> The first local judge in Nava, a municipality in the Rio Grande District, received Andrea's complaint and began the investigation. He did not arrest the suspect, but he summoned him to make a statement. Jacobo testified that though he was married, he was separated from his family. He also denied kidnapping María de Jesús and instead told the judge that she was his domestic and that he paid her an *honorario* (stipend). Possibly, to dispel any notion of bigamy, Jacobo clarified that he had not offered to marry the young woman. María de Jesús ignored the local judge's notices requesting that she make a statement. Uncertain about how to proceed, the local judge wrote to the district judge requesting assistance. The district judge replied and instructed the local judge to verify Andrea's ties to María de Jesús to ensure that the plaintiff had the legal authority to initiate a formal complaint. Next, the local judge was

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<sup>96</sup> Portillo, *Anuario Coahuilense para 1886*, 173-174.

<sup>97</sup> Portillo, *Anuario Coahuilense para 1886*, 163. See Articles 2-4.

<sup>98</sup> Contra Jacobo Galván por rapto, AGPJIC, Caja 1911 Penal, No. 32.

asked to verify whether the young woman was younger than 16 and, if so, to arrange for a doctor to examine her for signs of physical violence.<sup>99</sup>

In early December, while in the midst of the case, a new local judge assumed control of the case. Not only was there a new judge, new assistants also had been assigned to the case. After reading the district judge's note, the new local judge heeded his instructions. He ascertained that the plaintiff had the legal authority to make a complaint because she was the young woman's maternal grandmother. Moreover, María de Jesús appeared before the new judge with her birth certificate in hand to confirm her age; she was 33. After gathering this information, the new local judge was perplexed about how to proceed and therefore wrote back to the district judge. The judicial record is unclear on what happened after that. There was no reply, and the proceeding came to a close.<sup>100</sup>

This rapto case exemplifies the grave lack of procedural and criminal understanding of the law of some local judges. In this example, both local judges' minimal knowledge of sexual crimes clearly extended the length of the complaint. In fact, the suspect was never arrested, because neither judge ever opened a judicial investigation. Moreover, when María de Jesús finally made her declaration, the judge did not interrogate her about the events. Her statement consisted of providing her name, listing her immediate family members, and handing her birth certificate to the judge. The local judge did not question her about whether she had been abducted by Jacobo. As the case showed, a local judge's one-year term quickly elapsed and, during the middle of a trial, a

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<sup>99</sup> *Código penal del Estado de Coahuila* (1900), 157. According to Article 801, if a rapto involved a young woman younger than 16, the law presumed that she was seduced.

<sup>100</sup> *Contra Jacobo Galván por rapto*, AGPJC, Caja 1911 Penal, No. 32.

new judge might assume the reins of a case. Prior judges did not wait to adjudicate their cases to completion and most likely did not review their notes with their replacements. New local judges were literally thrown into a case with new assistants. Thus, as Cutter and Juan Manuel Palacios argue, judges received legal training through hands-on experience.<sup>101</sup> But in contrast to what these scholars found, to balance local judges' lack of experience, Coahuila's legal system had superior judges to help clarify legal procedure. The transcript does not discuss whether the correspondence to the district judge was lost. It is also plausible that the district judge ignored the second local judge's question, given that the young woman was older than the age of majority. Based on Coahuila's 1900 Criminal Code on raptó, the little evidence gathered suggested that no crime had been committed. No violence or claims for seduction existed because the suspect testified that María de Jesús worked for him earning an honorario, and her birth certificate demonstrated that she was older than 16. In this case, it seems likely that María de Jesús and Jacobo found a way to circumvent the legal system by claiming that she was his employee. Utilizing the pretext of domestic employee, the two were able to informally arrange a domestic life together. Clearly, María de Jesús' grandmother did not approve of her 33-year-old granddaughter's choice and, in her efforts to protect her sexual honor, the grandmother went to the authorities and referred to her granddaughter as a "*señorita*" ("maiden").<sup>102</sup>

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<sup>101</sup> Cutter, *The Legal Culture of Northern New Spain*, 102. Juan Manuel Palacio, "Judges, Lawyers, and Farmers: Uses of Justice and the Circulation of Law in Rural Buenos Aires, 1900-1940," in *Crime and Punishment in Latin America*, ed. Ricardo D. Salvatore, Carlos Aguirre, and Gilbert M. Joseph (Durham: Duke University Press, 2001), 93.

<sup>102</sup> Queja de Andrea Quintero. Contra Jacobo Galván por raptó, AGPIC, Caja 1911 Penal, No. 32, 1.

## **Auxiliary Judges**

Given the diverse functions that auxiliary judges exercised within a community and the requirement that they live in the same area as the plaintiffs, it is feasible that these judges were acquainted with the families that filed criminal complaints. In addition to dealing with civil and criminal matters, auxiliary judge assisted the ayuntamiento to enforce primary education on haciendas and ranchos. The judges were involved in ensuring that monies were collected for education and fined parents who failed to comply with the law. Public education, per the civil codes of 1886, required that parents send their children to municipal schools beginning at the age of 6. Teachers compiled attendance records by class, student gender, subjects taught, and books used in their classroom. Parents and guardians who violated the codes pertaining to public education paid fines.<sup>103</sup> It was up to the auxiliary judges to determine the salary that residents paid teachers. Additionally, auxiliary judges maintained census records for residents who lived in their section, ensured that children attending school were vaccinated, enforced the burial of cadavers within 24 hours of death, safeguarded order, handed arrested individuals to police, and even notified police about suspicious situations and people.<sup>104</sup>

## **Other Mediators of Justice: El Ayuntamiento, Presidente Municipal, and the Police**

Other local officials, such as members of the ayuntamiento, due to their political role, were involved in numerous activities and came into contact with litigants. In isolated areas, lacking a judge or local authority, civil servants and heads of police could

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<sup>103</sup> The first violation extracted a fine of between 25 centavos and one peso; the second violation doubled, and the third tripled the fine.

<sup>104</sup> *Portillo, Anuario Coahuilense para 1886*, 173-174. See Article 91. See also Capítulo VIII. De los jueces auxiliares en las haciendas y ranchos and Capítulo IX. De los jueces auxiliares, vigentes y celadores en las poblaciones in *Portillo, Anuario Coahuilense para 1886*, 188-189.

legally initiate a criminal complaint. Depending on the type of evidence involved, in some instances, local authorities might even initiate the *diligencias* (investigation) proceedings. For all other cases, the authorities were to forward the filed complaint to the judge in charge.<sup>105</sup> In fact, in one case, an ayuntamiento member signed for the prosecutor, as his substitute, during one proceeding.<sup>106</sup> The ayuntamiento covered the costs associated with maintaining the judiciary branch and headed other community projects. Part of the councils' functions included protecting orphans. All of that, in addition to carrying out everyday tasks, such as ensuring public health, maintenance of streets, erecting buildings, and conserving clean water through acequia cleanup projects, has been cited as part of the maintenance of public education.<sup>107</sup>

Members of the ayuntamiento and the municipal president served as legal mediators who helped settle personal disputes, as the following 1909 appeal's case illustrates.<sup>108</sup> The plaintiffs and the defendants lived on a hacienda on the outskirts of Parras. The Hacienda del Rosario had a population count of approximately 2,059 inhabitants. In 1869, Evaristo Madero purchased the Rosario, making it the largest of the nine haciendas in Parras at that time.<sup>109</sup> The criminal trial fell under the jurisdiction of the second local judge of Parras. Felipe Escobedo, a *jornalero* (day worker), accused Manuel Morales, 19, of committing raptó and estupro with his 16-year-old daughter, María de la Luz Escobedo. Felipe told the court that he had not filed his criminal complaint sooner because he had placed his complaint with the municipal president. The municipal

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<sup>105</sup> *Código de procedimientos penales* (1884), 19. See Article 53.

<sup>106</sup> Auto de formal prisión. Criminal instruída contra Adolfo Martínez por el delito de estupro, AGPJC, Caja 1925 Penal, #164, 11.

<sup>107</sup> *Portillo, Anuario Coahuilense para 1886*, 182-183. See Articles 14 and 16.

<sup>108</sup> Apelación de Manuel Morales por raptó y estupro, AGPJC, Caja 1909 Penal #942.

<sup>109</sup> Favret Tondato, *Tenencia de la tierra*, 109-110.

president told Felipe that he would speak with Manuel's father to pressure the young man into marrying María de la Luz. After Manuel refused to marry her, at that point, the municipal president counseled the parents to initiate a legal proceeding with the local judge.<sup>110</sup>

As this example conveys, families turned to local power brokers before resorting to the court's assistance. The municipal president believed that he could compel Manuel to marry María de la Luz and spare both families from going through the criminal justice system. Using his political authority, the municipal president spoke with Manuel's father to morally compel Manuel into marrying María de la Luz. After hearing the case, the local judge ruled that Manuel was guilty, but when the Supreme Tribunal of Justice reviewed the case, the magistrate ruled there was insufficient evidence and freed Manuel.<sup>111</sup> María de la Luz's story suggests that local officials, such as municipal presidents and local judges, granted plaintiffs greater protections than did the Supreme Tribunal of Justice. The urban magistrates, who made up the tribunal in Saltillo, lacked familiarity with the victims and their families.

Indeed, municipal presidents had legal influence. On February 11, 1925, Jesus Soria, a married railroad worker who lived in the Estación de Santa María, accused Adolfo Martínez of committing an estupro with his 13-year-old daughter, Aurelia Soria.<sup>112</sup> Yet, before placing his denuncia with the second local judge in Ramos Arizpe, the father enlisted the help of two other officials. The municipality of Ramos Arizpe was

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<sup>110</sup> Apelación de Manuel Morales por raptó y estupro, AGPJC, Caja 1909 Penal #942.

<sup>111</sup> Apelación de Manuel Morales por raptó y estupro, AGPJC, Caja 1909 Penal #942.

<sup>112</sup> Criminal instruída contra Adolfo Martínez por el delito de estupro, AGPJC, Caja 1925 Penal, #164.

located north of Saltillo. According to the 1900 census records, the nearest hacienda matching the name of Santa Maria reported a population of 230.<sup>113</sup> However, the railroad brought an influx of workers such as the Sorias into the area and, very likely by 1925, the population exceeded that count. Unlike María de la Luz's case, the municipal president's assistance in the investigation proved crucial. The auxiliary judge at Santa María's Molino took Jesús to meet with the municipal president to mobilize the suspect's arrest through a *via de auxilio* (route for help). As the case illustrates, a municipal president commanded resources to obtain a suspect's arrest, and this explained why the auxiliary judge sought his help.

In addition to turning to municipal presidents, courts relied on the police to apprehend suspects who hid in remote ranchos and urban areas. A chief of police headed the police force, which was composed of an assistant of the *policía diurnal* (day police), officers, and an assistant for night patrol. Here again, the city and town councils played roles in the hiring and firing of police agents. The council used the city and town budgets to determine the number of police contracted for an area. Ayuntamientos appointed and removed police, contingent on the approval of the governor.<sup>114</sup> Solving the case depended on the effectiveness of the local police. To illustrate, on February 16, 1909, in Saltillo, an agricultural worker, Tiburcio Ramos, 48 and married, accused Cristóbal Melchor, 18, of taking his daughter, Tomasa Ramos, 17. The judge from the *Juzgado 2 Menor* (second minor court) of Saltillo issued an order to arrest the suspect, and the police, that very

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<sup>113</sup> Favret Tondato, *Tenencia de tierra*, 79.

<sup>114</sup> Portillo, *Anuario Coahuilense para 1886*, 174-178. See Articles 92-104.

afternoon, placed Cristóbal in jail. Perhaps because the case occurred within the city of Saltillo, the police acted with haste in executing their arrest order.<sup>115</sup>

In other cases, police were sent to apprehend a suspect but were not provided with sufficient information to execute an arrest. For example, on August 3, 1907, in Saltillo, Santiago Lira and Margarita Escobedo, the parents of Angela Lira, accused their son-in-law, Herculano Bustos, of bigamy.<sup>116</sup> The complaint was made before the district judge in Saltillo, and the order was sent to the local judge in Ramos Arizpe, another jurisdiction. The note written by the local judge in Ramos instructed the police official to head to the rancho de Ramirez in Ramos, speak with the auxiliary judge and together apprehend the suspects. In the postscript, the local judge from Ramos admitted to not knowing the identity of the auxiliary judge at the rancho and asked that another employee accompany the police official to help with the arrest. Eventually, the arrest order reached the auxiliary judge at San Martin de las Vacas because he replied that the suspects were not found. In this case, the police officer was unable to track the suspect because the police unit lacked resources. The police force consisted of only one individual, and the record is not clear about the identity of the employee, most likely a citizen, who accompanied the police official.<sup>117</sup> The next section focuses on how officials apprehended suspects who fled across state lines.

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<sup>115</sup> Contra Cristóbal Melchor por rapto, AGPIC, Caja 1909 Penal #938.

<sup>116</sup> Causa instruída contra Herculano Bustos por bigamia, AGPIC, Caja 1907, #895.

<sup>117</sup> Causa instruída contra Herculano Bustos por bigamia, AGPIC, Caja 1907, #895.

**Judicial Priorities: “Apprehend him, he stole a mule and two donkeys! Oh, he also took a young woman”**

Because Coahuila’s territory is bordered by the Mexican states of Chihuahua, Durango, Zacatecas, and Nuevo Leon, some cases crossed jurisdictions, testing the limits of judicial authority. As an example, on April 8, 1884, Francisco Plata accused Blas Rocha of kidnapping his daughter, Elena Plata, from their home in the rancho de San Jose de Sanchez located in the municipality of Saltillo.<sup>118</sup> Three men accompanied Blas, and as the men fled, they stole one mule and two burros from two neighbors. Even the complaint made by Elena’s father mentioned the animal theft. In addition to raptó, the men faced abigeato. Because the suspects fled into the Villa de Santiago in the state of Nuevo Leon, the local alcalde was notified of the crime and was asked to assist in apprehending the suspects. Communication between eight officials, including Coahuila’s governor, Evaristo Madero, an alcalde, and judges from Coahuila and Nuevo Leon were exchanged to apprehend the men. Ironically, the raptó investigation quickly established that the young woman, on her own accord, had fled with Blas. Shortly afterwards, Elena’s father dropped the charges, but the case continued for months afterwards until the judge ruled that Blas was not guilty of abigeato.

This case addresses three significant issues: the efficacy of official communication, jurisdictional matters, and judicial priorities. The case serves as an example that coordinated long-distance communication could effectively locate fugitives. The judges from Saltillo to Nuevo León appeared to take each other’s arrest orders

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<sup>118</sup> Criminal instruída contra Blas Rocha por (abigeato) (the word abigeato was crossed out) raptó, AGPJC, Caja 1884, No. 175.

seriously. The suspect, Blas, and the young woman were apprehended and returned to Saltillo, and authorities established that there was no rapto because Elena left on her own and her father dropped criminal charges. Through the testimony of several witnesses, officials ruled out Blas' involvement in the abigeato crime, yet officials persisted with the complaint. The officials' desire to convict the other suspects implicated in the animal theft explains why the investigation continued beyond June 18, the date when Elena's father dropped the rapto charges, and through the end of November. During those months, the proceedings were no longer about Elena and instead involved the theft of the mule and two donkeys.

Indeed judges were selective about what mattered criminally. This was not the first case where robbery took precedence over a sexual crime. Another case in 1867 had a similar outcome. María Guadalupe Menchaca, 15, accused Félix Sánchez of abusing her in a huerto, near the Molino where she purchased some *harina* (wheat).<sup>119</sup> Despite having a witness who placed the suspect in the huerto and who found María Guadalupe without her *naguas* (undergarments), the judge in the case determined that there was no evidence of a struggle at the scene of the crime and that had the young woman screamed for help, neighbors within 10 steps of her would have heard her cries. The second local judge in Parras ruled that María Guadalupe's rape was unsubstantiated but instructed Félix to compensate the young woman with 20 pesos, the value of her clothing, which was a

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<sup>119</sup> Declaración de María Guadalupe Menchaca. Averiguación Sumario por conatos de estupro contra Félix Sánchez, AGPJC, Caja 1867, No. 42. Her words were, “. . . si no colaba, le daría golpes. . .”

reboso (shawl) and a handkerchief, and fined him another 10 pesos.<sup>120</sup> By the same token, in Elena's case, the judges' prioritized cattle theft over sexual crimes.

## **Conclusion**

To summarize, Coahuila's distance from the viceroyalty, during the colonial period, and later from the seat of government in Mexico City, prompted a variety of ways to ensure that community members had access to a justice system. As Cutter and Shelton concluded, despite the isolation of the north, peripheries developed functional court systems. For the state of Coahuila, various levels of courts were located in urban as well as in rural areas. People residing in the countryside could also file a complaint with local authorities to initiate a proceeding. Hence, areas in the far north, such as Coahuila, developed systems to address accessibility of courts to a sizable segment of the population that lived in remote places. But while there were auxiliary judges in ranchos, trials did not take place in these locations, which meant that litigants had to travel to the nearest local court to make their declaration and to participate in careos.

Mechanisms were also in place to address the inadequacies of legally trained individuals and court personnel. Similar policies were followed by officials in Mexico City, through the use of testigos de asistencia to fulfill the jobs of escribanos. In spite of this, there were flaws within the court system, and the adjudication of cases was impacted. The management of the law was not as informal as Cutter depicted where judges ruled based on common sense. Courtroom formality and procedural protocol were

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<sup>120</sup> Sonya Lipsett-Rivera, *Gender and the Negotiation of Daily Life in Mexico, 1750-1856* (Lincoln: University of Nebraska Press, 2012), 217-218. Lipsett-Rivera notes that clothing was expensive, and thus the judge took this monetary cost into account in his ruling. But, it is interesting that he showed more concern for the theft of her clothing over the theft of her sexual honor.

followed more closely. Informality and judiciary discretion were viewed as backward remnants of the colonial system that penal laws, rights of the accused, and prison reforms sought to eradicate. Indeed, the absence of a trained judiciary impacted some cases. For instance, when local and auxiliary judges asked for assistance from district court judges, cases were prolonged. The case analysis also demonstrated that the use of *oficios* facilitated communication between officials and mobilized law enforcement to fan out into ranchos and haciendas to capture fugitives. The interstate communication that occurred in some criminal lawsuits was evidence of an effective use of resources. Other aspects of interstate mobilization were more inchoate. For instance, police were effective at apprehending suspects, and in other proceedings when the suspects crossed into rancherías, police were unable to make arrests.

While courts had gained legitimacy as mediators of justice, local authorities remained influential. As the cases illustrate, plaintiffs often looked to officials other than local judges to obtain justice for their families. Local mediators were not always successful, but those actions did suggest clientelism and thus the potential for corruption in parts of the state, as the work of Romana Falcón on *jefaturas políticas* in Coahuila has identified.<sup>121</sup> My analysis did not uncover outright instances of corruption in the manner that judges ruled—though some complaints alleging impropriety were made against some judges. In fact, I found evidence of higher courts admonishing judges who failed to adhere to judicial protocol.

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<sup>121</sup> Romana Falcón, “Force and the Search for Consent: The Role of the Jefaturas Políticas of Coahuila in National State Formation,” in *Everyday Forms of State Formation: Revolution and the Negotiation of Rule in Modern Mexico*, ed. Gilbert M. Joseph and Daniel Nugent (Durham: Duke University Press, 1994), 123. Jefaturas Políticas bore many names: department chiefs, department police chiefs, political chiefs, and political prefects and subprefects during Porfirio Díaz’s regime.

But, the transition of laws from the colonial period to the modern period was less than smooth. Further, Coahuila's congressional legislators operated at a slower pace in enacting and modifying the 1871 Criminal Code. After Coahuila's legislators passed the 1900 Criminal Code, sexual offenders received sentences one to two years shorter than the federal code sentences. Differences in the prison terms given to men accused of rape and estupro confirm the importance that place exerts in the adjudication of sexual crimes. Indeed, even in contemporary laws, there are notable dissimilarities between how Mexico City and Coahuila's laws define sexual violence.

## CHAPTER 2

### “I’VE COME TO GIVE YOU PROOF OF LOVE”: THE LANGUAGE OF SEDUCTION AND DECEPTION IN ESTUPRO CASES

**“ . . . With love letters and handkerchiefs,  
We deceive women,  
What did she think (esa chirriona),<sup>122</sup>  
That I loved her. . . .”**

- Jesusita me Dio Un Pañuelo

Throughout the colonial period, church and state authorities discouraged couples from initiating sexual relations if only a verbal promise of marriage had been made. Couples, however, were not deterred by such warnings from engaging in premarital sex. By analyzing the courts’ responses, or lack thereof, in these matters, scholars have examined the consequences of these actions for young women and their families. Seed’s work in colonial Mexico traced the impact that the transition from oral to written communication had upon male codes of honor and on how courts punished these offenses. As masculine codes of personal virtue changed, men no longer felt compelled to honor their verbal promises. Relaxed social sanctions reinforced men’s prerogative to change their minds. Thus, men’s sense of personal responsibility diminished as

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<sup>122</sup> The Spanish song reads, “Con cartitas y pañuelos engañamos a la mujer, que pensará esa chirriona, que yo la había de querer.” A *chirriona* is a *tramposa* (an unfaithful) woman. Unidad Regional La Laguna, *La canción cardenche: tradición musical de La Laguna* (México: Dirección general de culturas populares, 1991), 65-66. The La Laguna region was a heavily agricultural area located in the southwestern part of Coahuila. For a good study of this area, see William K. Meyers, *Forge of Progress, Crucible of Revolt: The Origins of the Mexican Revolution in La Comarca Lagunera, 1880-1911* (Albuquerque: University of New Mexico Press, 1994). Also see, Clarence Senior, *Democracy Comes to a Cotton Kingdom: The Story of Mexico’s La Laguna* (Mexico: El Libro Perfecto, 1941).

punishment for crimes of seduction were reduced to a fine that could be shared.<sup>123</sup> Similarly, Gauderman described the precarious risks faced by young women in colonial Quito who engaged in premarital sex. While these women brought forth suits, courts in Quito were selective about enforcing crimes of seduction. Gauderman found that courts paid more attention to seduction cases that involved a married suspect, and therefore, church and state authorities in those cases were motivated by a desire to punish bigamists, not necessarily seducers.<sup>124</sup> In the modern period in Mexico, Sloan's study from the late nineteenth to the early twentieth centuries in Oaxaca explored couple's use of raptó as a means to force parental acceptance of their relationship. She persuasively showed that these crimes represented a generational struggle between parental and children's marriage choices.<sup>125</sup>

The focus of this chapter concerns estupro crimes that occurred within relationships that went awry. Specifically, this chapter focuses on the ways that the language of seduction and deception shapes criminal complaints.<sup>126</sup> Estupro cases

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<sup>123</sup> Patricia Seed, *To Love, Honor, and Obey in Colonial Mexico: Conflicts over Marriage Choice, 1574-1821* (Stanford: Stanford University Press, 1988), 61-74. See also Patricia Seed, "Marriage Promises and the Value of a Woman's Testimony in Colonial Mexico," *Signs* 13, no. 2 (1988): 253-276.

<sup>124</sup> Kimberly Gauderman, *Women's Lives in Colonial Quito: Gender, Law, and Economy in Spanish America* (Austin: University of Texas Press, 2003). See section Seduction, 64-68. Albeit, as Gauderman and other historians have noted, these cases were risky because the legal system failed to enforce verbal promises of marriage.

<sup>125</sup> Sloan, *Runaway Daughters*, 34-35.

<sup>126</sup> In estupro cases described in this study, some complainants claimed rape. A rape accusation served multiple legal purposes. Families and seduced women used rape statements strategically to show courts that the offended woman was chaste and honest (of good reputation) prior to engaging in sex with her boyfriend. A successful legal outcome depended largely on demonstrating that the young woman was deceived and seduced into sexual relations under false pretenses. The evidence was needed to prove that the young woman was lured into sexual relations when her boyfriend offered her a promise of marriage. Unfortunately and despite high illiteracy rates, courts recognized only a written promise of marriage. Another reason compelling families to make a rape accusation involved punishment. Rape convictions carried a longer sentence than did estupro convictions. Through a rape complaint, families sought to punish the offender harshly, yet this made it difficult in some circumstances to differentiate deflowering cases involving broken promises from violent cases.

ultimately are social windows into plebian understandings of romance and courtship in Coahuila at the end of the nineteenth century and the first three decades of the twentieth century. The young men implicated in these criminal suits fit the stereotypical image of Don Juan, the literary figure who ravished maidens after giving them false promises of marriage. For historians, the young men's language and legal defenses used in trials reveal masculine views toward sexuality, relationships, and the significance of marriage. Arguably, young men and married men involved in these sexual scandals were not troubled by their failure to honor their verbal promises. Instead, men manipulated notions of female sexuality to their advantage and already-married men formed new unions. By accepting a married man's propositions, a young woman inverted traditional notions of the nuclear family, suggesting that family units for some couples were fluid. An individual could form relationships and later, dissolve ties with a lover or a spouse through separation. In a few cases, some men walked a tightrope and came close to facing bigamy charges.

According to the law, the *estuprador* was a man who utilized "seduction and deception to obtain sex from a chaste and honest young woman by falsely offering her a promise of marriage."<sup>127</sup> As one jurist put it, an estupro, quite simply, was "sexual fraud."<sup>128</sup> The legal language of the written statutes used the terms *seducción* (seduction), *engaño* (deception), and *casta y honesta* (chaste and honest).<sup>129</sup> A legal theorist of the time defined seduction as "lascivious malicious conduct aimed at sexually arousing a

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<sup>127</sup> *Código penal del Estado de Coahuila* (1900), 155. See Articles 782 and 783.

<sup>128</sup> Francisco González de la Vega, *El Código penal comentado* (México: Impresores unidos, 1939), 240-242.

<sup>129</sup> In his work with seductions cases, Barahona found that very rarely, honesty referred to virginity. Renato Barahona, *Sex Crimes, Honour, and the Law in Early Modern Spain: Vizcaya, 1528-1735* (Toronto: University of Toronto Press, 2003), 42.

woman or using cajolery to reduce her ability to psychologically resist.” And, legally, deception was understood as “lies, deceits or false promises used to create a state of error in the victim, by which she accedes to his erotic pretensions.”<sup>130</sup> Legal practice, however, did not invoke all of these subtle and nuanced definitions in determining whether an assault on a young woman met the criteria for estupro. To be sure, Coahuila’s courts did not entirely disregard the elements of seduction and deceit in making their rulings. Instead, judges in Coahuila focused on a young woman’s chastity, honesty, and the unachievable written promise of marriage. Through their declarations, to elude prosecution, men also sidestepped the elements of seduction and deceit and focused on the young woman’s sexual virtue. But, young women’s testimonies included not only an affirmation of their sexual honor, their statements were shaped by the language of seduction and deception.

### **Juridical Views on Estupro: Defining Chastity and Honesty**

Under the national 1871 Criminal Code and 1900 Criminal Code in Coahuila, estupro was classified as an offense against the “order of the family, public morals, and decency.”<sup>131</sup> When the 1871 Criminal Code was revised in 1931, however, the Federal District legislators classified estupro as a “sexual offense.”<sup>132</sup> The crime of estupro, like rape, involved sexual penetration of the victim, but the circumstances differed because

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<sup>130</sup> In Spanish, the definition for seduction reads, “Maliciosa conducta lasciva encaminada a sobreexcitar sexualmente a la mujer o halagos a la misma, disminuyendo así su posibilidad de resistencia psíquica. But engaño (deceit), “mentiras, falacias o falsas promesas creadoras de un estado de error en la victima, por el que esta accede a la pretensión erótica. González de la Vega, *El Código penal* (1939), 241.

<sup>131</sup> *Código penal para el Distrito Federal* (1873), 215; *Código Penal del Estado de Coahuila* (1900), 152.

<sup>132</sup> Celestino Porte Petit Candaudap, *Ensayo dogmático sobre el delito de estupro* (México: Editorial Jurídica Mexicana, 1972), 24. The category is simply sexual crimes (not individual sexual freedom), but this term, as Candaudap points out, does not reveal what exactly federal legislators sought to protect.

the young woman was viewed as having consented. In addition to the victim's chronological age, consent within estupro intersected with notions of sexual honor. Therefore, a young woman's sexual reputation mattered if seduction or deceit were to be proved. A chaste individual in legal practice was a virgin who lived honestly, her sexual reputation and character were intact. The age of the victim shaped the punishment for this crime. The law prescribed the stiffest prison term to men who had sex with a girl younger than 10 but legally protected the young woman who was older than 14, if she had received a written promise of marriage.<sup>133</sup>

Across the board, estupro victims fared worse under the revised law. Previously, perpetrators of crimes against victims aged 10-14 faced four years in prison, and cases involving victims younger than 10 faced up to eight years in prison. Under the national 1931 Criminal Code, crimes no longer accessed sentences based on the age of the victim. The 1931 Criminal Code simply punished an offender with a prison sentence ranging from one month to three years in prison. The law books also dropped the written promise of marriage clause and established 18 as the legal maximum age for the application of this law.<sup>134</sup>

Other debates surrounded the legal concepts of chastity and honesty. Prior to implementing the national 1931 Criminal Code, Mexico City's legislators debated the

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<sup>133</sup> The 1871 Criminal Code stipulated that if the "victim were aged 10-14, the sentence would be four years in prison. Defendants convicted of crimes against victims younger than 10 faced eight years in prison. A third group of cases applied to young women older than 14 who had received a written marriage promise from a young man; who met the age of majority, 21; and if the man had reneged on carrying out his promise of marriage, without just cause, following sexual relations. Defendants in the third category, if sentenced, faced five to 11 months of incarceration." Articles 793, 794, and 802 discuss estupro. *Código penal para el Distrito Federal* (1873), 219-221.

<sup>134</sup> *Código penal para el Distrito y Territorios Federales y para toda la República en materia del fuero Federal* (México: Ediciones Botas, 1936), 125-126. Articles 262-264 pertain to estupro crimes.

removal of chastity from estupro laws, and, in fact, under the short-lived 1929 Criminal Code, it was removed.<sup>135</sup> But chastity was reinstated into the national Criminal Code of 1931.<sup>136</sup> Federal legislators' removal of chastity from the estupro codes appeared to broaden the protections offered to young women by not excluding victims who were unable to meet the chaste requirement. Reinstating chastity into the written law was a reaffirmation that the legislators in 1929 erred in their legal approach.<sup>137</sup> More importantly, for estupro victims, the laws were a continuation of 60 years of legal practice that held that a young woman must be both chaste and honest. Except for the change in titles that classified sexual offenses, as other Mexican scholars have pointed out, courtroom practice remained the same. Like judges in Mexico City, Coahuila's judges continued adjudicating estupro crimes following the same standards enacted under the 1871 Criminal Code.<sup>138</sup> Even after the national code of 1931 was modified by Coahuila legislators, Coahuila's 1941 Criminal Code retained the elements of chastity and honesty.<sup>139</sup> Current penal codes in Coahuila and the Federal District have removed chastity and honesty from estupro law.<sup>140</sup>

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<sup>135</sup> The 1929 Criminal Code is not addressed in greater depth because the 1931 Criminal Code is the national law that took effect in Coahuila and that impacted the cases included within this study. Historically, the 1929 Criminal Code and the debates it sparked have not received adequate attention. Symbolically, the revised laws represented the first revision to the 1871 Criminal Code. Therefore, legislators were unhappy with the final product encapsulated in the 1929 Criminal Code, which brought about only years later the 1931 Criminal Code.

<sup>136</sup> Ira Beltrán-Garibay, "Sex and the Nation: Sexuality and Criminal Justice in Revolutionary Mexico, 1920-1940" (PhD diss., City University of New York, 2009), 229, accessed May 1, 2013, ProQuest Dissertations & Theses.

<sup>137</sup> José Ángel Cenicerros, *El nuevo código penal de 13 de agosto de 1931 en relación con los de 7 de diciembre de 1871 y 15 de diciembre de 1929* (México: Talleres Gráficos de la Nación Tolsa y Enrico Martínez, 1931), 45.

<sup>138</sup> Kathryn A. Sloan's work observes subtle changes in notions of familial honor in the elopement and seduction cases she reviewed from 1870-1910. See Sloan, *Runaway Daughters*, 10.

<sup>139</sup> *Código penal del Estado de Coahuila de Zaragoza* (Saltillo: Congreso del Estado, 1942), 52. See Article 238. In Spanish, the wording is, "Al que tenga cópula con mujer menor de dieciocho años, casta

## The Marriage Promise: Law and Court Practice

The next substantive legal change involved the promise of marriage. Laws on estupro had criminalized seduction based on an insincere promise of marriage. However, litigants were unable to offer compelling evidence in a written form. After reviewing a 1925 appeal's case, the Supreme Tribunal of Justice ruled,

It has been established that the accused cannot read or write and therefore, logically he is unable to offer a written promise of marriage which he made verbally. If we accept the lower court's argument that he who cannot read or write must offer a written marriage promise, we would arrive at the absurd [conclusion] that the crime of estupro when committed by an illiterate would be unpunished.<sup>141</sup>

In effect, cases dating to the colonial period show that judicial rulings had followed the logic of requiring that illiterate litigants present written documentation. Revision to the estupro laws suggested that outdated portions of the law were not compatible with modern Mexico. The revised national law of the 1931 Criminal Code no longer specified a written marriage promise.<sup>142</sup> Following legal reform, Coahuila's 1941 Criminal Code also removed the written marriage provision from its law books.<sup>143</sup> Removing the marriage promise from estupro laws at the national and state levels reflected a shift in legal thinking.

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y honesta, obteniendo su consentimiento por medio de seducción o engaño, se le aplicarán de un mes a tres años de prisión y multa de cincuenta a quinientos pesos.”

<sup>140</sup> Congreso de Coahuila de Zaragoza, “Código penal del Estado de Coahuila de Zaragoza,” accessed April 22, 2016, <http://congresocoahuila.gob.mx/portal/wp-content/uploads/2014/11/coa08.pdf>. See Article 394; Asamblea Legislativa del Distrito Federal, IV, “Código penal para el Distrito Federal” accessed April 25, 2016, [http://www.fimevic.df.gob.mx/documentos/transparencia/codigo\\_local/CPDF.pdf](http://www.fimevic.df.gob.mx/documentos/transparencia/codigo_local/CPDF.pdf). See Article 180. While chastity and honesty have been removed from the law books, perhaps a more fruitful question is whether judicial practice is aligned with the law.

<sup>141</sup> It reads in Spanish, “Porque de autos consta que el acusado no sabe leer ni escribir y por consiguiente, no podía lógicamente corroborarle por escrito la promesa de matrimonio que verbalmente le hizo. Si aceptamos la tesis del Inferior de que debe dar por escrito palabra de casamiento, quien no sabe leer ni escribir, llegaríamos al absurdo de que el delito de estupro cometido por analfabetas, quedaría siempre impune.” Toca a la 2a Instancia de la causa en apelación, contra Dámaso Lara, acusado de estupro. Caja 1925, Exp. 197, AGPJC.

<sup>142</sup> González de la Vega, *El Código penal* (1939), 240-242.

<sup>143</sup> *Código penal del Estado de Coahuila de Zaragoza* (1942), 52.

Accordingly, in Coahuila, estupro crimes involving breach of marriage hinged on the young woman's ability to produce a written promise of marriage. Similar to Seed's finding for colonial Mexico, a spoken marriage promise was not legally binding, which meant that Coahuila's highly illiterate plebians were disadvantaged during legal proceedings. Seed notes that judges accepted engagement gifts and love letters as evidence to corroborate the written promise, but for Coahuila's judges, those items were insufficient.<sup>144</sup> Coahuila's courts did not force seducers to marry. Nor did Coahuila's judges substantiate an estupro charge based on gifts and verbal utterances of marriage. Civil laws compensated successful litigants for expenses incurred as a result of marriage preparations and for the social damage that breaking an engagement might cause the young woman.<sup>145</sup> Two cases found within the study recorded a civil remedy, and of the seven estupro cases prosecuted, four of those investigations involved a broken marriage promise.<sup>146</sup> While in colonial Mexico, as Seed shows, a lack of enforcement of a broken marriage promise was attributed to cultural changes and to lax social and legal sanctions because men could pay a fine, thus compensating a woman's sexual honor through a dowry.<sup>147</sup> In Coahuila's courts, a lack of enforcement of estupro crimes, involving broken marriage promises, stemmed from young women's inability to provide written documentation.

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<sup>144</sup> Seed, "Marriage Promises," 273.

<sup>145</sup> The law does not elaborate on this any further but seems to suggest that a blameless betrothed woman was socially harmed by her fiancée breaking their engagement. The clause indicates that individuals were ostracized by their community and that gossip surrounding the circumstances irreparably harmed the young woman's reputation.

<sup>146</sup> The cases involving a civil monetary agreement are discussed in Chapter 3 and 4. Criminal contra el Lic. Mauro Muñoz por el delito de estupro, AGPJC, Caja 1912 Penal, #643, 29F, 20. Criminal instruída contra Jesús María Siller-Peña por violación y estupro, AGPJC, Caja #788, 1903 Penal, 18. See Appendix A, for case outcomes by the type of crime committed.

<sup>147</sup> Seed, "Marriage Promises," 270-272.

Further, liberalism brought about changes in the legal culture. Family laws offer a lens into how Coahuila's jurists viewed private matters such as marital separation and paternity, and by extension, estupro. Civil laws protected men's individual rights to thwart paternity suit investigations.<sup>148</sup> So that paternal anonymity could be maintained, laws also prohibited women from disclosing the father's identity so that paternal anonymity could be maintained. As Arrom notes, the civil laws of 1870 and later also permitted husbands and wives to use personal happiness as a legitimate claim in divorce proceedings.<sup>149</sup> Similarly, individual rights trumped an offended young woman's loss of virginity because without proper documentation, the young man evaded criminal charges and fines.

While many families specifically asked for criminal prosecution, parents also wanted to secure marriage for their daughter. Families utilized the threat of criminal prosecution as leverage to force men to honor their verbal commitment with their daughter. The next section explores the notion that a verbal contract was legally binding and that people's *palabra* (their spoken word) meant something in the daily lives of Coahuilenses. For a young woman, a man's word was part of the local courtship custom.

### **Courtship through Estupro Complaints**

The estupro complaints involved lower-class litigants who lived in rural as well as in urban parts of Coahuila.<sup>150</sup> In this study, estupro crimes represented the majority of complaints filed. Some 48% of the sexual crimes in the sample contained an estupro

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<sup>148</sup> Arlene J. Díaz, "Women, Order, and Progress in Guzmán Blanco's Venezuela, 1870-1888," in *Crime and Punishment in Latin America*, ed. Ricardo D. Salvatore, Carlos Aguirre and Gilbert M. Joseph (Durham: Duke University Press, 2001), 61.

<sup>149</sup> Arrom, "Changes in Mexican Family Law," 305-317.

<sup>150</sup> In 1877, census records recorded 86 haciendas and 168 ranchos. In 1900, there were 140 haciendas, 953 ranchos, and 15 congregaciones. Favret Tondato, *Tenencia de la tierra*, 122.

charge.<sup>151</sup> Based on criminal court documents, it is possible to reconstruct courtship patterns in Coahuila. However, as Renato Barahona points out, it is also important to bear in mind that courtships that did not end up in litigation might contain characteristics different from those relationships depicted in criminal files.<sup>152</sup> Bearing Barahona's warning, it is not possible to know how representative the following social construction of relationships is of courtship in Coahuila. To balance the criminal complaints, a few perspectives from regional popular cultures are examined.

Couples met within their communities. The young women and men were often locals who had been born and raised and were living within the same areas. Many were neighbors; others met through family friendships.<sup>153</sup> Taking advantage of family gatherings and community events, couples had occasion to meet and flirt. Other couples had deeper spiritual relationships, which the man sometimes exploited. For instance, in one case, the father specifically mentioned that his daughter had run off with his *compadre*, which meant the suspect was a close family friend and spiritual godparent.<sup>154</sup> In such cases, families believed that boundaries and trust had been violated.

Young women's declarations revealed different reasons for initiating or choosing to elope with a boyfriend. As other scholars have found, in some cases, young women were escaping a bad home situation—particularly when a family member disagreed with a daughter's romantic choice and vociferously opposed the relationship.<sup>155</sup> Sloan's court

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<sup>151</sup> Thirty-five percent of the cases contained a raptó charge and some of these were in combination with an estupro charge. Forty cases were filed as raptó only.

<sup>152</sup> Barahona, *Sex Crimes, Honour, and the Law*, 13.

<sup>153</sup> Causa instruída contra Nicolás Zamora por raptó y estupro, AGPJC, Caja 1913, #645, No. 104.

<sup>154</sup> Averiguación instruída contra Crisóforo Campos por raptó, AGPJC, Caja 1936 Juzgado Penal Sabinas Exp. 1-28.

<sup>155</sup> In Ponce, Puerto Rico, Findlay found that 35% of her 211 raptó cases contained parental

cases from 1870-1900 noted that one quarter of these cases involved parental abuse.<sup>156</sup> Similar to Oaxaca, in Coahuila, young women appeared to be unhappy about their occupations as domestic workers. In these cases, couples took advantage of being away from family members' watchful eyes to meet privately. In one case, the young woman and her boyfriend, who happened to be married, met while working for the same family.

The age difference between couples in a few cases was significant. It is possible that some young women were attracted to older men for their experience and material possessions. But, in some cases involving an older man and a much younger woman, manipulation and coercion were factors bringing the two lovers together. During the Mexican Revolution period from 1910-1920, young women eloped with soldiers—and not all of those relationships were examples of coercion. As Ana Maria Alonso's work explains, young women fell romantically in love with officers. The young revolutionaries, as Alonso calls the men, took romantic risks and initiated sexual relationships without parental authority because they knew that if their lovers got pregnant, they could leave.<sup>157</sup> Sometimes, couples during this period formalized their relationships. These cases are discussed further in an upcoming section. Perhaps the young woman was seeking not only a protector role in the soldier, but his status as a soldier also symbolized virility and masculinity. Elizabeth Sala's work describes brutal sexual violence women encountered from soldiers representing the federales and revolutionaries. Salas also shows that *soldaderas* (young women) travelled, cooked, and

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violence. Eileen J. Suárez Findlay, *Imposing Decency: The Politics of Sexuality and Race in Puerto Rico, 1870-1920* (Durham: Duke University Press, 1999), 49.

<sup>156</sup> Sloan, *Runaway Daughters*, 144.

<sup>157</sup> Alonso, "Love, Sex and Gossip," 52.

cleaned, and nursed their lovers' wounds. Some women accompanied soldiers to escape sexual violence back home.<sup>158</sup>

In consensual relationships, notions of physical attractiveness or beauty played a role. Definitions of what constitutes beauty vary from “the quality of being very pleasing” to “good looks” and “sexual attractiveness.”<sup>159</sup> Portraits located in the criminal transcripts and statements made by the young women and their parents discuss physical attractiveness. In Coahuila, having phenotypically colored eyes that were not brown was likely a significant difference in the population. For example, one suspect was described as having *ojos borrados* (colored eyes).<sup>160</sup> Often, parents were at a loss for what their daughter saw in their boyfriends. But at times, race and prejudice motivated parental opposition. One parent's description of the defendant was that he was “short in height, with a regular constitution, a mustache, black eyes and eyebrows, skin is *moreno* [darkskinned], and pockmarks.”<sup>161</sup> Another parent described the suspect's appearance in the following way, “He is short, fat, has pockmarks; he's a *trigueño* [skin color that is not too dark but it is also not white] . . . while my daughter is white, tall, and thin.”<sup>162</sup> In other words, not only did some parents believe the men were not physically attractive or good enough for their daughters, but these declarations by parents hinted a racial component. In those two cases, skin color was a marker that suggested a racial element that made the men inferior before the parent's eyes.

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<sup>158</sup> Elizabeth Salas, *Soldaderas in the Mexican Military: Myth and History* (Austin: The University of Texas Press, 1990), 44.

<sup>159</sup> Linda B. Hall, *Dolores del Río: Beauty in Light and Shade* (Stanford University Press, 2013), 5.

<sup>160</sup> Averiguación contra Cosme Ortega por estupro, AGPJC, Caja 1932 Juzgado Penal Sabinas 1-21. No. 440.

<sup>161</sup> Causa instruída contra Nicolás Zamora por raptó y estupro, AGPJC, Caja 1913, #645, No. 104.

<sup>162</sup> Causa instruída contra Isabel Pérez por raptó, AGPJC, Caja 1913 Penal, #644.

Based on a close reading of the legal documents, public spaces served different functions in Coahuilense life. Activities took place in public space where young people congregated. Young people accompanied by friends and siblings sometimes headed to the river—not just for chores but also for leisurely activities. For example, walking down the street and around the plaza were spaces where young lovers met and exchanged glances, tokens of love, and chatted. Public spaces were also areas where sexual activity occurred. Sometimes, the length of courtship before sexual relations occurred was relatively short. The majority of couples were together for less than a year, many for only two or three months. The longest relationship found in the court records was six years, and the shortest was approximately 20 days.<sup>163</sup> Couples engaged in intercourse near bodies of water, such as arroyos and rivers. Other couples had sexual relations in the fields and in remote areas behind abandoned buildings.<sup>164</sup> In one case, one couple pushed the limits of propriety and had sex within the *capilla* (chapel) of a rancho. Complaints recorded in the early twentieth century described couples taking car rides as a source of entertainment—and then engaging in sex in the automobile.

For the most part, it seems that the majority of sexual activity occurred in or near young women's homes. Other sexual relations occurred in areas immediately adjacent to the home, such as the coral/patio and the solar. That sexual relations occurred in young women's own homes speaks to couples who took advantage of moments when the girlfriend was alone and unsupervised. In other cases, intercourse occurring inside the home also suggests two things. First, couples had open relationships where a boyfriend

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<sup>163</sup> Averiguación instruída contra José Barrón por estupro, AGPJC, Caja 1915# 673, No. 118. Criminal instruída contra Alejandra Carmona por estupro, AGPJC, Caja 1914 Penal.

<sup>164</sup> Causa instruída contra Vicente Figueroa por estupro, AGPJC, Caja 1922 Penal.

enjoyed some rights to visit the young woman. This type of *noviazgo* (romantic relationship) differed from cases in which the young man courted the young woman without parental permission. Secondly, based on the concept of *recogimiento* (female seclusion), if societal and moral conventions advocated that women remain within the home engaged in domestic chores, then it was reasonable that most relations also occurred in the home space.<sup>165</sup>

### **Families' Responses to Avoid Public Scandal and Address Pregnancy**

Estupro complaints were filed by parents who learned either that their daughter and her boyfriend had engaged in premarital sexual relations or after realizing she was pregnant. Precisely because it was the family who had a stake in these criminal proceedings, family members represented 81% of the plaintiffs.<sup>166</sup> Fathers filed the criminal complaint in most cases, 31.7% of the time; mothers, 25.8% of the time. The next subsets of cases were filed by male or female relatives. Offended women themselves also made legal complaints, filing 12.1% of the court cases. Only small fractions (.07 %) of the proceedings were initiated by a neighbor or another community member. Legally, the mother did not hold *patria potestad* over their children until the enactment of the 1917 Law on Family Relations. However, the number of complaints filed during the Porfirian

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<sup>165</sup> Sonya Lipsett-Rivera, *Gender and the Negotiation of Daily Life in Mexico, 1750-1856* (Lincoln: University of Nebraska Press, 2012), 73. In estupro cases, *recogimiento* was also a state of being. For instance, one grandmother testified that her granddaughter's conduct was *recogida* (reserved) and decent. See *Causa instruída contra Manuel Cárdenas-Rodríguez por raptó y estupro*, AGPJC, Caja 1910 Penal. In Namiquipa, Chihuahua, Alonso described the relationship between *recogimiento* and feminine honor. Alonso says that young women were taught to be collected and exhibit chaste and modest demeanor therefore, the notion of *recogimiento* linked the enclosure of the home space with the female body's enclosure. Ana María Alonso, *Thread of Blood: Colonialism, Revolution, and Gender on Mexico's Northern Frontier* (Tucson: The University of Arizona Press, 1995), 86.

<sup>166</sup> Twenty-four cases are unknown. Legally, anyone can initiate a criminal complaint, but for a criminal case of a private offense to proceed, the case needs a legitimate querrela. James E. Herget and Jorge Camil, *An Introduction to the Mexican Legal System* (Buffalo: William S. Hein & Co., 1978), 84.

to the postrevolutionary periods by fathers versus mothers were comparable, indicating that patria potestad was a juridical right exercised by mothers, and the court system typically did not question the mother's legal authority to file a complaint.<sup>167</sup>

Plaintiffs used the courts as leverage to enforce a marriage between the victim and the accused. One widow, María Sóstenes Veliz Viuda de Borjón, told authorities that when she confronted Federico Arizpe about seducing her 14-year-old daughter, María Patrocina Borjón, the defendant cynically replied, "Your daughter is not a señorita nor do I plan to accede with what she wanted."<sup>168</sup> In other words, he told the mother that because the girl was not a virgin when they had sexual relations, he was under no obligation to marry her. She complained to authorities that Federico had left her daughter dishonored before society and that there was no one else to protect her. Another parent, Florencio Hernández, claimed he had not filed a complaint sooner because he was "poor and completely ignorant of the laws." The father added that his family's sustenance relied on his day-to-day work.<sup>169</sup> He strategically called attention to his poverty to ask the court to protect him with its authority to force the defendant to fulfill his offer of marriage. In another example, Josefina Lira, a 17-year-old orphan who had been living with her cousin and legal tutor, Felipa Valencia, because her parents had died, sought the court's assistance to pressure her boyfriend, Miguel García, into marriage. Josefina said that the accused had not offered her marriage, only to live with him as his lover. But now that the case had come to the court's attention, she asked the judge to tell her boyfriend that he

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<sup>167</sup> In Latin America, some judges questioned a mother's authority to file a complaint. See Caulfield, *In Defense of Honor*, 133.

<sup>168</sup> Declaración de María Sóstenes Veliz Viuda de Borjón. Averiguación contra Federico Arizpe por estupro, AGPJC, Caja 1931 Juzgado Penal Sabinas Expedientes 40-63, No. 311, 2.

<sup>169</sup> Criminal contra Pedro Rangel por estupro, AGPJC, Caja 1902 Penal #756, No. 303.

had dishonored her and therefore must marry her.<sup>170</sup> Thus, plaintiffs, who were otherwise socially or economically disadvantaged called on the court's authority to assist them to force a defendant to marry or to compensate the offended woman.

In some cases, complaints were filed as soon as families detected a pregnancy, which some mothers referred to as a paralyzed menstrual cycle. Suspicious mothers took their daughters to a medical professional (midwife or doctor) to confirm their fears. Because young women sometimes proved adept at concealing their pregnancy, families often learned about a daughter's pregnancy as late as the third trimester, when the pregnancy was visibly apparent, or even following a delivery of a baby. In such instances, the complaints were filed following the birth of an illegitimate child.

Municipal doctors were summoned routinely to testify in court proceedings. Doctors were brought in during a criminal proceeding to conduct a physical examination. The exam provided scientific, corroborating evidence meant to supplement the offended girl's testimony. Doctors' findings included a report on the state of the sexual organs, the presence or absence of the hymen, scarring, an approximation of the girl's age (because age influenced how the court defined the crime), confirmation of pregnancies, estimation of the date when a defloration occurred, and determination of whether the body showed signs that the intercourse had occurred with violence.

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<sup>170</sup> Criminal instruída contra Miguel García por estupro, AGPJC, Caja 1917 Penal #590, No. 121. The court determined that it could pursue no criminal complaint against García because Josefina voluntarily left with Miguel, accepting to be his lover, and because her tutor never filed a formal complaint against García.

## Examining the Language of Deception in Estupro Cases

Pregnancy for many young women was a moment of realization that her boyfriend had deceived her. The earliest estupro case found in my research occurred in 1868. Juana Cortez filed a complaint on behalf of her 19-year-old daughter, Eduarda Fabitas, when she noticed that her daughter no longer had a menstrual cycle. Eduarda told the judge that she and her boyfriend, Pedro Hilario, 23, had been in a relationship for two months when he stopped by her home one day while she was alone. She claimed that he offered her marriage and then mounted a physical resistance that could not be overcome. After this first-time sexual encounter, the couple continued to engage in sexual relations until Eduarda told Pedro that she was pregnant, and this angered him. He replied “*Que no la queria.*” In this case, Pedro meant that he did not love or intend to marry Eduarda. He then threatened her, saying that if she persisted with her desire to marry him, he would give her *mala vida* (literally, bad life but understood as spousal abuse). Eduarda told the court that she was no longer interested in marriage but wanted Pedro punished because she had been a “child” when he took advantage of her.<sup>171</sup>

Although judges did not automatically side with a pregnant woman to protect the interests of an unborn child, lawmakers permitted paternal investigations into children born out of raptos and rape.<sup>172</sup> The civil codes from the Porfirian through the

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<sup>171</sup> Declaración de Eduarda Fabitas. Averiguación instruída por seducción y violencia contra Pedro Hilario, AGPJC, Caja 1868 Penal. In the end, Eduarda and her mother dropped the complaint.

<sup>172</sup> Raptos are sexual crimes in which a couple fled (eloped) when a young woman’s parents refused to recognize her noviazgo, relationship. These cases were often filed as estupro and rapto. In these situations, the age of the minor played a key role. If the young woman was younger than 16, the courts determined that the defendant could not claim she had consented. Through Article 801, the law established 16 as the age of consent. Rapto has been largely viewed as elopement; however, there were violent raptos. In some cases, it is difficult to assess whether a rapto was consensual because the defendant and victim’s statements contradict one another. In this study, the majority of raptos appeared to be consensual, but in a

postrevolutionary periods, the Civil Code of 1898,<sup>173</sup> and the 1917 Ley sobre Relaciones Familiares forbade paternal and maternal investigations of illegitimate children, but under both civil codes, raptos and rape were viewed as causes to initiate paternity investigations.<sup>174</sup> In actual legal practice, as scholars in Latin America have shown, obtaining a favorable ruling was extremely difficult.<sup>175</sup> Because of the legal difficulties unwed women faced in procuring maintenance, an unwanted pregnancy challenged already financially constrained families and stigmatized illegitimate children. Legally, either parent could recognize an offspring, but the woman alone could not reveal the name of the other parent.<sup>176</sup> Recognition entitled an offspring to use the father's surname, possibly preventing the social stigma of illegitimacy. Recognition laws did not entitle the father to automatically exercise patria potestad. Nor did recognition obligate parents to

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handful of violent cases, the defendant forcefully took the young woman. *Código Penal del Estado de Coahuila* (1900), 157-158. See Articles 798-805.

<sup>173</sup> *Código civil del Estado de Coahuila de Zaragoza* (Saltillo: Tipografía del Gobierno en Palacio, 1898), 44-46. Article 358 authorized a paternity suit, "when the conception date matched the date that a rpto or rape occurred." The same article permitted a paternity suit when a "child was born from a relationship between a man and woman who lived together and in which the woman was publicly known as his concubine or spouse." Otherwise, Article 343 prohibited paternity investigations for children born out of wedlock.

<sup>174</sup> The civil codes mention two exceptions to paternity investigations. The first applied to a woman impregnated during a rpto or rape. The second exception involved situations in which a man or woman was in *posesión de estado* (possession of state) of a natural child. See Articles 187, 197, and 211. Natural children were children born out of wedlock. See Article 186. Pallares, *Ley sobre relaciones familiares*, 68-71.

<sup>175</sup> See Linda Lewin, *Surprise Heirs I: Illegitimacy, Patrimonial Rights, and Legal Nationalism in Luso-Brazilian Inheritance, 1750-1821*, and also Linda Lewin, *Surprise Heirs II: Illegitimacy, Inheritance Rights, and Public Power in the Formation of Imperial Brazil, 1822-1889* (Stanford: Stanford University Press, 2003). Also see, Nara B. Milanich, *Children of fate: Childhood, Class, and the State in Chile, 1850-1930* (Durham: Duke University Press, 2009).

<sup>176</sup> Parents could recognize children together or separately; "if the recognition of a child occurred separately," then legally the parent was "prohibited from naming the other progenitor." This act of legitimating an offspring occurred at the child's birth before the civil registry judge, by a special judicial motion before the civil registry judge, in public writing through a testament, and by confession. Pallares, *Ley sobre relaciones familiares*, 68-69. See Articles 188-219.

provide *alimentos* (literally food), but legally the term referred to room and board, clothing, and a basic education.<sup>177</sup>

Often, pregnancy, followed by postponement in following through with a wedding, served as proof of deception. In other cases, men simply stopped visiting, and for young women, abandonment by the man signaled that something was wrong. Luciana Peña complained that when she questioned her daughter, María Mendoza, about “*de quien estaba gorda*” (who impregnated her), she admitted to her mother that for the past three months, she and her boyfriend, José Barrón, had engaged in sexual relations.<sup>178</sup> José had promised to marry María, but when she informed him that she was pregnant, he stalled, giving her three different marriage dates, and he had yet to fulfill his promise. María and José’s case is unique because the couple had enjoyed a formal relationship of six years. Only in the previous few months, according to the couple’s testimony, had the two embarked on a sexual relationship. María and José’s lengthy relationship complicates the significance of the seduction/deflowering crime. In this case, perhaps subsequent to the sexual relations, José had a change of heart about marrying his longtime sweetheart.

José was willing to economically help María but refused to marry her because he claimed she was not a señorita when they had sex. By accepting to economically support their unborn child, José was negotiating that he was an honorable man because he accepted his economic responsibilities of providing for the child María carried. José’s

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<sup>177</sup> When parents recognized a child separately, the law granted the first parent legal representation rights over the child. A judge of first instance intervened in cases involving parents who were unable to decide who should exercise legal representation of a child. Pallares, *Ley sobre relaciones familiares*, 71. See Articles 218-219.

<sup>178</sup> Declaración de Luciana Peña. Averiguación instruída contra José Barrón por estupro, AGPIC, Caja 1915# 673, No. 118.

statement is significant because men accused of estupro were absolved of legal charges and therefore were not civilly liable to provide civil restitution. José's decision to economically provide for the child may also be attributed to the significance that fathering a child had for some men. The transcript does not offer further information to substantiate this claim, but José's reaction is a stark contrast to the behavior of other men who impregnated their girlfriends and evaded their financial responsibilities. However, in this case, María was not satisfied by José's economic offer, and instead, she wanted José to tell the truth and admit that she had been a virgin. María added that she was willing to drop her desire for a marriage if José stopped lying and quit using her virginity as a pretext. Again, María's counterclaims, similar to those of Eduarda, reveal that seduced women's motivations for pursuing a criminal complaint sometimes were based on more than just economic compensation. At stake in these complaints were the young woman's sexual and public honor; therefore, a woman's decision to challenge a man's allegations is an important aspect of feminine agency. When Eduarda and María shifted from pursuing marriage or economic restitution, in some ways their actions revealed a sense of resiliency. Certainly, the two women were aware of the economic challenges facing them and their offspring. Eduarda lived in a single, female-headed household. However, Eduarda and María's choice for punishment over marriage suggests that women's reputations mattered, and at this point, the women were no longer operating under deception. María's case ultimately ended badly when she went into early labor, and her premature male twins died.

## Exploring Deception and Seduction through Love Letters

For women, then, pregnancy and male abandonment were moments of realization that their lovers were less than noble. Love letters served a different purpose for women than they did for men. Within courtship, love letters were part of *prendas* (a token of love) that lovers exchanged.<sup>179</sup> Love letters were part of courtship communication. A love affair started with insistent glances followed by the exchange of a love letter, and from that point onward, the young woman was “. . . in love with the young man. . . . The love affair continued; four months after exchanging a promise of marriage, the wedding date was arranged . . . .”<sup>180</sup> Love letters were material tokens of love. And for young women, the letters lent seriousness to the relationship. For this reason, when a judge asked whether a written promise of marriage had been given, young women presented their love letters. When a daughter eloped, one of the first things that the parents did was to rummage through her belongings. When parents found love letters, they presented them to the court as part of filing a legal complaint. Love letters created a belief that the young woman had been seduced, and the letters were viewed as evidence that deception had occurred.

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<sup>179</sup> Sloan, *Runaway Daughters*, 62-64. My analysis concurs with Sloan’s perspectives on the function of love letters for litigants. However, I did not find that Coahuila’s judges took these artifacts as seriously as did judges in Oaxaca.

<sup>180</sup> Froylán Mier Narro, “El callejón de la Llorona” in *Leyendas de Saltillo antología*, ed. Ricardo Dávila (México: Consejo Editorial, 2004), 91. In Spanish, the text reads, “. . . prendada del muchacho . . . los amorios siguieron su curso normalmente, unos cuantos meses después de la promesa de matrimonio, se fijó la fecha de la ceremonia . . .” The courtship pattern described in this *leyenda* (folk story) surrounds the story of Saltillo’s Llorona (the weeper). In the story, Pablita’s fiancé is stabbed to death, near an arroyo, the night before her wedding day. In the morning, Pablita discovers Pedro’s body and is devastated. After this, she dies and is buried in her wedding attire. The community then discovers that Pedro’s killer had been motivated by jealousy. The killer was secretly in love with Pablita and vowed that no other man would have her; thus, the tragic events involved a crime of passion.

Insight into coercion emerges through love letters. On November 28, 1914, Santiago Villanueva, the maternal grandfather of Mercedes Esparza, accused José Bernal Sánchez, 23, a single *peluquero* (barber), of impregnating his granddaughter.<sup>181</sup> The following letter was turned over to the minor judge in Saltillo. In the letter, José writes,

Mercedes, I read your letter, and I understand that you are angry because of what I asked you. You have to understand that if I asked you for that *prueba* (proof), it is because *te quiero* (I love you), and my affection is true. I am not trying to deceive you, but if I offended you, I don't think you are in the right. . . . If you want to marry, I need to ask. . . . If you want to be my wife, give me proof, and I will right away be yours until death. Will you not, you *ingrata* (ungrateful), give me that proof, and we will be happy. Understand that I am yours, and my affection is for you. I await your reply, and I am yours until death.<sup>182</sup>

José framed his sexual request using the language of love. Submitting to José's yearnings demonstrated that Mercedes reciprocated his love. Men also used this *prueba* to confirm their girlfriend's virginity. And if she was indeed a virgin, then the man would fulfill his promise to marry the woman. In the letter, Jose uses the words *te quiero*, which can mean "I want you" or "I love you." Here, it seems to mean that he loves Mercedes. The letter also mentions that Mercedes was not happy with this request. José describes her as being angry and offended. He also argues that Mercedes is incorrect to doubt his true feelings toward her and repeats that he has feelings for her, he loves her, and that he will be faithful until death.

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<sup>181</sup> Mercedes exact age was not given. Santiago testifies that she was older than 14 but younger than 21. Causa instruída contra José Bernal Sánchez por estupro, AGPJC, Caja 1914 Penal.

<sup>182</sup> In Spanish, the letter reads, Mercedes leí tú carta y comprendo que estabas enojada por lo que te dije pues tu deberás de comprender que si acaso te pedí esa prueba fue debido a que te quiero y mi cariño es verdadero y no trato de engañarte pero si te ofendió por eso creo que no tienes razón porque tú sabes que cuando . . . esta pena casarme necesito pedir . . . y así es que si quieres ser mi esposa dame una prueba y enseguida seré tuyo hasta la muerte no vas ingrata dame esa prueba y seremos felices pues comprende que soy tuyo y mi cariño es para ti. Espero ti contestación y soy siempre tuyo hasta la muerte. Causa instruída contra José Bernal Sánchez por estupro, AGPJC, Caja 1914 Penal.

Further insights into deception emerge through José's syntax and lexicon choices. The letter and its language meet the criteria of the legal definition of deception. The letter's contents, indeed, create the appearance of an error in judgment by Mercedes, which can be attributed to Jose's promises. The language portrays a future life together because José strategically makes reference to whether Mercedes wishes to be his wife and to establish a relationship until death. Nonetheless, José never asks Mercedes for marriage or states that the letter is a promise of marriage. That verbiage has him walking a murky legal line between what is legally binding and what will help him obtain what he desires.<sup>183</sup> It is plausible that it is not a coincidence that the letter does not quite meet the legal criteria of a written marriage promise. But from the standpoint of the woman, he certainly does employ the language of seduction to wear her down. In another letter, Jose becomes irate with Mercedes. He writes,

. . . because I have told you that my love is true and I am incapable of deceiving you but if you have an inconvenience . . . do not use the pretext that you doubt me. . . . My love is true . . . . You are the only one who possesses my affection because I love you (*te amo*) truly. Oh! Am I not worthy of your love? Tell me, miss, because I want to be disillusioned to know what ground I stand on. . . . I vow to be yours and for no one else.<sup>184</sup>

In this letter, Jose used the words, *te amo* (I love you). Again, he is persistent in demanding sex. In this letter, José turns the situation around and blames Mercedes. He says that perhaps it is Mercedes who was inconvenienced, and if that is the case, she

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<sup>183</sup> Alonso, "Love, Sex and Gossip," 52. Alonso makes this same point in her analysis of love letters. Alonso argues that the discourse of seduction works by "implicature, which she states means anything that can be inferred by an utterance."

<sup>184</sup> ". . . porque ya te he dicho que mi amor es verdadero y no soy capaz de engañarla pero si Ud tiene algún inconveniente . . . y no me ponga el pretexto de que duda de mí . . . mi amor es verdadero y . . . sino Ud es la única que pose mi cariño pues la amo verdaderamente oh! Que no soy digno de su amor? Dígamelo Srita desengañeme pues deseo un desengaño siento para poder a qué atenerme . . . yo juro ser suyo y de nadie más." Causa instruída contra José Bernal Sánchez por estupro, AGPJC, Caja 1914 Penal.

should not use it as an excuse to evade his request. After his harsh words, José reaffirms his love for Mercedes and once again resorts to manipulation when he asks her if she believes he is not worthy of her love. With this statement, Jose assumes the role of victim, the one being cruelly seduced in the relationship. He begs Mercedes to *desengañeme* (undeceive me).<sup>185</sup>

Analyzing the textual message within the love letters indicates that men, such as José, employed the language of love, fidelity, trust, and shifted their words from tender to forceful to pressure young women into acquiescing to a sexual relationship. Yet for women, letters were persuasive and indicated the desire for a long-term relationship. Through letters, men could be very coercive. But in person, their stubbornness and persistence was even more compelling. Young women describe sexually aggressive male behavior repeatedly in their declarations, and it also comes across in popular songs. In one song from the region produced close to the study's time period, the man narrates,

I had a beautiful girlfriend; you could tell that she really loved me. I gave her a meeting, asked her to go to the field one day, she cried . . . and in her laments asked: What am I to do with this obstinate man? I withstand, because it is decreed by the eternal . . .<sup>186</sup>

The lyrics of the song outline the division between masculine and feminine gender norms and sexuality. The man in the song is depicted as sexually forceful, and the woman, despite her reservations about yielding to her lover's request, follows a stereotypical sexually passive role. Similar to José's prueba here, the meeting in the countryside was

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<sup>185</sup> Causa instruída contra José Bernal Sánchez por estupro, AGPJC, Caja 1914 Penal.

<sup>186</sup> Unidad Regional La Laguna, *La canción cardenche*, 100. In Spanish the song, Tuve una Novia, reads, Tuve una novia simpática y bonita, se le conocía que deberás me quería. Le puse una cita, que saliera al campo un día, ella lo que hacía era ponerse a llorar. Ella lloraba y en sus lamentos decía: pues qué haré yo con ese hombre tan porfiado? Le sufro y le aguanto porque así está decretado por el eterno, que a padecer nos echó.

code for sex. As noted, sexual violence occurred in fields. However, the remoteness of such peripheral areas also was sought and desired for their privacy.<sup>187</sup> As cited in legal transcripts, many couples had sexual relations in the countryside. Also depicted in the song are stereotyped personae of the macho male who has the right to give orders and has sexual rights to his girlfriend's body.<sup>188</sup> Male rights connected to religious beliefs, as the woman referenced that the male-female roles were decreed by the eternal.

Similar to the above letter, suspicion emerges through men's letters. In the above relationship, Mercedes doubted José's true intentions and feelings. Likewise, in the next letter, the young woman held reservations about her boyfriend's fidelity. In October 1922, Concepción Aguilar filed a legal complaint against her boyfriend, Vicente Figueroa, an 18-year-old jornalero who lived near the rancho de Peña.<sup>189</sup> Concepción might have lived closer to Saltillo because she did not list the rancho as her address. In the letter she handed to the judge, Vicente writes,

Miss, I received your letter in which you tell me that you love me but at the same time ask if I have another girlfriend, which is not true, because I only wish to live to love you. Believe me, Miss, I am your faithful lover who is incapable of deceiving you. You are who occupies my heart. Until today, there have been no difficulties between you and I, and I assure you that there never will be. I will be faithful until death and thereafter. Receive the heart of the one who always loves you.<sup>190</sup>

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<sup>187</sup> Lipsett-Rivera, *Gender and the Negotiation of Daily Life*, 126-128. Areas outside of the city limits were masculine and sexualized.

<sup>188</sup> Alonso, *Thread of Blood*, 80.

<sup>189</sup> Causa instruída contra Vicente Figueroa por estupro, AGPJC, Caja 1922 Penal.

<sup>190</sup> "Sta: He recibido su carta en la cual me dice que me ama, pero al mismo tiempo me dice que seguramente tengo otra novia, lo que no es cierto, pues solamente quiero vivir para amar a Ud. Crea Sta., en un amado fiel que es incapaz de engañarla, pues Ud. Es la que ocupa sin cesar mi corazón. Hasta hoy no ha habido ninguna dificultad entre Ud y yo, y aseguro que no la habrá nunca, porque le aseguro serle fiel hasta la muerte y después de ella. Reciba el corazón del que siempre la quiere." Causa instruída contra Vicente Figueroa por estupro, AGPJC, Caja 1922 Penal.

In the letter, Vicente tells Concepción that he loves her (he used the words *te amo*) and writes that he wants to live only for her and that his love is eternal. Interestingly, the young woman appears to have misgivings and needs assurance about Vicente's love. The letter suggested Vicente simultaneously courted another young woman. In his defense, Vicente reiterates his faithfulness. Further, he notes that they will not have any difficulties— hinting that if she became pregnant, he would take care of her. Overall, Concepción presented five letters to the court, and therefore, it was fascinating to learn that neither she nor her boyfriend was literate. Individuals unable to write either paid a scribe to write the letter or had friends assist in crafting a letter. This could be problematic because sometimes a young woman presented a letter in court claiming it held a marriage promise, but after it was read, the judge ruled otherwise. While it also seems that when community members were recruited to write a letter, they sometimes used generic letters or recited prose—in both cases casting doubt about the legitimacy of the document. But Concepción's letters were not basic, generic love letters; all 5 were examples of ongoing correspondence. The back and forth dialogue between the couple gives a certain level of authenticity to the documents. Despite the presence of the letters, the judge ruled that given Vicente's age, he was younger than the age of majority, and the letters alone were insufficient to establish a guilty verdict. Though Vicente had declared that he would marry Concepción, he needed months to gather the preparations, and it is unclear whether, after hearing the judge's ruling he did indeed marry Concepción.<sup>191</sup>

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<sup>191</sup> Causa instruída contra Vicente Figueroa por estupro, AGPJC, Caja 1922 Penal.

## **“He Promised to Divorce and Marry Me:” Making and Breaking Relationships**

In other cases, guardians refused to give their blessings because the man had a family. Sometimes the seducer was already married or had an extramarital life with another woman. Families, in these circumstances, asked courts to restore family order and sexual honor through punishment. Other parents opposed relationships for economic reasons; for instance, some families relied on a daughter’s wages to support the household. Other families relied on the young woman’s housekeeping, child care, and companionship for aging parents. For example, Gil Soledad accused Trinidad of kidnapping his 13-year-old daughter, María Cruz Soledad. María Cruz had lived with her maternal grandparents since her mother died. Now that his in-laws were advanced in age, they relied on María’s care. In this case, María’s family opposed her relationship with Trinidad not only because he had a relationship with another woman, but because her grandparents needed her domestic assistance.<sup>192</sup>

For some men and women, relationships were fluid rather than monogamous. Holding a relationship with another woman did not prevent some men from entering into a new relationship. Gudelia Rangel, 16, for instance, initially claimed that she did not know that her boyfriend, Bruno Herrera, was married. But later, she testified that Bruno confided that he could no longer stand the other woman’s naggings, suggesting that Gudelia knew he lived with another woman.<sup>193</sup> Likewise, María Teresa Montiel, 18, agreed to elope with her 24-year-old boyfriend, Maximiano Mireles, despite knowing he lived with another woman. The defendant told the court that he desired to marry María

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<sup>192</sup> Causa instruída contra Trinidad Martínez por raptó y estupro, AGPJC, Caja 1914 Penal, # 647.

<sup>193</sup> Toca 2 Instancia. Causa contra Bruno Herrera por los delitos de raptó y estupro, AGPJC, Caja 1917 Penal, # 589, No. 269.

Teresa. He asked the judge to give him two months to prepare a new home. But he also needed the time to get rid of Enriqueta Flores, with whom he had lived for the past year but was not interested in marrying.<sup>194</sup> Likewise in another case, Carmen Soto, 15, admitted to knowing that her boyfriend, Nicolás Zamora, was married; after all, he was her neighbor. In spite of this, the couple carried on a one-year relationship until her mother found out about it. Tired of her mother's badgering, Carmen asked her boyfriend to elope.<sup>195</sup>

Marriage did not prevent men or women from forming new relationships. Despite knowing that church officials did not marry men who were already civilly married, men made their girlfriends such offers.<sup>196</sup> In 1915 María Rosa Torres, 19, admitted to knowing José Aguirre was married, but added that José and his wife were separated. Because he was only civilly married, José proposed a church wedding.<sup>197</sup> Men, civilly married, offered a religious ceremony, and men who were married through the church offered a state-sanctioned marriage.

Still, judges did not respond favorably to young women who were aware that a man was married. In such cases, judges ruled that no promise existed because a married man was unable to offer a promise of marriage to another woman. Hence, young women involved with married men could not claim seduction and deceit. Estupro scenarios involving married men raised interesting questions about what these types of crimes

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<sup>194</sup> Causa instruída contra Maximiano Mireles por rapto y estupro, AGPJC, Caja 1910 Penal, #984, No.322.

<sup>195</sup> Declaración de Carmen Soto. Causa instruída contra Nicolás Zamora por rapto y estupro, AGPJC, Caja 1913, #645, No. 104.

<sup>196</sup> Averiguación por violación contra Juan Galván, AGPJC, Caja 1883. The defendant was civilly married.

<sup>197</sup> Declaración de María Rosa Torres. Criminal instruída contra Juan Aguirre por rapto y estupro, AGPJC, Caja 1915 Penal, #679, No. 480, 2-3.

sought to protect. Estupro crimes protected familial and sexual honor. Though officials hoped to promote marriage, in practice, judges did not force men to marry their girlfriends nor did they dissolve existing ties for men to enter a new relationship. Therefore, male privilege was not absolute, particularly when estupro crimes crossed into adultery and bigamy.

### **Affirming and Negotiating Male Honor**

Young men used gossip and sexual impropriety as proof that a young woman was loose. Raising questions about sexual morality undermined litigant's claims that they were victims of seduction or deception. Reifying those two notions of honor intersected with elements of chastity and honesty. Men questioned a young woman's sexual reputation to challenge her ability to fulfill the legal definition of estupro. Chaste meant abstention from all illicit sexual relations. The term honesty was not limited to sexual experience but referred to one's moral conduct and to the public's perception of the young woman. Feminine sexual honor was not only symbolically embodied by the material presence of a hymen but also was connected to how the community regarded the young woman's sexual reputation.

Men's declarations also addressed their girlfriend's sexual comportment. For this reason, male testimony reverted to the woman's open, active sexuality to escape marriage. Vicente Caríelo told the court that though he had been in a two-year relationship, he never intended to marry his girlfriend, Matilde Segura.<sup>198</sup> He testified to having sex in multiple locations, including the young woman's home, claiming that her parents had caught them during the act. Following this incident, the two were prohibited

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<sup>198</sup> Causa instruída contra Vicente Caríelo por estupro, AGPIC, Caja 1914 Penal # 676, No. 24.

from seeing each other, but once Matilde was allowed to go out, they resumed their sexual relationship. Matilde was impregnated twice but miscarried during her first pregnancy after she lifted a heavy load. Similar to Vicente, when men cited engaging in multiple sexual acts with their girlfriends, questions were raised about a girl's sexual virtue. Young women who engaged in sexual intercourse multiple times were viewed as promiscuous because they were not adhering to traditional gender norms or to female sexual comportment.<sup>199</sup> Virginity equated with chastity and honesty, which means that the judges believed that not all young women were entitled to legal protections and that only maidens could be seduced.<sup>200</sup>

Another young man, Cosme Ortega, also admitted to engaging in sexual relations with Margarita Castro, but he added that he never had any intention of marriage. For him and for other youth his age, sex was just an activity to pass the time. In both cases, the young men used the strategy of blemishing the girl's reputation by saying the young woman was a worldly woman, not a señorita. He then admitted to having offered to marry Margarita but claimed that because of her questionable behavior, he did not believe he was compelled to fulfill his promise.<sup>201</sup>

### **Sexual Crimes Intersect with Adultery Complaints**

Additionally, adultery crimes could intersect with sexual crimes, such as crimes committed by a married defendant. In these scenarios, estupro and rapto narratives fail to

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<sup>199</sup> Causa instruída contra Vicente Caríelo por estupro, AGPJC, Caja 1914 Penal # 676, No. 24.

<sup>200</sup> In post-revolutionary Orizaba, Veracruz, laws protected only women who judges believed were chaste and honest. Gregory Swedberg, "Dangerous Women and Macho Men: Preserving Sexual Difference in Orizaba Mexico, 1920-1940" (PhD diss., Rutgers, The State University of New Jersey, 2007), 104.

<sup>201</sup> Averiguación contra Cosme Ortega por estupro, AGPJC, Caja 1932 Juzgado Penal Sabinas 1-21. No. 440. In this complaint, the last name was spelled "Ylario," and in the adultery complaint, the family's last name was spelled "Hilario." In this case, Marcelo was Maria Paula's brother-in-law, but no one raised an incest charge, nor did their relationship meet the legal definition of incest.

capture the ramifications that the crimes imposed on the defendants' families. Estupro complaints fail to note that wives are injured by a husband's sexual relations with another woman. In fact, wives voices are absent from the court transcript. As a lens into how estupro complaints affected wives, the next section examines the following adultery cases.<sup>202</sup>

In 1884, Dolores Ylario, a male widower, accused his son-in-law, Marcelo Suárez, of committing estupro on María Paula, 14, impregnating the girl.<sup>203</sup> Two years earlier, the father had placed María Paula under the care of his son-in-law and eldest daughter, Maria Francisca. He discovered his daughter's pregnancy when María Paula became ill, and afterwards, Marcelo confessed that he had impregnated the young woman.

In addition to this estupro charge, Marcelo was charged separately with adultery.<sup>204</sup> The defendant's wife, María Francisca Hilario de Luna, filed an adultery charge against Marcelo Suárez for failing to provide food for her and their child, who was under the age of two. In her complaint, she accused her husband and sister of being sexually involved. The victim, María Paula, told a different story, describing the unwanted sexual relations with her brother-in-law as violent. She added that on two occasions, she confessed to her sister that Marcelo was harassing her. But instead of protecting María Paula, her sister grew angry, and Marcelo denied the accusation.<sup>205</sup>

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<sup>202</sup> This study includes 14 adultery complaints that were filed between 1875 and 1920.

<sup>203</sup> Criminal instruída contra Marcelo Suárez por estupro, AGPJC, Caja 1884, No. 8. The family lived on the rancho de Flores.

<sup>204</sup> Criminal instruída contra Marcelo Suárez y cómplice por adulterio, AGPJC, Caja 1884, No. 164.

<sup>205</sup> Careo entre María Paula Hilario y Marcelo Suárez, Criminal instruída contra Marcelo Suárez y cómplice por adulterio, AGPJC, Caja 1884, No. 164, 5.

Unfortunately, the judge was unable to rule in the case because both María Paula and her sister forgave Marcelo, and without a complaint, the courts ended the criminal investigation.

Conversely, in another case, the defendant was sentenced to prison after committing raptó. In 1915, Juana Lozano de Zárate, 22, accused her husband, Marciano Zárate, of abandonment. She testified that to support herself and their child, she worked and received assistance from her family. She decided to file an adultery charge against her husband after learning that he had “. . . kidnapped Victoria Maldonado and in a scandalous way showed no fidelity or respect owed to her as his wife. Instead, he tried to marry Victoria yesterday.”<sup>206</sup> Juana’s story echoes what Arrom found in the colonial period that adultery was often not the primary reason wives filed an adultery complaint or pursued a divorce.<sup>207</sup> Juana had tolerated abandonment and economic hardship, but after learning that her husband kidnapped Victoria Maldonado, she was not willing to remain silent. To prevent this illicit marriage celebration from taking place, Juana had visited the local priest to warn him that Marciano was married to her, thus attempting to prevent the priest from proceeding with the marriage ceremony. For her part, Victoria Maldonado, 18, was aware that her lover was married. However, she told the judge that Marciano offered her a church wedding, which she had accepted.<sup>208</sup>

The defendant denied his wife’s allegations. Marciano explained that the barrio celebration was in honor of his sister’s birthday. But he defended his right to initiate a

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<sup>206</sup> Testimonio en la causa contra Marciano Zárate y Victoria Maldonado por adulterio, AGPJC, Caja 1920.

<sup>207</sup> Silvia M. Arrom, *The Women of Mexico City, 1790-1857* (Stanford: Stanford University Press, 1985), 240-241.

<sup>208</sup> Testimonio en la causa contra Marciano Zárate y Victoria Maldonado por adulterio, AGPJC, Caja 1920.

relationship with Victoria because he said that although he and his wife had been married for four years, they had lived together for only one year. He believed that another woman could make him happy.<sup>209</sup> Apparently, neither the initial judge nor the appeals judge believed that Marciano was being truthful, and they sentenced him to prison. In this case, the court sided with Juana because her husband's raptó provoked public scandal. Marciano had acted criminally in pursuing not only the kidnapping of Victoria Maldonado but had attempted to marry her. It may be that parents opposed their daughters entering into relationships with married men precisely to avoid this type of scandal because adultery carried criminal charges, and parents desired to prevent their daughters from finding themselves in these dilemmas. Other young women, who, like Victoria Maldonado, entered into relationships knowingly with a married man also faced criminal prosecution.

In the same way, María Dolores Lomas de Soto initiated a proceeding against her husband, Bernabé Soto, in 1891.<sup>210</sup> She said, "This was not the first time he committed this crime; after only being married for one year and some months, he abandoned me to take Rumalda Rosales to Monterrey, leaving me to beg. I face the same situation again now caused by Atenacia Nava."<sup>211</sup> Similar to Juana, María Dolores' legal complaint against her husband describes wives' immense tolerance for infidelity. But similar to the findings of other scholars, María Dolores' testimony emphasized compensation over

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<sup>209</sup> Testimonio en la causa contra Marciano Zárate y Victoria Maldonado por adulterio, AGPJC, Caja 1920.

<sup>210</sup> Juicio contra Bernabé Soto por adulterio, AGPJC, Caja 1891, No. 12.

<sup>211</sup> Declaración María Dolores Lomas de Soto. Juicio contra Bernabé Soto por adulterio, AGPJC, Caja 1891, No. 12, 1.

punishment.<sup>212</sup> In this case, the wife negotiated an equitable economic settlement in exchange for dropping the complaint, and she asked that he give her a daily maintenance for her children and that he guarantee this with two people of good credit. She also told him she would proceed with the complaint if he failed to fulfill his commitment.

But in another case, the husband, Remigio Rodríguez, launched a complaint against Luciano García, 22 and single, for abducting his wife, María Juana Cortez.<sup>213</sup> After authorities arrested Luciano and his wife, Remigio opted to forgive his wife, and after she promised fidelity to him, he asked that the judge release her to the family. Other cases involved married women who faced an adultery accusation, and yet their husbands forgave their wife's indiscretions.<sup>214</sup> These cases demonstrate that in those situations, male honor was defined in a way other than through the woman's lack of sexual impropriety. Husbands' responses certainly cast doubt on the Mediterranean conception of male honor as an extension of female sexual honor to demonstrate that honor is more complex. A man's willingness to forgive his wife's sexual transgressions by reuniting with her after she had been unfaithful showed that male honor had additional meanings.

When these adultery cases are contrasted against the language that male defendants employ in estupro cases, the complaints reveal a richer, more fluid version of male honor. Adultery destroyed some marital bonds. As illustrated by one estupro defendant who testified that his wife had abandoned him and now lived with another man. Other cuckolded husbands attempted to preserve a public sense of honor by keeping

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<sup>212</sup> Shelton, *For Tranquility and Order*, 80.

<sup>213</sup> Acusación por rapto y adulterio a esposa, María Juana Cortez y Luciano García, AGPJC, Caja 1879.

<sup>214</sup> Averiguación contra Tomas Reynosa y María Concepción Avalos por adulterio, AGPJC, Caja 1876, No. 2.

a wife's infidelity outside of public scandal.<sup>215</sup> It could also be that some husband's insistence on preserving a marriage grew out of a desire to retain and force a wife to remain by his side.

Especially telling from crimes involving adultery is that judges punished married men who committed sexual infractions. And, cases involving women were not necessarily punished more harshly.<sup>216</sup> In some instances, the husband forgave his wife's offense, and in other instances, women escaped legal punishment through loopholes in the legal system. In two cases, the judge refused to pursue a criminal investigation against the wife because the couple was not civilly married. Without a valid marriage, officials did not investigate an adultery charge. The court also refused to recognize couples who were married only through the church, and thus the court simply did not rule on behalf of the husband's interest against an unfaithful partner.<sup>217</sup>

### **Female Agency or Male Strategy to Avoid Legal Repercussion**

Adultery disputes involving female infidelity sometimes involved sexually active women. By the same token, young women were portrayed as the mastermind behind elopement schemes. In such cases, young women exert different levels of autonomy in either suggesting the couple elope or in planning the departure. For instance, María Rivera suggested they wait and elope on the following night between 7 and 8 p.m. rather

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<sup>215</sup> Susan Migden Socolow, "Women and Crime: Buenos Aires, 1757-97" *Journal of Latin American Studies* 12, no. 1 (May 1980): 51-52. Husbands tolerated adultery out of shame or fear to file charges.

<sup>216</sup> My findings depart from scholars who highlight that female adultery was not tolerated. Shelton, *For Tranquility and Order*, 76.

<sup>217</sup> Acusación por adulterio contra Víctor Rivera y María Albina Segura, AGPJC, Caja 1884, No. 901. The judge ruled that the case lacked merit because the couple had been married only by the church. See also Acusación por adulterio contra María Gertrudis Rodríguez y Apolinar González, AGPJC, Caja 1880, No. 4. In this case, the judge ruled in favor of the accused parties because there was no legal union.

than leave on the date her boyfriend proposed.<sup>218</sup> Defendants depicted the young woman as an active participant, arguing that the elopement occurred as a result of the girl's own will, which eliminated the possibility of an abduction charge. Further, by depicting the young woman as a willing participant, the sexual relations that followed would not be deemed coerced or forced, and that again was a tactic used by defendants to eliminate the possibility of charges of seduction or deceit.

In other cases, the man emphasized that the young woman was sexually aggressive and had pressured him into engaging in sexual relations. For example, Lucas Cano Esquivel, 21 and a jornalero, claimed that his girlfriend, Juana Ortíz, 15, insisted on maintaining relations.<sup>219</sup> She invited him to meet her, he said, in a remote location behind the hospital and proposed they have sex, but he claimed, out of a sense of responsibility, to have resisted her advances. While the accused strategically used this statement to diminish his role in the process, he also depicted the young woman as acting out of character from the traditional passive feminine role. But this scenario also provided insights into his masculinity because he noted that out of responsibility, he had resisted his girlfriend's request to engage in intercourse.

Still, other cases illustrated mutual passion. According to her own statement, María del Socorro Luna resisted the sexual advances of boyfriend Eduardo Luis Barrientos, but when he promised her marriage, because she loved him, she gave in. Based on both testimonies, the two had engaged in sexual relations for approximately

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<sup>218</sup> Criminal instruída contra Lorenzo Salas por raptó y estupro, AGPJC, Caja 1914 Penal #675 No. 41.

<sup>219</sup> Averiguación contra Lucas Cano Esquivel por estupro, AGPJC, Caja 1937 J1PST, Exp. 27-174.

five months. Early on, they had used contraceptives, a rare occurrence given the time period, but over the previous three months, they engaged in sexual relations without protection. Eduardo Luis did not deny engaging in sexual intercourse, but he told the court that he had offered María del Socorro no promise of marriage, and in fact, he denied being her boyfriend.<sup>220</sup>

It appears that the actions of many young women deviated from prescribed gender norms. The woman would embrace an assertive position within a relationship rather than conform to a role of sexual passivity. During questioning, Crisóforo Campos told authorities that for the previous month, he and his girlfriend, Dolores Treviño, had been intimate. It was Dolores' idea, he said, to leave her home, so he took her. He told the magistrate that Dolores said, “¿Usted dira si nos vamos o no es hombre?” (You decide, shall we go or are you not a man?)<sup>221</sup> With that statement, Campos was making a strategic defense utilized by a number of accused—that no crime was committed because the plaintiff was not a woman worthy of legal protection. For the previous month, the couple had maintained relations, even prior to eloping. Campos made this point prior to seeking a defense attorney, demonstrating that he understood this aspect of the law.

Further, his testimony depicted Dolores as assuming a very active feminine role, rather than a passive role. Through her words, Dolores placed Campos in a position to decide their fate, but the way that she worded it almost undermined whether he really had any choice at all but to elope. She questioned his masculinity: Are you not a man?

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<sup>220</sup> Causa instruída contra Eduardo Luis Barrientos, AGPJC, Caja 1931 Juzgado Penal Sabinas, Exp. 40-63, No. 314.

<sup>221</sup> Averiguación instruída contra Crisóforo Campos por rapto, AGPJC, Caja 1936 Juzgado Penal Sabinas Exp. 1-28.

Dolores' actions went against traditional notions of gender that denied women's sexual pleasure and limited women's sexuality to maternal bliss. At the same time, his girlfriend's words reinforced normative masculinity and gender relations. Men were the sexual aggressors and were in charge in heterosexual relationships. Her statement indicated that the man, not the woman, had made important decisions within the relationship.

Campos added that neither of them had made promises. Again, this was another strategic move utilized by defendants to show that the case lacked merit because the man had offered no promise of marriage, which was a vital aspect of estupro cases. Further, Campos depicted Dolores as a willing participant who accepted him as her lover. In the court's eyes, Dolores, like María Mendoza, was soon to reach the age of majority, 21, worked as a domestic worker, and was romantically involved with a married man who had a family.<sup>222</sup> Domestic workers were portrayed by Mexican elites as sexually promiscuous individuals who corrupted good morals and families. Other treatises and cartoons of the time also depicted domestic workers as a source of sexual corruption.<sup>223</sup> Therefore, in Coahuilense magistrates' minds, Dolores' employment as a domestic worker, rather than as a woman dedicated to the traditional roles of her gender, cast doubt on her sexual purity and morals.

Similar to other young women, Dolores attempted to gain the court's favor by pointing out that her boyfriend had promised to marry her after he divorced and that they had not initiated sexual relations prior to eloping. In other words, she portrayed herself as

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<sup>222</sup> Averiguación contra José Barrón por estupro, AGPJC, Caja 1915 #673, No. 118.

<sup>223</sup> Beltrán-Garibay, "Sex and the Nation," 137-138.

a chaste and honest woman. Her family, and especially her father, did not condone their relationship. Her father, Mauricio Treviño, told the court that Campos took advantage of their family's trusting manner. He was an *arrimado* (who lived in their home), which smeared his ability as a financial provider because he was not sufficiently economically independent to maintain a separate home for his family. Further, Campos and his family had a spiritual relationship with Mauricio's family. Dolores was the godmother of one of Campos' sons. In the colonial period, Spanish laws considered spiritual kinships equal to blood kinships, and godparents were prohibited from entering into relationships with each other and with their godchildren, because under Spanish ecclesiastical laws, that was considered incest.<sup>224</sup> But under the secular Mexican penal codes, spiritual kinships forged through *compadrazgo* (godparents) were not considered incest.

Dolores' testimony further revealed something peculiar that cast serious doubt about her sexual reputation. In a later statement, she told the court that she had been involved in a relationship with Roberto, Crisóforo's brother. That relationship had lasted four years, but she ended it because of things that Campos had told her about Roberto. What those things were is not spelled out in the legal record. However, the transcript also contained an allegation of Roberto having fathered a child with Dolores, but she denied this accusation.

All of these declarations and incriminations made by the young woman herself were sufficient to cast doubt on her virginity, her sexual reputation, and she clearly was

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<sup>224</sup> Partida 4, Ley XII. In Spanish the prohibition is, “. . . nin el padrino con su afijado, nin el afijado o el afijada con fijo, nin con la fija de su padrino, o de su madrina: ca son hermanos spiriuales.” Martínez Alcubilla, Marcelo ed., *Códigos antiguos de España*, 2 vols. (Madrid: J. López Camacho Impresor, 1895), 486.

old enough to have known better than to pursue a relationship with a married man. Moreover, the fact that she left willingly showed that she consented to the relationship, and because of her age, under the 1931 penal code, she was no longer protected by the new age limits of estupro laws. Dolores' story revealed that young women exercised agency in initiating romantic relationships, and those choices at times conflicted with what their parents desired for them. In the case of Dolores and Campos, the young woman's sexual behavior did not always adhere to the idea of a passive agent who was acted upon by a sexually aggressive male. In fact, many young women played a prominent role in planning the escape with their boyfriends.

### **Sexual Violence during the Mexican Revolution**

War is a space that Michael Kimmel argues re-masculinizes men and re-feminizes women and where ideas of power are present.<sup>225</sup> According to Kimmel's interpretation, masculinity and femininity took on stereotypical roles. Soldiers were expected to display qualities of physical strength and bravado because at any moment, they faced death. Because soldiers engage in fighting, a sense of detachment toward life, pain, and humanity occurs, allowing for soldiers to process the realities of war. If strength, aggression, and sexual prowess are stereotypically valued masculine qualities, during wartime, these male characteristics exert greater strategic significance as a mode of survival. Examining sexual violence transpiring during Mexico's civil war reveals views toward masculinity, femininity, sexual norms, and heterosexual relationships.

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<sup>225</sup> Michael Kimmel, "Contextualizing Men's Violence: The Personal Meets the Political" in *Gender Violence Interdisciplinary Perspectives*, ed. Laura L. O'Toole, Jessica R. Schiffman, Margie L. Kiter Edwards (New York: New York University Press, 2007), 99-110.

Elizabeth Salas' work certainly speaks to sexual violence that women encountered from soldiers among the federales and the revolutionaries.<sup>226</sup> During my research, I examined 69 cases that occurred during the 1910 to 1920 period. Several of them took place in the midst of the Mexican Revolution and into the postrevolutionary period that highlight the mistrust that individuals felt toward soldiers. These incidents provide insights into collective violence, as well as into a violence that continued into the period of national consolidation.<sup>227</sup> The following section considers a few cases involving estupro.

### **Estupro during the Revolutionary period, 1910-1920**

The sources examined during my research, rather than portraying a significantly increasing number of violent incidents during the revolutionary period, revealed a continuation of similar patterns of estupro crimes observed prior to the revolution. Subtle differences significant to the period were apparent, suggesting a decline in morals and a greater number of couples engaging in more risqué sexual behavior.<sup>228</sup> Katherine Bliss points out that soldiers and military officers were viewed as sexually promiscuous.<sup>229</sup> The court documents also portray a more sexually active female during this period. The following cases also stood out because of the couples' relatively brief involvement. This

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<sup>226</sup> See Elizabeth Salas, *Soldaderas in the Mexican Military: Myth and History* (Austin: The University of Texas Press, 1990), 44.

<sup>227</sup> Thomas G. Rath, *Myths of Demilitarization in Postrevolutionary Mexico, 1920-1960* (Chapel Hill: University of North Carolina Press, 2013), 2. In his work, he argues that demilitarization occurred after 1940.

<sup>228</sup> See Gabriela Cano, "Unconcealable Realities of Desire: Amelio Roble's (Transgender) Masculinity in the Mexican Revolution," in *Sex in Revolution: Gender, Politics, and Power in Modern Mexico*, ed. Jocelyn Olcott, Mary Kay Vaughan, and Gabriela Cano (Durham: Duke University Press, 2006), 44-47.

<sup>229</sup> Katherine Elaine Bliss, *Compromised Positions: Prostitution, Public Health, and Gender Politics in Revolutionary Mexico City* (University Park: The Pennsylvania State University Press, 2001), 11.

is precisely the case for one 1914 proceeding filed against Second Sgt. José Lozano when he eloped with his 13-year-old girlfriend, María Rodríguez.<sup>230</sup> The case was originally sent to the Superior Military Tribunal but then was returned to the local judge with the notation that, because it involved the crime of rapto, the case should be sentenced through his court.<sup>231</sup> Here, the complaint was made by the girl's mother, a widow.

José was a 22-year-old soldier in the constitutionalist army. Lozano himself was not a native and originally was from Hacienda de Bella Vista in Jalisco; at the time of the incident, he lived in the quarters of a nearby battalion. José told the court that he and María had met only 15-20 days previously and that despite their brief relationship, he wanted to marry her. Unlike the songs and corridos' portrayal of women as passive sexual agents, José depicted María as a willing participant. To affirm his honor, he told the judge that he had asked María if she wanted him to ask for her hand or if she preferred to leave with him, and she opted to go. Thus, Lozano's testimony framed the runaway as part of a premeditated plan, not as María recounted. He portrayed María as the mastermind, claiming that she asked him to wait for her at 8 o'clock that night. Men routinely used the defense of female consent in rapto/estupro charges knowing that judges considered these elements in their verdicts. An elopement without violence made out of a young lady's *voluntad* (free will) usually meant that no crime had transpired.<sup>232</sup>

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<sup>230</sup> Causa instruída contra José Lozano por rapto (estupro has been crossed out), AGPJC, Caja 1914.

<sup>231</sup> This notation suggested that perhaps cases involving soldiers were sent to the Military Tribunal as part of court protocol to ensure that the criminal courts indeed possessed jurisdiction to carry out an investigation. But, as this case involving Sgt. Lozano indicates, the Military Tribunal did not oversee these types of sexual crimes.

<sup>232</sup> Causa instruída contra José Lozano por rapto (estupro has been crossed out), AGPJC, Caja 1914.

Candelario García, 19, was another military man who engaged in sexual relations with his girlfriend after knowing her for only a month. He was enrolled in the 3rd Squadron, 8th Regiment. Similar to other estupro cases, he took María Leonarda Hernández, who was originally from Matehuala, to his sister's home where they engaged in sexual relations on various occasions. María Leonarda remained in Candelario's home until her mother, a widow, found her and picked her up. Afterwards, the young woman, perhaps feeling a little insecure about whether Candelario had been truthful in his promise of marriage, asked the court to punish him if he did not marry her. However, he said he was willing to marry his girlfriend civilly and was released.<sup>233</sup>

The revolutionary period expedited the initiation of sexual relations and in other cases interrupted relationships. The next set of cases involved couples who had maintained lengthy relationships but finally chose to engage in a sexual relationship. After a four-year relationship, José de Jesús Flores, *jefe del estado* (chief of staff), meaning he was a high-level commander in the armed forces, began engaging in sexual relations with his 23-year-old girlfriend, María Herminia Delgado. José de Jesús never actually appeared in court to testify, and thus the court transcript documents the case from the perspective of María Herminia and her widowed mother. Love letters emerged as proof of their lengthy relationship. Then María Herminia's testimony described a colder courtship period, stating that at the time the forces of Carranza were put together, her boyfriend stopped coming by her home and that she saw him only sporadically. José de Jesús' duties in the Carranza forces left him with less time for courting. Then, very suddenly a few months afterwards, he stopped by María Herminia's home and promised

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<sup>233</sup> Causa instruída contra Candelario García por rapto, AGPJC, Caja 1914.

to marry her if they eloped to Monterrey. But four days later, José de Jesús had a change of heart and instructed his girlfriend to return to Saltillo to wait for him. When he failed to return after the 12 days he gave María Herminia, she and her mother grew concerned, prompting their criminal complaint. José de Jesús and María Herminia's love story described a lengthy relationship that eventually included sexual relations. Months after lodging the criminal complaint, María Herminia's mother requested that the charges be dropped and asked for the return of the love letters she had presented before the court. It appears that the mother reached a marriage agreement for her daughter with the young man because she told the court that it was in her best interest to desist from criminal proceedings.<sup>234</sup>

Relationships with male soldiers could have disastrous consequences when sexual relations resulted in a pregnancy. These cases did not always have happy endings. In 1919, Jesús Arreola, a soldier, had been in a relationship with 22-year-old Vicenta Carillo.<sup>235</sup> His tragic death left Vicenta in a precarious situation because she was pregnant. Rather than disclose her pregnancy after giving birth in the barnyard she hid the female infant's body with straw, used for animals, and then left the infant out in the open. Her brother-in-law discovered the newborn. This case, which involved a female delinquent, perplexed the court. The magistrates were unclear about how to legally charge the woman. The dilemma was whether to classify the crime as 1) a frustrated infanticide, because apparently the infant survived for six days following the birth; 2)

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<sup>234</sup> Causa instruída contra José de Jesús Flores por estupro, AGPIC, Caja 1915 Penal #681.

<sup>235</sup> Causa instruída contra Vicenta Carillo por infanticidio frustrado, AGPIC, Caja 1919.

with abandonment of an infant; or as a 3) simple intentional homicide because it was exposure to the elements, the magistrate surmised, that led to the infant's death.<sup>236</sup>

Vicente accepted responsibility and confessed to the crime of infanticide. She told the court how she hid the pregnancy and birth. The infant's father, she said, was a soldier who died near the end of the previous year. The courts found that Vicenta had not measured the consequences of her actions when she left the infant in a solitary place at night. The court was sympathetic to Vicenta's confession and therefore reduced her prison term from three years to two years and one month and a fine of 100 pesos.<sup>237</sup>

Very few cases involved female delinquents. Interestingly, three of the six cases filed as a corruption of a minor involved a female defendant. The corruption of a minor was defined as an individual who initiated a minor into a vice and facilitated the perversion of moral customs.<sup>238</sup> Though the small sample size suggested that the crime occurred with less frequency or was reported less often, legislative modifications made between the 1871 and 1931 codes suggested that the laws intersected with concerns about prostitution.<sup>239</sup> When comparing the two penal codes, the elements of the crime became more descriptive, and penalties doubled when the crime involved a prepubescent girl.<sup>240</sup>

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<sup>236</sup> Causa instruída contra Vicenta Carillo por infanticidio frustrado, AGPJC, Caja 1919.

<sup>237</sup> Courts responded with sympathy to young women who killed their infants out of desperation. Vicenta's case met the legal criteria to consider her mitigating circumstances. See Kristen Ruggiero, *Modernity in the Flesh: Medicine, Law, and Society in Turn-of-the-Century Argentina* (Stanford: Stanford University Press, 2004).

<sup>238</sup> *Código Penal del Estado de Coahuila* (1900), 156-157. See Articles 792-797.

<sup>239</sup> Bliss, *Compromised Positions*, 114.

<sup>240</sup> Under the 1871 penal code, lawmakers included "family members and individuals in positions of authority who corrupted a minor." The sentence for this crime depended on whether the suspect was a repeat offender. Under the revised code, the state's concern was to stop the entry of young women into places of ill repute, such as bars, cabarets, and houses of prostitution. Thus, legislators desired to punish employers and pimps in efforts to reform prostitution. *Código penal para el Distrito Federal (1873)*, 221-222. See Articles 803-807.

In 1922, María Soto, 17, defied the notion of passive femininity when she pimped an 11-year-old girl to a soldier nicknamed Tomás.<sup>241</sup>

Through several accounts, María was depicted as a corruptor of morals, perverse, and sexually promiscuous. When Lorenza Cerdas' father filed the complaint, he said that María had lived with the family for the past four months. But apparently, María was not a family member. Lorenza testified that almost daily, María had advised her to not “be not be dumb, that Tomás was a good person and that it was in her interest to run away with him.”<sup>242</sup> Tomás was stationed with the third zone's battalion, the same battalion as María's lover. Though Lorenza was afraid, she had been warned by María that if she refused Tomás's offer to elope, he would take her by force from her home. The idea of being violently forced convinced Lorenza to go willingly, and María arranged for Tomás to pick up the girl. Only later did Lorenza learn that “Tomás” was a pseudonym.

The 22-year-old soldier was brought in to render his testimony. Marcos Montes declared that María was his sergeant's lover. Depicting María as a loose woman, Marcos told the judge how he had approached María for a sexual relationship. But unable to accept his offer, María had lied to Marcos, telling him she had a sister, Lorenza. While María may have facilitated the encounter between Lorenza and Marcos and received 50 centavos as payment, it is unclear why the judge did not punish the soldier as well. Pablo Piccato's research found a nearly identical case where the judge took the same position.<sup>243</sup> Both courts' rulings indicated that the females' actions were deemed more

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<sup>241</sup> Causa instruída contra María Soto por corrupción de menores, AGPJC, Caja 1922.

<sup>242</sup> Declaración de Lorenza Cerdas. Causa instruída contra María Soto por corrupción de menores, AGPJC, Caja 1922.

<sup>243</sup> Marcelina Ayala was paid 25 cents by a soldier to rape 13-year-old Esther Zúniga, but the

morally reprehensible that those of the soldiers. Intriguingly, in both cases, the courts asked the soldiers to testify, but charged neither with a crime. The cases suggest that both judges found the women's behavior suspect, and the judges desired to punish these criminals harshly. In this case, the court chose to ignore Lorenza's young age, and despite Lorenza's testimony, which suggested violence had occurred, the judge ignored the psychological coercion.

It seems that the court found María's actions more reprehensible than those of the soldier's procurement of the girl. In fact, neither the judge nor Lorenza's father blamed the soldier in the matter. Marcos maneuvered responsibility by offering to marry the girl, but her parents refused to consent to a marriage. Tomás' actions and Lorenza's responses conformed to binary views of men and women—men as natural sexual aggressors who dominated and women as submissive to men's sexual requests. The case, while providing the perspective of a female offender, shows the coercion in relationships and reveals that not all families viewed marriage as the best remedy after sexual relations had occurred. In Lorenza's case, the family anticipated problems in the relationship and believed that marriage would not be an ideal resolution for the young woman.<sup>244</sup>

## **Conclusion**

Estupro laws were not advantageous to women. Legal procedure itself set a high standard that offended women often were not able to substantiate through their claims. Even in estupro cases involving pregnancy, judicial authorities did not automatically side with families and offended women, nor did magistrates act to protect the rights of unborn children. Further, the continued practice of legally requiring a written promise of

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soldier was never accused of a crime. Pablo Piccato, *City of Suspects*, 122.

<sup>244</sup> Causa instruída contra María Soto por corrupción de menores, AGPJC, Caja 1922.

marriage absolved men of responsibility, because few women were able to present this evidence.

Instead, magistrates overwhelmingly agreed with defendants' assertions that a lack of virginity or that sexual gossip about a young woman cast doubt on her chastity and honesty and that those issues justified their retraction of marriage. In other complaints, men cited former lovers to blemish the girl's reputation by suggesting that his girlfriend had already lost her virginity prior to engaging in sexual relations and that the young woman's pregnancy could be blamed on another man. Hence, as other scholars have found, laws protected only women who met the chaste and honest requirements. Nonetheless, in Coahuila's courtrooms, those two elements, and the presence of seduction and deceit, were secondary to having written documentation.

Similar to what has been found in other parts of Mexico, plebian families tried to handle the situation. Only when families grew anxious about a young man's lack of attention to the matter did the family take their case to the authorities to disclose their family's predicament. This is important, for rather than resorting to other forms of justice, families primarily turned to the justice system to act as an ally in negotiating a marriage, procuring a civil remedy for an unborn child's future maintenance, and in other instances to punish the man for tarnishing their daughter's reputation and the family's name.

Moreover, adultery cases coupled with estupro/rapto complaints showed a significantly different side to male honor from what is revealed in estupro narratives. Adultery complaints indicate that male and female sexual honor were more fluid in Coahuilense society than estupro crimes portrayed. Clearly, in Coahuilense society, another group of men faced marital infidelity, and yet these men were willing to preserve

their relationships to save their public reputations and honor. Further, the cases involving married men who committed sexual crimes reveal the dire situations that their families faced to support their households. These families were left at the mercy of their family member's good charity. Additionally, the adultery complaints, combined with estupro cases, depicted another side to feminine sexual agency that is often omitted in sexual crimes in which the woman is simply the victim whose legal grievances are seldom enforced by judges. In this respect, the adultery cases in Coahuila depart from findings elsewhere, which document intolerance toward female adultery. Here, judges were not particularly harsh on female adulteresses. Finally, estupro complaints that occurred during the Mexican Revolution did not indicate a rise in the number of cases filed in court, which contributed to civil disorder but did align with what other scholars have identified a loosening of morality.

### CHAPTER 3

#### **“A MAN ON HIS OWN CANNOT RAPE A WOMAN”: ASSESSING CONSENT, VIOLENCE, AND RESISTANCE IN RAPE NARRATIVES**

“According to the medical-legal experts’ report, after they examined the accused and the victim in terms of her physical development, these experts concurred that there could be no rape but rather that she consented, this opinion coincides with the doctrines of many authors and is accepted within all jurisprudence, that a man on his own cannot rape a woman if his physical development is more or less equal to hers.”<sup>245</sup>

- Judge Benito Flores, Supreme Tribunal of Justice

In Mexican law, similar to colonial Spanish law, the crime of rape carried a stiff sentence. Of all sexual crimes—indecent assaults, corruption of minors, and deflowerings/seduction—suspects convicted of rape charges received the longest prison sentences and fines.<sup>246</sup> Lawmakers considered rape a heinous crime that demanded severe punishment of offenders. Scholars in Latin America have generally found that plaintiffs

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<sup>245</sup> Causa instruída contra Juan Jacio por el delito de estupro, AGPJC, Caja 1902 Penal, #770. The Lic. Benito Flores presided over the 2<sup>a</sup> Sala of the Superior Tribunal of Justice. In Spanish the wording is, “Según el dictamen de los peritos medico legalistas después del examen que hicieron del acusado y de la ofendida en cuanto a su desarrollo físico, estiman que no pudo consumarse la violación sino por el consentimiento de esta, opinión que está de acuerdo con las doctrinas de varios autores y aceptada por todas las jurisprudencias, acerca de que un hombre solo nunca puede violar a una mujer cuando el desarrollo físico de ambos es más o menos igual.” This case involved a blind victim.

<sup>246</sup> Rapes committed against victims younger than 14 years were punished with up to 10 years of incarceration, and cases involving young women who were 14 and older called for sentences of six years. Rapes committed by a family member or an individual who exercised authority over the victim were regarded as an aggravating factor and lengthened the prison term by between 6 months and 2 years. Sexual crimes perpetrated by a parent had sentences lengthened by two years. An additional 6 months in prison were imposed for sexual crimes committed by members of certain professions, such as tutors, teachers, doctors, dentists, and ministers. The 1871 Criminal Code also stipulated that additional sanctions were imposed if the victim contracted a disease. In such cases, the longest prison sentence of the charges was applied in determining a final sentence. *Código penal para el Distrito Federal* (1873), 219-220. See Articles 795-802.

filed a very small number of rape charges and that few resulted in a conviction.<sup>247</sup> Of the 282 cases examined in this study, 73 included a rape charge.<sup>248</sup> This meant that one fourth of the complaints found in this study’s sample size involved a rape accusation. Further, as Figure 3 demonstrates, based on an analysis of the punishment applied by the classification of sexual crimes, the crime of rape ranked at the top.

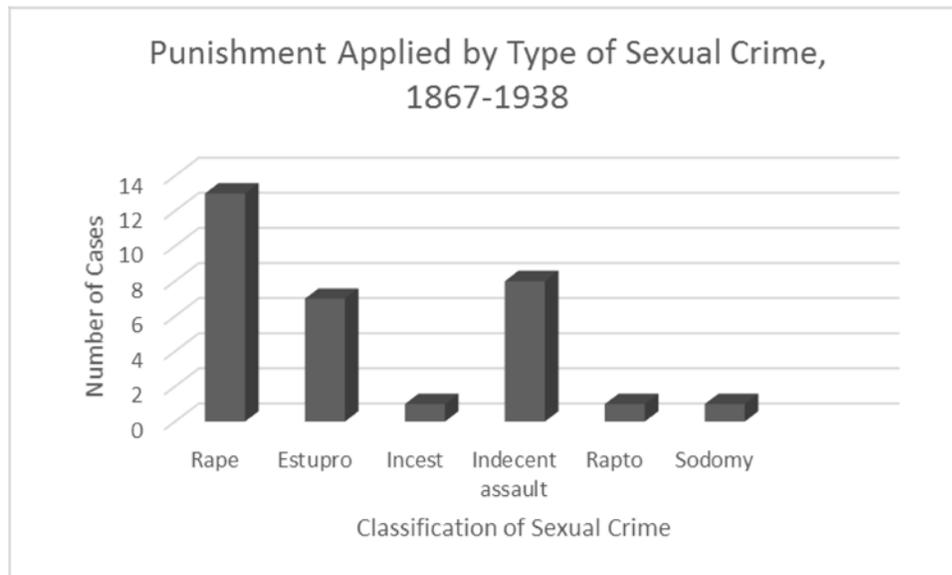


FIGURE 3. Punishment Applied by the Type of Sexual Crime, 1867-1938<sup>249</sup>

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<sup>247</sup> Lipsett-Rivera’s study found 5 reported rapes per decade between 1750-1856 with an increase in the number of rapes reported during the periods of 1801-1820 and 1851-1856. Sonya Lipsett-Rivera, “The Intersection of Rape and Marriage in Late-Colonial and Early National Mexico,” *Colonial Latin American Historical Review* 6, no. 4 (1997): 584. In her study in Ponce Leon, Puerto Rico, between 1880 and 1898, Eileen Findlay found 15 cases of rape and 211 cases of rapto. Only two of the 15 rape cases resulted in convictions. See Findlay, “Courtroom Tales of Sex and Honor,” 202. In Sonora, sex crimes were rare when compared with lawsuits such as theft, assault, and property. See Shelton, *For Tranquility and Order*, 75. Also, see Swedberg, “Dangerous Women and Macho Men,” 107.

<sup>248</sup> The 73 cases represent complaints in which juzgados classified the crime as a rape or as a rape charge in combination with another crime such as estupro, kidnapping, and breaking and entering a domicile. Of those 73 cases, magistrates filed 60 of them as rape only. Rape cases were selected based on the following criteria: first, I coded for cases filed as rape with an additional sexual crime or crimes; second, I coded the number of cases filed as only a rape crime.

<sup>249</sup> See Appendix A, for a list of the punishments applied by the type of crime committed.

This chapter examines legal arguments and evidence that magistrates used to determine a rape verdict. I argue that the high evidentiary burden of proof established through rape laws, coupled with the arbitrary judicial application of legal elements and discriminatory courtroom practices, made it difficult to procure a rape verdict. Compounding the challenge for plaintiffs was that the courts often interpreted a woman's lack of resistance during an attack as compliance, creating implied consent. Violence, both physical and especially moral, were trivialized despite their presence in actual cases.

### **Rape Laws**

During the 60 years between the passage of the national 1871 Criminal Code to the 1931 Criminal Code, the penalties and classification of the crime of rape underwent changes. Under the 1871 Criminal Code, federal lawmakers viewed rape as a crime against the integrity of the family, not against the victimized woman. As a law student in 1969, Miguel Angel Conde Torres pointed out, this legal perspective was flawed because whether or not “a family exists, the crime exists.”<sup>250</sup> Consequently, Conde Torres suggested that the code weakened the protections of women without families. In 1931, rape and other sexual crimes no longer fell under the rubric of the family; they were located under the heading of sexual crimes.<sup>251</sup> Under the 1931 codes, lawmakers began using the terms *puber* and *impuer* to issue sentences based on whether the victim had reached the onset of puberty, which ranged in age from 13 to 18. Age 14 demarcated the difference between a prison term of one to six years and a prison term of two to eight

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<sup>250</sup> Miguel Angel Conde Torres, “El delito de violación en el derecho penal Mexicano” (J.D. thesis, D.F.: Impresos Off Sali-G, S.A., 1969), 10-12.

<sup>251</sup> Martínez Roaro, *Delitos sexuales*, 139.

years.<sup>252</sup> The changes reflected in the titles suggested a shift in the description of sexual crimes, moving toward more contemporary standards in which the individual, rather than the family or the community, was the victim.

### **Rape Litigants**

The majority of cases, 54, of the rape litigants were female.<sup>253</sup> The victims were primarily “dedicated to the labors of their sex,” meaning they stayed home; a small percentage of the plaintiffs were domestic workers. During the proceedings, female litigants referenced notions about honor that the written law expressly conveyed in defining rape and other sexual crimes.<sup>254</sup> We can speculate about whether women and

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<sup>252</sup> González de la Vega, “El Código penal (1939),” 242-243.

<sup>253</sup> Six of the cases involved male victims.

<sup>254</sup> The literature on honor is vast. Based on the Mediterranean perspective of honor, feminine honor resided in a woman’s chastity and reflected on the honor of the men who surrounded her— her father, brothers, fiancé, and husband. While women’s honor required restraint and passivity, male honor was more active. In fact, male sexual potency required courage and manliness as men needed to defend their women against the aggressions of other males. Current historical works depart from a strict, traditional Mediterranean perspective of honor. In “Marriage Promises,” Seed discusses changes in female and male notions of honor in colonial Mexico, as the idea of the promise to marry shifted from the oral to the written promise in the 1660s. As personal integrity separated from maintaining a spoken promise, men were no longer accountable for the spoken promise; rather, their reputation relied on what they had agreed in writing. By the eighteenth century, as Seed claims, men were increasingly resistant to adhere to former codes of honor (the culture of the spoken word), making it more complicated for families to compel these men to marry their female relatives. See Seed, “Marriage Promises,” 266-267.

In Lyman L. Johnson and Sonya Lipsett-Rivera’s edited monograph, *The Faces of Honor: Sex, Shame, and Violence in Colonial Latin America*, a number of scholars demonstrate the malleability of honor through their studies. For instance, Anne Twinam’s work shows that women, families and the community employed a number of strategies to manipulate the honor system. Twinam’s work attests to the elasticity of honor, not just for men, as Seed’s article indicated, but that it extended to women as well. See Ann Twinam, “The Negotiation of Honor: Elites, Sexuality, and Illegitimacy in Eighteenth-Century Spanish America,” in *The Faces of Honor: Sex, Shame, and Violence in Colonial Latin America*, eds. Lyman L. Johnson and Sonya Lipsett-Rivera (Albuquerque: University of New Mexico Press, 1998), 68-102. Sandra Lauderdale Graham’s finds that freed persons and slaves, too, held their own notions of honor. See Sandra Lauderdale Graham, “Honor among Slaves,” in *The Faces of Honor: Sex, Shame, and Violence in Colonial Latin America*, eds. Lyman L. Johnson and Sonya Lipsett-Rivera (Albuquerque: University of New Mexico Press, 1998), 201-228. Graham extends Twinam’s work to address the construction of honor among non-elites. These works suggest that honorable behavior varied among

their families were highly knowledgeable about the law prior to finding themselves immersed in the legal system or whether litigants learned about legal processes after an assault. But, when women claimed that a rape was an offense to their honor or an offense against their decency, they were strategically using the legal codes' written language to gain the judge's attention. However, the analysis of rape narratives that follows will show that women were not merely manipulating the legal system to obtain justice in their cases, but rather, as a number of cases demonstrate, the rhetoric of honor was tied to many markers of identity such as gender, social-class, and maternity. Therefore, the claims of an offense against female honor provide a glimpse into how ordinary people experienced sexual violence.

In Coahuila, most victims of sexual violence were female, poor, single, and members of the working class.<sup>255</sup> And, as Susan Socolow remarks about the colonial

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different groups; thus, no single definition captured what honor meant. Views of honor/shame were far from static, and women, men, elites, and slaves constructed their own notions of honor, as it best fit within their respective personal circumstances. As each held their own view of honor, honor was always contested, therefore, notions of honor as it pertains to gender, sexuality, and race were not set in stone.

The scholarship on sexual violence demonstrates that feminine chastity remains a central issue and is significant in the prosecution of statutory rape cases. Caulfield and Esteves' finding on nineteenth-century Brazilian jurisprudence indicated that the Brazilian 1830 penal code protected women who the law felt were worthy of protection. The honesty requirement could be proven through the woman's actions, her conduct, behavior, and her family's vigilance over her. Therefore, feminine honor based on honesty and proof of seduction is imperative. See Sueann Caulfield and Martha de Abreu Esteves, "50 Years of Virginity in Rio de Janeiro: Sexual Politics and Gender Roles in Judicial and Popular Discourse, 1890-1940" *Luso-Brazilian Review* 30, no. 1 (1993): 47-74.

Additionally, historian Cheryl Martin's work on honor in colonial northern Mexico notes the importance of maintaining reputable appearances. As Martin argues, while male honor derived from his "wife's sexual probity . . . a woman's reputation depended directly on her own actions." Martin sustains that females wrapped up in sexual scandals had a great deal to lose, as those women who society perceived as whores, faced public stigmatization; thus, this negative perception had vast repercussions, since these deflowered single women were exiled or confined and their opportunity for a respectable marriage was greatly diminished. See Cheryl English Martin, "Popular Speech and Social Order in Northern Mexico, 1650-1830," *Comparative Studies in Society and History*, 32, no. 2 (April 1990): 314.

<sup>255</sup> This social profile for victims of rape has been established in the work of Carmen Castañeda,

period, it was not accidental that sexual predators selected these vulnerable populations to prey upon.<sup>256</sup> The profile outlined also suggests gender, class, and age markers, which denoted power differentials between the suspects and the victims. Socially marginalized children, individuals with disabilities, orphans, and women left alone without male protection constitute the majority of plaintiffs. Chambers has argued that women and children lacked citizenship rights and that rapists benefitted from the liberal laws.<sup>257</sup> Indeed, Chambers' argument about citizenship as an explanation for why legislators and judges failed to punish sexual crimes is applicable. Lack of citizenship rights may have biased judges against some litigants. The remainder of the chapter explores the role that social categories played in courtroom practice and notions of honor. The section begins with an examination of married women who filed rape complaints.

### **Offenses against the Honor of Married Women**

Read critically, female complaints reveal a woman's own sense of feminine honor, which they perceived to be at stake in criminal cases. Married litigants claimed honor based on their status as married women. In court cases involving married women, the legal system's interpretation of rape based on the definition of "crime against the order of the family" reverted to an offense against the husband rather than against the affected woman. A case in 1874 illustrates this example.<sup>258</sup> While María Estanislada Castro's husband was at work, her neighbor, José de Jesús Zamora, a jornalero, stopped

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*Violación, estupro, y sexualidad Nueva Galicia, 1790-1821* (México: Editorial Hexágono, 1989), 89-90. Castañeda did find a few cases involving Spanish women that she attributed as acts against their upper class. Still, the majority of her cases fit the traits of victims in Coahuila. See also Shelton, *For Tranquility and Order*, 88-89.

<sup>256</sup> Socolow, "Women and Crime," 45.

<sup>257</sup> Sarah Chambers, "Private Crimes, Public Order: Honor, Gender, and the Law in Early Republican Peru," in *Honor, Status, and the Law in Modern Latin America*, eds. Sueann Caulfield, Sarah C. Chambers, and Lara Putnam (Durham: Duke University Press, 2005), 29-30.

<sup>258</sup> Averiguación instruída en contra de José de Jesús Zamora por violación, AGPJC, Caja 1874.

by to ask her to give him a corn husk so that he could roll a cigarette. When María, who was pregnant, went to fetch the husk, he grabbed her arm, threw her on the kitchen floor, and raped her. María notified the police immediately. Her nearest neighbors were a distance from her home, and thus there were no witnesses. When the rape occurred, María was at the end of her second trimester. The judge asked the municipal doctors to examine María for violence. Doctors estimated her gestation at five months and nine to 12 days. Due to the severe physical violence, she miscarried.

Cases involving married women posed dilemmas for judicial authorities, as officials grappled with the decision of whether to believe the victimized woman. Deborah Kanter argues that judges mistrusted women's accusations because they believed that some women lacked sexual control and virtue. Widows and married women, if their husbands were absent, were thought to possess unbridled sexuality.<sup>259</sup> In María's case, officials were suspicious of her allegation of rape because they minimized the overwhelming physical evidence and trivialized her miscarriage. The prosecutor submitted María to a lengthy interrogation process, asking for specific details about the rape. Judges typically asked numerous questions of rape victims. In María's case: In what part of the house did the assault occur? Were the contusions on María the result of the violence she suffered from the aggression? How far along was she in her pregnancy? She was also questioned about the clothing worn by the accused: Was his shirt torn and muddy? Was he wearing a shirt underneath or just a coat? Did anyone see him leave her home? This tactic of interrogation was meant to provide the court with information to

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<sup>259</sup> Deborah Kanter, *Hijos Del Pueblo: Gender, Family, and Community in Rural Mexico, 1730-1850* (Austin: University of Texas Press, 2008), 93. See also Shelton, *For Tranquility and Order*, 89-90.

establish that the sexual assault had indeed occurred against María's will through physical or moral (psychological duress) violence. The officials' questions about the suspect's attire were significant because clothing, as Lipsett-Rivera notes, was expensive, and individuals had limited garments, and thus, clothing served as a strategy to identify an individual.<sup>260</sup> The questions also were meant to ascertain if there were witnesses to the crime, which could add credibility to María's account. The information gathered during questioning would be subjected to further scrutiny by the police and by the doctors' physical examinations of María.

In this case, the priorities and values that the magistrate protected were not directly related to the victim of the crime. Instead, the court focused on how María's husband was affected by her rape. In other words, based on the court transcript, the judge regarded the rape as an offense against the husband. By defining the rape through the husband's tarnished honor, the court then questioned whether the rape also was a case of adultery. Ample statements were devoted to a discussion of whether José de Jesús was guilty of violent adultery, because the plaintiff was pregnant during the crime. Another example indicative of how the court interpreted the rape through the husband's honor was shown when the court asked María's husband if he forgave the offender. To reiterate, the law considered sexual crimes as private crimes rather than as public crimes, and because authorities investigated private crimes by complaint only, if María's husband forgave the offense then the charges were dropped.

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<sup>260</sup> Lipsett-Rivera, *Gender and the Negotiation of Daily Life in Mexico*, 217-218. Clothing also carried other markers of race, ethnicity, and social class, but here, it seems to serve an investigative purpose.

By considering the husband's pardon, the judge linked the offense suffered by the wife directly to the husband, who then had authority to desist from pursuing further charges by forgiving the defendant.<sup>261</sup> This judge's actions illustrated that when a sexual offense involved a married rape survivor, the legal concept of family extended to include the spouse of the alleged victim. As the case illustrates, the judge protected the honor of the husband, which had been violated by the additional insinuation of adultery. The husband's honor trumped his wife's rape and the death of their unborn child, as those offenses were secondary to upholding the husband's interests. The case closed when the defendant became a fugitive of the law.

By comparison, another case contained many similar themes with the case involving María, but it had a different outcome. In 1912, in the Matamoros de La Laguna region, businessman Cirilo Hernández accused Refugio Cordero, a laborer, of assaulting his wife "by force," in other words of rape.<sup>262</sup> When his 18-year-old wife, Josefa Serrano, was called in to testify, she said that Refugio grabbed her when she stepped outside her home to go to the outhouse at about 7 one evening. She told the authorities that without uttering a word, Refugio grabbed her by the arms, knocking her back, and that he carried a knife in his hand. He would not let her scream; thus, she was not able to resist until he had sexually assaulted her. Josefa's husband had left that morning to Torreón to purchase supplies. She told the courts that her husband worked as a seller and that typically when he left on a business-related trip, he did not return until the next morning. It was a small

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<sup>261</sup> In the cases studied, no instance arose where a husband forgave an offense while his wife wanted to proceed with a complaint, or vice versa.

<sup>262</sup> Toca de la causa instruída contra Refugio Cordero por el delito de violación, AGPJC, Caja 1913, 1ª Sala Penal, #655, 9.

community, and it was possible that Refugio knew her husband made such trips. Josefa told the court that she did not know her assailant's name but that she could identify him by sight. She was able to point him out to her husband. When her husband questioned his wife about whether she screamed for help, Josefa replied that she did not because the man had a knife and was threatening. Moreover, she reasoned, had she screamed, no one would have heard her. There was no one around at that time, and she added, "This is the first time such a thing happened [to her]."<sup>263</sup>

Based on María and Josefa's stories, their comportment adhered to societal expectations for domesticity—they were within their homes. The home setting also established that the women were honorable.<sup>264</sup> In the second case, legally, the knife served to establish proof of violence, at least moral violence through intimidation. The element of resistance went unfulfilled. Josefa's failure to scream for help was questioned by the court and by her own husband. Not calling out for help was interpreted to mean that the sexual encounter was consensual. Josefa tried to defend herself by telling her husband and the court that she had not known how to react. She rationalized her actions again, alleging the defendant had a weapon, no one was around to help, and no one would have heard her had she screamed.

Nevertheless, in this case, the accused, Refugio, who was a married man, offered a different version. He testified that about three months ago, he and the plaintiff were lovers. He said that, Josefa told him, without offering an explanation, they would have to

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<sup>263</sup> Declaración de Josefa Serrano, June 11, 1912. See Toca de la causa instruída contra Refugio Cordero por el delito de violación, AGPJC, Caja 1913, 1ª Sala Penal, #655, 9, 4.

<sup>264</sup> Eileen Findlay says that the domestic setting shows that rape victims were "respectful of gendered spatial boundaries." See Findlay, "Courtroom Tales of Sex and Honor," 214.

stop seeing each other. He told the authorities that he was circling her home because Cirilo, her husband, was a seller and that he needed some things for his home.<sup>265</sup>

This situation demonstrated that rape cases many times came down to “he said, she said.” Had Josefa devised the story as Refugio claimed, then why would she have bothered to tell her husband about the rape? It seems that she had nothing to gain except perhaps to explain why Refugio had circled their home. Lipsett-Rivera found that men sometimes attacked former lovers when they were threatened with the termination of a relationship. In some cases, the relationship was delusional.<sup>266</sup> Nonetheless, whether there was a real relationship or whether it existed in Refugio’s imagination, either ending their relationship or her unwillingness to engage in a relationship, seems to have prompted his attack.

Cirilo, and possibly the court, believed Refugio’s testimony over Josefa’s version. The defendant’s allegation of adultery, again whether true or not, strategically cast doubt on Josefa’s virtuous and marital honor. Refugio testified that Cirilo and Josefa were no longer together and that Cirilo lived with another woman. This suggested that Refugio’s statements cast sufficient suspicion about Josefa’s character and sexual modesty to such a degree that her husband abandoned her following the complaint. The defendant then used Josefa’s abandonment to raise further questions before the court about her credibility and allegation of rape. If her own husband doubted her integrity, her reputation as a woman worthy of legal protections was compromised.

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<sup>265</sup> Declaración del acusado. Toca de la causa instruída contra Refugio Cordero por el delito de violación, AGPJC, Caja 1913, 1ª Sala Penal, #655, 9, 4.

<sup>266</sup> Sonya Lipsett-Rivera, “If I Can’t Have Her, No One Else Can”: Jealousy and Violence in Mexico,” in *Emotions and Daily Life in Colonial Mexico*, ed. Javier Villa-Flores and Sonya Lipsett-Rivera (Albuquerque: University of New Mexico Press, 2014), 75-76.

Compared to María's case, Josefa's story, from the viewpoint of her husband and of the court, was perceived as less trustworthy. While the women in both cases claimed that violence had occurred, in María's case, the aggressor used physical violence against the victim. In Josefa's case, the knife represented a threat of physical aggression. However, the women responded differently in the two cases. María, immediately following the rape, sought help. Josefa, however, did not scream during her attack, and her composure and behavior cast doubt on whether the sexual relations occurred against her will. Legally, Josefa's actions failed to meet the resistance requirement. A charge of rape by a married as well as by a single woman faced immense scrutiny. It appeared that Cirilo's abandonment undermined Josefa's credibility before the court. Notably, neither court acknowledged that the husbands' absences, not the women's unbridled sexual passions, made these two married women vulnerable to sexual violence.

Not all rape crimes committed against married women were perceived as an offense against the husband. In 1903, Petra Villanueva accused Pedro Hernández of raping her.<sup>267</sup> The plaintiff was married and lived in the mining region of Monclova, in Minas de Hondo, Foro 5. She told the court that she was sick and alone with her two children while her husband was incarcerated. Between the hours of 11:00 p.m. and midnight, Pedro broke into her home to assault her and demanded that she keep quiet. She said that Pedro uttered offensive words to her honor, saying he wanted to make use of her "*que silcabo . . . se lo habia llevado la chingada que se lo acabara de llevar,*" (if

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<sup>267</sup> Criminal contra Pedro Hernández por violación, AGPIC, Caja 1903 Penal, #779, 73 E, 2.

he was fucked already, then what the hell).<sup>268</sup> With a pistol in his hand, he raped her as her 10-year-old son and 7-year-old daughter slept.

Petra's situation was different from those of María and Josefa. While Petra had a husband, he was unable to help her because he was in prison. What prompted Petra to file a complaint? Through her testimony, she called on her honor as a family woman, head of her household, and enlisted the court's authority to procure justice. Petra was using the legal system as a protector to avenge her lost honor. She emphasized not only the sexual assault but that she was dishonored by her attacker's words. Further, the aggressor assaulted her in the presence of her young children. Had she not come forth, perhaps, no one else in the community would have learned about what happened to her. Yet, it was important to her and to her children that she file a criminal complaint against Pedro rather than to let his assault go unpunished. Married women, unlike single women, could not hope to obtain a marriage or monetary compensation, and therefore, their motivations for making a rape report have been explored by scholars. Lipsett-Rivera argued in her work that married women disclosed an attack because to remain silent essentially meant that they were in the category of women without honor to protect. Through airing the rape, the women reaffirmed their virtuous honor.<sup>269</sup> Likewise, the cases involving married women in Coahuila suggest that the married women believed that they possessed honor and thus approached magistrates with the expectation that the rapists would be punished.

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<sup>268</sup> Declaración de Petra Villanueva. Criminal contra Pedro Hernández por violación, AGPJC, Caja 1903 Penal, #779, 73 E, 2, 3. Chambers makes the point that being insulted within one's home was a serious affront because the home constituted an inviolable sanctuary. Chambers, "Private Crimes, Public Order," 31.

<sup>269</sup> Sonya Lipsett-Rivera, "A Slap in the Face of Honor: Social Transgression and Women in Late-Colonial Mexico," in *The Faces of Honor: Sex, Shame, and Violence in Colonial Latin America*, edited by Lyman L. Johnson and Sonya Lipsett-Rivera (Albuquerque: University of New Mexico Press, 1998), 194-196.

But as scholars have shown, a woman's testimony faced intense scrutiny, and judges exhibited a suspicion that they were less than truthful.<sup>270</sup>

Moreover, Petra's case is an example of the different ways that rape survivors interpreted a sexual offense as it related to the legal system. In this case, the magistrates found insufficient evidence to corroborate allegations that sexual violence occurred. The only witnesses were the parties involved and the plaintiff's children. The judge exercised legal discretion to compel the children to testify. However, due to their age and mental capacity, the law considered children as *inhábiles*, or inept, and thus, the authorities discredited their testimonies—and that occurred often with children's testimony. With this decision, the court revealed its bias against child testimony, as the attorney did not ask the children to testify about what they witnessed during their mother's alleged assault. Their familial relationship presented a conflict of interest in favor of the plaintiff, and legal procedure established certain criteria for witness testimony. In this occasion, the court did not even debate whether to ask the children to testify, because the authorities did not acknowledge the children as witnesses.

It is telling that in María, Josefa, and Petra's complaints, all three courts raised the issue of marital infidelity. Part of the reason for this unequal treatment was that the law differentiated between female litigants based on their status. All three litigants were married, but unlike María and Josefa, whose husbands had filed a complaint, in Petra's case, her husband was incarcerated. As all three cases indicate, the judges considered how a woman's sexual violation by extension affected her husband. In Petra's case, the

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<sup>270</sup> Piccato, *City of Suspects*, 120; Kanter, *Hijos Del Pueblo*, 64; Shelton, *For Tranquility and Order*, 89.

judge seemed to question her own familial honor because her husband was a criminal, and by extension this reflected negatively on her. It is unclear under what circumstances Petra's husband was incarcerated. Chambers' work explains that officials viewed an incarceration as dishonoring and that criminality could suspend a man's rights to citizenship.<sup>271</sup> Further, the judge appeared astounded that the two children slept on the very bed that the alleged sexual attack occurred. The transcript read the children ". . . continued sleeping in the room of the deed in her very bed!"<sup>272</sup> These words conveyed shock at the lack of propriety for sexual relations taking place in the presence of children rather than compassion at her dilemma. Beltrán-Garibay's study of the minor's tribunal in Mexico City found that living arrangements influenced tribunal outcomes. Middle-class reformers disapproved of co-sleeping between parents and their children because minors could witness adult sexual acts.<sup>273</sup> Similarly, Petra's household and living quarters did not meet the judge's standards of approval.

It also did not help Petra's case that another couple slept outside in her patio while the attack was occurring. This information undermined Petra's rape accusation. If there was someone within reach who could have assisted her, then why had she not screamed for help? Like in Josefa's case, when she did not cry out for help, her actions brought into question whether a rape had occurred. The magistrate's final ruling freed the alleged perpetrator because the court found insufficient evidence to prove that a rape had

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<sup>271</sup> Chambers, "Private Crimes, Public Order," 30-31.

<sup>272</sup> Declaración de Petra Villanueva. Criminal contra Pedro Hernández por violación, AGPJ, Caja 1903 Penal, #779, 73 E, 2, 3. The complaint reads, ". . . permanecieran durmiendo en ese cuarto del hecho en su misma cama!"

<sup>273</sup> Beltrán-Garibay, "Sex and the Nation," 176-177.

occurred.<sup>274</sup> The next section focuses on litigants who were single and working women to assess the values and legal protections that courtrooms determined were at stake in these cases as a point of reference to compare to cases involving married women.

### **Understanding Rape through Class and Social Hierarchies: Families and Young Women's Notions of Honor**

As the above cases demonstrated, the private sphere of the home could be a dangerous space. For domestic workers, the workplace was the home. Poor families placed young women to work in homes as a source of income to help with the expenses of the family. These young domestic workers were especially vulnerable to sexual violence from men in the household.<sup>275</sup> Young women and their parents presented complaints that revealed their own plebian understandings of honor. In 1912, in Saltillo, Brígida Garza, 15, testified that her employer, who used the title *Licenciado* Mauro Muñoz, raped her.<sup>276</sup> Brígida told the court that she was asked to bring her employer a drink. When she saw that her employer was alone in his bedroom, she was frightened and wanted to leave. However, the defendant grabbed her blouse, forced her inside, and then locked the door with a key. He then invited her to engage in an “*acto carnal*” (sexual relations), but she declined, screaming for help from her mother, who was in the kitchen. Mauro grabbed her by the arms and forced her to the bed while he simultaneously covered her mouth to prevent her from screaming. Brígida described how through his physical force he managed to have sexual relations with her. She added that through the

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<sup>274</sup> Criminal contra Pedro Hernández por violación, AGPJC, Caja 1903 Penal, #779, 73 E, 2.

<sup>275</sup> Katherine Elaine Bliss, “The Right to Live as Gente Decente: Sex Work, Family Life, and Collective Identity in Early-Twentieth-Century-Mexico,” *Journal of Women's History* 15, no. 4 (2004): 164-169.

<sup>276</sup> Criminal contra el Lic. Mauro Muñoz por el delito de estupro, AGPJC, Caja 1912 Penal, #643, 29F, 20. A licenciado is used to denote he was learned and/or professional that he had perhaps earned a university degree.

coitus, she continued to scream and ask for help until finally, through her cries, he released her.<sup>277</sup>

Again, Brígida's testimony followed the procedure found in other rape cases. Her testimony referred to criteria that courts followed in arriving at a verdict. Brígida testified that she resisted and screamed during the entire encounter. To muffle her cries, Muñoz alternated between placing his hand and a pillow over her mouth. Recounting her multiple acts of continued struggle against the defendant, Brígida told the court that the sexual relations were unwanted. Similar to the case that opened the study, afterward, the defendant handed the young woman 50 centavos, instructing her to not tell her mother, Stefana Cardenas, what had transpired.<sup>278</sup>

Brígida's defiance of the defendant's order to not tell her mother, and her female relatives' reactions, were examples of the meaning that this sexual violence had for her family. After her employer handed her the money, Brígida testified that she took it out of fear; then, she ran to tell her mother, aunt, and sister what had occurred. On hearing Brígida's story, the women began to cry. When the defendant heard the women's sobs, he asked what was wrong, but the mother replied that he knew why they were sobbing. To avoid the confrontation, Muñoz turned around to return to his bedroom, and Brígida's mother followed him, throwing a chair at the defendant, and the chair broke.

Brígida's mother testified that she was present when her daughter was called to take Muñoz a drink, but she thought nothing of it. The mother's words echoed those of

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<sup>277</sup> Declaración Brígida Garza. Criminal contra el Lic. Mauro Muñoz por el delito de estupro, AGPJC, Caja 1912 Penal, #643, 29F, 20, 2.

<sup>278</sup> Some defendants handed the victim money to establish consent, or payment for a service rendered similar to that of a prostitute. Courts interpreted this exchange of money or gifts as confirmation of consensual relations.

estupro (deflowering) that family members used to establish that the family was unaware of the sexual danger that an individual posed. Her statement allowed her to maintain her familial reputation. Otherwise, if she had suspected that sexual danger had lurked and ignored the warning, that knowledge would have made her partly to blame for her daughter's rape. Being a good family entailed guarding the female members' reputation by avoiding dangerous situations. Establishing this legal point, of chastity and honesty, served to uphold that the family was honorable and that the young woman—while she was raised in a working-class or a single-mother household—came from a good family worthy of legal protections.

In contrast to the rape cases involving married women, parents of single women wanted the offender criminally punished, and some parents desired civil indemnification. The economic compensation served two purposes. First, it symbolized reparation of the loss of sexual and familial honor. To some extent, this suggested that the young woman's sexual loss impacted her future ability to secure a marriage. Second, in cases involving women who became pregnant as a result of an assault, a monetary compensation helped the family care for the young woman and for her unborn child.

The way that courts levied economic compensation was symbolically different from the victim being handed money by a defendant following a rape. Through her testimony, Brígida stated that the defendant handed her 50 centavos and told her to keep quiet about what had occurred. His actions tarnished her sexual honor. This monetary exchange was equivalent to stating that the young woman was a prostitute. Thus, Brígida's defiance of Muñoz's order not to tell anyone was partly a way for her to

reclaim her honor by affirming that she had not sold herself, and thus, that she did not merit being treated similarly to a prostitute.

Considering the social and class disparities between the plaintiff, her family, and that of the defendant, the case demonstrated that poor plaintiffs indeed demanded legal rights. Further, mothers sometimes were tenacious in seeking justice for their daughters. Prior to filing a legal complaint, the mother confronted the defendant in his own home, and she was physically aggressive, throwing a chair at her boss. It is unclear whether the court interpreted the mother's actions as out of step with a normative feminine passive role or if her actions served to convey the outrage that she felt at her daughter's rapist. Before the law, the mother asserted her own legal identity, as she filed the criminal complaint without a male figure representing her. She had *patria potestad* over her daughter, and the court did not question her legal right. The outcome of the case further revealed this mother's resourcefulness in securing protection for her daughter.

In the end, the mother negotiated with the accused a settlement in exchange for legally desisting from the charges. The final notes describing this case indicate that the mother spoke with her daughter, who clarified that she had been *estrupada* but not raped. To be *estrupada* but not raped meant that the daughter had been seduced or deceived into a sexual relationship by her employer. Legally, this changed the entire meaning of the crime itself. A seduction meant that the relations were consensual rather than against the woman's will.<sup>279</sup> Legally, the young woman and her family would have been unable to procure a marriage (he might have been married already) or to meet legal criteria needed to punish the defendant. The transcript itself omits all information concerning the

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<sup>279</sup> *Código Penal del Estado de Coahuila (1900)*, 155.

negotiation between the mother and accused. Given the defendant's status within the community, he might have believed it was in his best interest to come to an agreement with the mother to avoid further public scandal, because the court deemed there was sufficient evidence to arrest him and begin a judicial proceeding. Still, there were significant economic differences. The court document states that the defendant employed up to three other members of the family of the victim—her mother, sister, and aunt. Despite the possible loss of employment that her family and extended kin faced, the mother was motivated to initiate a criminal complaint against her employer. Apparently, the courts sided with her family to some extent because they arrested the defendant.

Similarly, in the following case, the plaintiff's uncle pursued his niece's criminal complaint diligently to procure justice. While the case was tried as an estupro, the plaintiff's legal guardian, her uncle Jesús Herrera, complained to authorities that his niece, Esperanza Herrera, was raped by her boss, Anatolio Barrera.<sup>280</sup> The case occurred in 1910, in Allende. Esperanza had just been employed at the Oficina de Telégrafos. Here, the complaint was filed by the uncle, not by the girl's parents. Apparently, Jesús gained custody of his niece when his brother's wife fell ill en route to El Paso, Texas. In the meantime, Jesús agreed to care for his two nieces, one of whom was 7 years old and the other, 13 or 14. It appeared that the uncle had more clout than the parents. In the transcript, Jesús testified that he knew the president of the municipality and the local judge. He said he worked in the 4<sup>th</sup> Zone Command and originally was from Chihuahua.

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<sup>280</sup> Toca a la instancia por el abuso cometido por Anatolio Barrón, AGPJC, Caja 1910, 3ra Sala Penal Tocas, #966, 34U, 3SC-910-1.

Esperanza does not immediately disclose the sexual abuse. Instead, her uncle became suspicious through the arrival of a strange package, a jar from Anatolio. Jesús claimed that he took this jar to the local doctor and was told that its contents provoked abortions.<sup>281</sup> Esperanza told her uncle that Anatolio had raped her in the office. Though Anatolio was charged with estupro, the case concluded without an outcome. The case file comes to a close with Anatolio out on bail. Though the uncle complained about the judge's decision, another judge upheld the presiding judge's decision that found no merit for a complaint.

In this case, based on his social and economic position, Jesús sought a punishment against the accused. He did not seem as concerned in arranging a marriage between the defendant and his pregnant niece. The accused was incarcerated for five weeks and then was released on bail. Jesús complained that Anatolio continued to be employed with the telegraph company. He wanted the defendant corporally punished for his actions. He also desired that Anatolio lose his job where he enjoyed access to other young women. Comparing Esperanza's and Brígida's stories highlights the sexual danger that working young women faced. Though Esperanza's uncle was not successful in his complaint, the case showed that families did not passively accept judicial rulings and sometimes appealed verdicts.

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<sup>281</sup> Under Coahuila's penal laws of 1900, abortions were considered crimes against the individual—literally, “the person.” Examples of other crimes that were categorized under this grouping were physical assaults and lesions, homicide, parricide (homicides committed by a family member against another family member), infanticide, abandonment of children, and duels. Article 567 defined an abortion as the “extraction of the conception product, and a provoked expulsion at any stage during a woman's pregnancy;” however, an abortion was punishable only when it was consummated. Here, merely sending the young woman a jar filled with an alleged substance that provoked an abortion, did not meet the legal requirements for prosecution because the jar's contents were not consumed by the young woman. *Código Penal del Estado de Coahuila* (1900), 116.

The last case examined within this section occurred after 1932, when Coahuila's court system abolished its 1900 Criminal Code in favor of the new national code, the revised 1931 Criminal Code. One of the changes included the recategorization of rape as a sexual offense rather than as a crime against the order of the family, public morality, and decency. Federal lawmakers initially entertained the idea of categorizing sexual crimes—crimes against sexual freedom—but opted for the generic term sexual offenses.<sup>282</sup> The criminal suit was filed in 1936 in the centrally located region of Múzquiz.<sup>283</sup> The plaintiff, Joaquina Sandoval, 13, worked as a domestic servant. Her father, Bonifacio Sandoval, a married laborer and miner, who lived at rancho de Calvillo, testified that after four to five months of working for Felipe Iglesias, the accused, the father noticed his daughter was pregnant. When he confronted her and asked for the identity of the “author of her pregnancy,” the daughter refused to reveal the identity of the man who had dishonored her.<sup>284</sup>

The case raised credibility issues. First, a considerable interval of time had passed between the time of the alleged rape and the criminal complaint. It was more common in cases involving deflowering than in rape cases for a great deal of time to pass before charges were filed. The rape cases reviewed in this sample were filed soon after the crime. The birth of his granddaughter the month before finally prompted Joaquina to divulge her aggressor's name. Bonifacio explained to the judge that his daughter was

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<sup>282</sup> Beltrán-Garibay, “Sex and the Nation,” 232.

<sup>283</sup> *Averiguación instruída en contra de Felipe Iglesias por violación*, AGPJC, Caja 1936, Juzgado Penal de Sabinas, Exp. 1-28, 1.

<sup>284</sup> *Declaración de Bonifacio Sandoval. Averiguación instruída en contra de Felipe Iglesias por violación*, AGPJC, Caja 1936, Juzgado Penal de Sabinas, Exp. 1-28, 1.

threatened by Felipe and she had not disclosed his name because she was afraid that he would kill her.

The plaintiff's declaration discussed the rape further in terms of the moral and physical violence she had endured during the attack. In her declaration, Joaquina told the court that she had worked as a cook at Felipe's home. She stated that one night, she did not recall the exact date, but it was approximately 11 months ago while she slept, she awoke to find the defendant in her bed. Felipe intimidated her by telling her not to scream because he did not want his wife to hear, or he would kill her. Joaquina claimed that after Iglesias had sex with her, she fainted. When she came to, she found the defendant's wife and another domestic, Guadalupe, helping her. Following the attack, Joaquina remained quiet, fearing that the assailant would harm her. She told the court that the sexual abuse occurred again and again over the next three days. The sexual abuse finally stopped when on the subsequent day, her mother visited her workplace. Joaquina told her mother that she no longer wanted to work with the Iglesias family, but the mother remained unaware of the true reason behind her daughter's decision to leave her work. In her statement, Joaquina added that she had been a virgin.<sup>285</sup>

Joaquina's narration of her rape focused on the defendant's use of continued intimidation to frighten her from speaking out about the multiple rapes she endured while working in his home. However, for the courts, moral violence was not as compelling as physical violence. Moral violence, though recognized by the law, was largely viewed as intangible and therefore did not carry the same weight as visible evidence of a rape.

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<sup>285</sup> Declaración de Joaquina Sandoval. Averiguación instruída en contra de Felipe Iglesias por violación, AGPJC, Caja 1936, Juzgado Penal de Sabinas, Exp. 1-28, 1.

Further, the courts were skeptical of plaintiffs who failed to resist or make an effort to prevent further sexual abuse. Hence, Joaquina's stories of ongoing, unwanted sexual abuse were not credible to the court. In the court's estimation, if a true victim did not desire sexual relations, then she would have been able to prevent the rape. Thus, the court interpreted the abuse as compliance. However, based on Joaquina's testimony, her decision to remain quiet about the abuse during the days it was occurring was a choice she made to preserve her life. Over and over, she repeated to the court and to her father that she was afraid her assailant would kill her if she disclosed his name. The power that fear held over her was such that she remained quiet about his identity, even after her family realized she was pregnant. From Joaquina's perspective, she showed resistance by choosing to leave her workplace. In the magistrate's view, this detail was not perceived as an act of resistance.

Enormous social and economic differences separated the plaintiff and her family from that of the defendant. The accused, Felipe, 46, was a businessman, originally from the city. The defendant vocally, legally, and even scientifically refuted the allegations as a "*calumnia*" (false accusation).<sup>286</sup> As a man of means, he used his status in the community to defend himself. Through his testimony, Felipe attempted to discredit Joaquina, arguing that she worked elsewhere at that time and suggested that she had gotten pregnant at that residence. He demanded that Joaquina provide the date when the alleged attack occurred. Similar to defendants in deflowering cases, Felipe cast doubt on the young woman's character, pointing out that she did not fulfill the honest-chaste

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<sup>286</sup> Declaración del acusado, Felipe Iglesias. Averiguación instruída en contra de Felipe Iglesias por violación, AGPJC, Caja 1936, Juzgado Penal de Sabinas, Exp. 1-28, 1, 4

requirement considered in estupro cases. However, the defendant erred in bringing up Joaquina's character because those were elements that courts used in deflowering cases, and this was not a deflowering complaint. According to rape laws, a rape was an unwanted sexual relation that occurred because the perpetrator of the crime had employed physical or moral violence.<sup>287</sup> Hence, the written definition of rape omitted any mention of chastity and honesty as criteria for determining the crime. Still, defendants raised these issues during their testimonies, and magistrates, too, came to consider those elements before issuing their verdicts.

Next, Felipe employed a third strategy in his case against Joaquina. In deflowering and rape cases, sometimes defendants claimed that another man had committed the crime. Felipe testified that Joaquina had worked in the Ibarra household for a quarter of the previous year. Again, he claimed that the plaintiff was not a reputable woman by alleging that she had not lived with her family during her stay at the Ibarra ranch. Then, he offered the court the names of three individuals to verify his statement.<sup>288</sup>

The witnesses supported the defendant's story, as each claimed to have seen Joaquina at the Ibarra's ranch. One man claimed he had seen her as he passed through on his way to another hacienda. The other two men testified they had seen her because they were working with the livestock at the Ibarra ranch. Even the defendant's current domestic help testified on his behalf. Guadalupe, 16, confirmed that Joaquina had worked for Felipe for four days but then had left to work for the Ibarra family for a month. When questioned about whether she noticed anything peculiar about the plaintiff, Guadalupe

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<sup>287</sup> *Código penal para el Distrito* (1936), 126.

<sup>288</sup> Declaración del acusado, Felipe Iglesias. Averiguación instruída en contra de Felipe Iglesias por violación, AGPJC, Caja 1936, Juzgado Penal de Sabinas, Exp. 1-28, 1, 4.

denied knowing anything, adding that she once observed that the plaintiff was sick but that she thought it was caused by indigestion from having eaten too many tamales.<sup>289</sup>

Indeed, the case stood out for all the legal strategies used by the defendant to refute the plaintiff's rape allegation. Felipe told the court that Joaquina was only trying to coerce money out of him. In this regard, he was correct because the primary motivation prompting the father to launch the criminal proceeding was monetary restitution. With Joaquina's baby, the family had another mouth to feed. In addition to the economic reparation that the family hoped to obtain, her father also was asserting his paternal rights to familial honor for his family. He refused to allow this wealthy man to wield his monetary and social status to get away with the rape. According to the father, his family had suffered the stain of the girl's pregnancy. And until the birth of his grandchild, the fear his daughter felt for the accused had outweighed the fear and respect she owed to Bonifacio by not revealing his name. Yet, Bonifacio did not emphasize all of the above points; instead, he focused on the fear that compelled his daughter to remain silent about the crime and that the child was conceived as a result of the rape. What had shifted the defendant's and plaintiff's testimonies from earlier cases?

By 1936, Mexico's medico-legal scientific community was further established, and the defendant used it as a fourth strategy to discredit Joaquina. Felipe emphasized that mathematically, it was not possible that he had access to the young woman. He said the plaintiff had worked in his home 14 months earlier, and since then, he had not seen her. Again, he reiterated his former demand that Joaquina provide the exact date when the

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<sup>289</sup> Testigos del acusado. Averiguación instruída en contra de Felipe Iglesias por violación, AGPJC, Caja 1936, Juzgado Penal de Sabinas, Exp. 1-28, 1, 4.

rape occurred. He asked that the plaintiff present the baby before the court so that an “expert,” a doctor, could see the infant, determine its age, and try to use that information to determine when conception had occurred. As Nora Jaffary has detailed in her research, Mexican obstetrics had risen in eminence by the nineteenth century.<sup>290</sup> The latter request to call on municipal doctors to testify signaled the growth of the medical community within Coahuila’s legal system. In rape cases, doctors were limited primarily to examining the woman, and depending on the crime, if it involved a venereal disease, to examine the defendant. Yet, in this occasion, the defendant was asking that the doctors examine the child as well. In other words, the defendant was asking for additional scientific involvement that in the past had not been exercised. In previous cases, authorities called on doctors and midwives to examine the plaintiff. In this incident, the defendant sought corroboration of trial evidence through the only means available, a physician.

Through the discretionary power that judges possessed to decide which witnesses offered testimony, judges impacted verdicts. The auxiliary judge who presided over Petra’s case did not compel her children to testify. We can infer from his actions that he opted toward the standard protocol, which disavowed minors younger than 14 from bearing witness in criminal matters. According to the rules of criminal procedure, only in dire circumstances should witnesses younger than 14 testify. However, another rule on criminal procedure stated that the statements of witnesses younger than 9 could be

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<sup>290</sup> Nora E. Jaffary, “Full of the most punishable shame:” Monstrosity and Pathology in Nineteenth-Century Mexico (paper presented at the 63<sup>rd</sup> annual meeting of the Rocky Mountain Council for Latin American Studies, Santa Fe, NM, March 30-April 2, 2016). Mexican obstetricians developed their own procedures, instruments, and maneuvers specifically suited for Mexican women’s bodies.

admissible, at the discretion of the judge, but these children should be admonished to speak the truth.<sup>291</sup> The chapter on sexual crimes against children shows that children as young as 7 offered declarations in criminal matters. The presiding judge permitted three male witnesses to testify on behalf of the defendant; as his employees, these men had interests in the outcome of the case. Procedurally, this meant that the defendant's witnesses were not impartial. The court's position was undetermined because the case concluded abruptly when the defendant died of pneumonia.<sup>292</sup>

### **Testing Exceptions to Resistance**

As court documents have demonstrated, physical resistance by the victim was a critical element in rape litigation. However, the penal code recognized that some individuals were unable to mount a defense. Article 785 extended legal protections to individuals deemed mentally or physically feeble. Under this article, the definition of rape included "copulation with an individual without understanding or reason, though they may be of age."<sup>293</sup> Even if the young woman had reached the age of majority, 21, perpetrators could not utilize consent as a defense with a physically or mentally disabled woman. Through this article, lawmakers recognized that a class of individuals in society, including those having mental disorders and the elderly, were easy prey for sexual predators. Courts applied the elements discussed in Article 785 arbitrarily, issuing a guilty verdict in a case involving a deaf mute plaintiff when a medical examination

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<sup>291</sup> *Código de procedimientos penales* (1884), 52-58. See Article 253 and 281.

<sup>292</sup> Averiguación instruída en contra de Felipe Iglesias por violación, AGPJC, Caja 1936, Juzgado Penal de Sabinas, Exp. 1-28, 1.

<sup>293</sup> *Código Penal del Estado de Coahuila* (1900), 155. This legal clause is Article 785 under Coahuila's 1900 Criminal Code. And, Article 796 under the 1871 Criminal Code. Martínez Roaro, *Delitos Sexuales*, 129. Conde Torres, "El delito de violación," 10.

determined she met the criteria of being mentally feeble.<sup>294</sup> Whereas in a case involving a young blind woman, Licenciado Benito Flores, a magistrate of Coahuila's Supreme Tribunal of Justice, ruled that based on the physician's report, she must have consented to the rape because her physical development was similar to that of her alleged rapist.<sup>295</sup> Piccato has noted that doctors could detrimentally impact victim's cases.<sup>296</sup> Intriguingly, none of the courts cited Article 785 in the blind woman's case, which in part is explained by judges' flexible application of legal categories.

Legally, the written statutes discussed two exceptions to resistance: an unconscious person and persons who lacked the capacity to reason. Being asleep or in a similar vulnerable position compromised an individual's ability to consent to sexual relations.<sup>297</sup> Mental illness resulting from temporary psychological withdrawal or from organic mental incapacitation diminished an individual's ability to make free, informed, or rational choices.<sup>298</sup> Thus, these two classifications were the only codified extenuating circumstances within rape laws that lawmakers believed prevented an individual from mounting resistance. The law determined that individuals in these at-risk positions were incapable of consenting or resisting, resulting from either their unconscious state or inability to reason.

As discussed, through the penal code, lawmakers attempted to make provisions for disabled individuals. Only two cases found in the study tested the court's exemption

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<sup>294</sup> Judges applied Article 785 in two cases within this study.

<sup>295</sup> Causa instruída contra Juan Jacio por el delito de estupro, AGPJC, Caja 1902 Penal, #770. Licenciado Benito Flores presided over the 2<sup>a</sup> Sala of the Superior Tribunal of Justice.

<sup>296</sup> Piccato, *City of Suspects*, 123.

<sup>297</sup> Ejecutoria No. 63. Criminal contra Fortino Baca por estupro frustrado, AGPJC, Caja 1917 Penal, #590, No. 194, 4-5.

<sup>298</sup> Celestino Porte Petit Candaudap, *Ensayo dogmático sobre el delito de violación* (México: Editorial Porrúa, S.A. 1985), 32.

rule. In a case in 1917, the court focused on the plaintiff's mental capacity because she was a deaf mute.<sup>299</sup> At stake was whether the plaintiff's case met the requirements of Article 785, which defined the use of violence as engaging in sexual relations with a person who was unconscious or who was of age but lacked the ability to reason.

In 1917, Josefa Ramos Galindo's father, Marcelino Ramos Galindo, appeared before the court to accuse his niece's brother, José Gutiérrez, of raping his 22-year-old daughter. Her pregnancy compelled the father to file the criminal complaint. After a medical examination, two physicians declared that she was mentally stable. In other words, through the medical statement, they disqualified Josefa from special protections afforded through Article 785. Thus, her case would have to proceed as a typical rape case, necessitating that she substantiate that the sexual relations were nonconsensual. But when the court personnel arrived at the plaintiff's home to take her statement and to physically exam the girl, they were denied access to her by her mother. While the father had initiated the court proceeding, Josefa's mother remained involved with the daughter's situation. She stood up to the men, asserting that her husband had given explicit orders not to allow the girl to be interrogated while he was away.

Denying the medical and legal authorities from carrying out their protocol negatively impacted the case. The court found insufficient proof of moral or physical violence. As mentioned, because Josefa had full use of her mental faculties, she did not meet the criteria for Article 785; therefore, the judge freed José. The family appealed the court's decision, and apparently Josefa's father returned from his trip because the court

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<sup>299</sup> Toca a la segunda instancia de la causa instruída por violación contra José Gutiérrez, AGPJC, Caja 1917 Penal, #589, 63G, 10.

transcript contained doctors' statements. The municipal doctors claimed that Josefa lacked the ability to reason, and their physical examination documented that she had been deflowered. The authorities once again apprehended José and proceeded with the criminal investigation. Ultimately, the record omits the outcome of the case. The appeals magistrate's perceptions about Josefa's mental capacities differed from the first magistrate's opinion of the young woman. He did not consider that Article 785 entitled her to additional legal protection. Because the court transcript failed to record the plaintiff's testimony, it is difficult to assess how the plaintiff interpreted her sexual violence. The former cases illustrated that families contested the courts' decisions, and they also disputed court rulings. Brígida's mother dropped the charges only when she had negotiated a settlement with the accused, her employer. In Josefa's case, her father appealed the first court's verdict to reinitiate a criminal proceeding.

### **Breaking and Entering**

I close with the following case, in which the plaintiffs obtained the verdict they sought. Though the case was not filed as a rape complaint, the story resembled the married plaintiff who was assaulted at night, in her home, in the presence of her children. The case started in 1910 in the Hacienda de Santa Ana in Monclova.<sup>300</sup> Nicolás Rivas told the court that when he returned home, his wife, Manuela Garza, 22, said that between 9:00 and 10:00 p.m. the previous night, Nicolás García broke into their home while she was alone with her two sons (their ages were not listed). The wife claimed that she was in bed when the defendant bound her hands but that she managed to escape to the

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<sup>300</sup> Criminal contra Nicolás García por allanamiento de morada y atentados contra el pudor, AGPJC, Caja 1910 Penal, #969, 37U.

street where she asked a neighbor, Benito, for help. Manuela stayed at her neighbor's home until the break of dawn when she headed over to the auxiliary judge of the hacienda so that he could inform the police authorities about her alleged rape. In her court declaration, Manuela testified that at first she thought the defendant was her husband. Twice, she called out for the individual to identify himself, but his reply was "*Oiga senora*" ("Listen ma'am"). At that point, she realized that a stranger was in her home. Then she recognized the intruder's voice as that of Nicolas.

But the question is, why did this case result in a guilty verdict where other cases involving sexual attacks failed to convict the suspect? Judiciary bias often underlies the prosecution of sexual crimes. Issues of credibility impact which women are deemed worthy of protection, and at the center of those conceptions is that a woman cannot be raped against her will. The rape cases prosecuted, as Figure 3 shows, involved minors; only two cases involving adult women were adjudicated.<sup>301</sup> As Findlay put it, there is no such thing as a nonconsensual heterosexual sexual relation.<sup>302</sup> Here, legally, the plaintiff took the appropriate actions that an actual victim would to avoid sexual assault. First, the victim resisted and fled to a neighbor for help. Further, her valor fleeing in the middle of the night did not go unnoticed. Crimes committed at night, especially in the home, posed a greater danger for harm, and these elements were considered aggravating circumstances. Criminals who attacked at night were deemed to be vicious, because at night, less help might be available. Further, home attacks threatened the integrity of the community, causing scandal and panic. When Manuela reached her neighbor's home, she

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<sup>301</sup> Refer to Appendix A for the age distribution of rape crimes.

<sup>302</sup> Findlay, "Courtroom Tales of Sex and Honor," 201-222. Findlay points out that judges believed some rape cases were actually estupro crimes.

fainted. Fainting demonstrated her feminine role of needing protection. The act of fainting also displayed her fear and nonconsent to the presence of a stranger in her home. It was strategically beneficial for her case that she fainted in the presence of her two neighbors—not during the attack, such as when the 13-year-old fainted while her employer assaulted her.<sup>303</sup> And further, Manuela’s neighbors testified to the court about her fainting episode. Finally, the accused’s admission of guilt essentially sealed his fate.<sup>304</sup>

Manuela’s actions adhered to how courts believed an actual victim would act if confronted by a rapist. She was a married woman who boldly guarded her sexual honor by doing everything at her disposal to flee from the sexual attack. In fact, she even left her children in the process, and yet no one questioned her motherhood. Motherhood came second to guarding her honesty. Manuela did not let fear prevent her from seeking help, and she was able to present witness corroboration that the courts believed. Here again, the court did not compel her children to testify. Manuela’s actions reinforced the notion that actual victims avoid rape. Therefore, women who are raped must have consented to the sexual relationship because after all, heterosexual relations were consensual.

The appeals court reflected on those notions. The magistrate’s notes said that Manuela was an honest woman. While the defendant showed premeditation entering the victim’s home at night, binding her hands in hopes of having carnal access, the crime nonetheless was not consummated. The court determined that the most severe crime

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<sup>303</sup> Declaración de Joaquina Sandoval. Averiguación instruída en contra de Felipe Iglesias por violación, AGPJC, Caja 1936, Juzgado Penal de Sabinas, Exp. 1-28.

<sup>304</sup> Criminal contra Nicolás García por allanamiento de morada y atentados contra el pudor, AGPJC, Caja 1910 Penal, #969, 37U.

committed here was *allanamiento de morada*, (entering and depriving the plaintiff of a home). Eventually, the court removed the charge for *atentado contra el pudor*, an attempt against her decency, and the defendant was sentenced to two years, four months and 15 days of incarceration and was fined 150 pesos.<sup>305</sup>

The court responded favorably to the defendant's admission of guilt by reducing the sentence. The court record omits details about why the defendant admitted to his crime. We can speculate why. His testimony conveyed criminal inexperience or a coerced confession. When Nicolás was brought in for questioning, he agreed with the plaintiff's version of the events. He told the court that he was a single, 20-year-old, farm laborer residing in the plaintiff's community. He confessed to taking advantage of the fact that Manuela's husband was out working when he attacked her. He admitted that he had no prior dealings with Manuela but seemed to know her family because he said he knew that she had daughters. With this statement, the defendant dispelled any notions of sexual impropriety between him and the woman—unlike the case involving the 18-year-old married woman in which the defendant claimed they had a prior relationship.<sup>306</sup> Further, the defendant testified that after the woman recognized his voice, he departed.

Admissions of guilt in the justice system revealed that the criminal was not a habitual offender—but rather that he could be reformed. Following the defendant's confession, the case file continued for some time, and further notifications were issued. The court's concern was whether he was legally of age to face prosecution as an adult.

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<sup>305</sup> Criminal contra Nicolás García por allanamiento de morada y atentados contra el pudor, AGPJC, Caja 1910 Penal, #969, 37U.

<sup>306</sup> Toca de la causa instruída contra Refugio Cordero por el delito de violación, AGPJC, Caja 1913, 1ª Sala Penal, #655.

Although Coahuila's jurists held that minors under the age of majority, 21, could be prosecuted and punished for crimes, minors were not punished the same as an adult. For minors older than 14 but younger than 18, reclusion was not to exceed two thirds of the sentence given to criminals who had reached the age of majority.<sup>307</sup> Indeed, a church's parochial birth entry for Nicolás confirmed his age at 20.<sup>308</sup>

## **Conclusion**

Rape charges were extremely difficult to adjudicate. The legal codes established standards of evidentiary procedures that rape victims often were unable to substantiate. These included meeting the elements to verify that sexual intercourse was not consensual by offering evidence of moral or physical violence that the courts would find compelling. Then, there was the question of resistance, which was not specifically expressed in the written law but was a part of the courtroom practice that magistrates utilized to separate rape from sex. The liberal codes of 1871 did little to offer women equality with respect to sexual crimes. As one scholar noted, the chapter heading for sexual crimes essentially sexually normalized these codes by placing an emphasis on women's sexuality. On women's sexual comportment rested the "order of the family, public morality, and good customs."<sup>309</sup> Sexually assaulted woman, as defined in the Criminal Code of 1871, had not attained a juridical identity—women were not the subject because ultimately, sexual crimes were about upholding familial honor and sexual propriety and the role of the father/husband.

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<sup>307</sup> *Código penal para el Distrito Federal (1873)*, 74. See Article 225.

<sup>308</sup> Criminal contra Nicolás García por allanamiento de morada y atentados contra el pudor, AGPJC, Caja 1910 Penal, #969, 37U.

<sup>309</sup> Szasz, "Sins, Abnormality, and Rights," 61-68.

Magisterial bias further compounded the difficulties faced by rape victims. The laws and legal practice alone revealed discriminatory practices. Attempts in the liberal laws were underway for women's personhood but had yet to reach sexual statutes. Women were placed on a social hierarchy and entitled to disparate legal protections based on their status. Cases involving married women brought different challenges to the court than did cases involving single women. In cases involving married women, magistrates often looked to protect the interest of the husband rather than of the offended woman. An example was the case involving the married pregnant woman who miscarried after her sexual attack. The court's notes reflected a greater concern about her husband's sexual honor than about the woman's attack, much less about the loss of the fetus.

Despite the legal system's obstacles, young women's testimonies reflected their own understanding of the sexual violence. Women used the legal framework to litigate how the violence impacted their honor, decency, and ultimately that the defendants' actions violated their community's good customs. Thus, the women used language to which magistrates would respond favorably. Women claimed honor through their roles as wife, mother, and working poor, to protect the interests of their families and especially of their children. Families employed diverse strategies to obtain economic compensation for pregnant daughters, while others challenged court rulings sometimes successfully. Further, while courts often interpreted rape victims' actions as evidence of participation or as a lack of resistance to the assault, these were strategies of survival to deal with a sexual assault. Some of the victims actively ran away and escaped from the attempted assault, while others froze, not knowing how to respond to an attack. But, testimonies by the victims revealed that they had acted out of fear for their lives and to avoid bodily

harm. Filing a rape complaint by women and their families in and of itself was an assertion that they believed they were entitled to justice.

## CHAPTER 4

### PROTECTING “THE GREATEST AND MOST SACRED TREASURE OF THE HOME”: CHILD SEXUAL VIOLENCE CASES

“We consider it an inalienable duty to be responsible for providing justice while ensuring the welfare and tranquility of our society, to punish with the full rigor of the law these individuals who without scruples and without respect for the basic principles of morality constitute a danger . . . [W]e urge you to punish this individual in an exemplary manner for his affront and opprobrium, for he does not know how to respect the greatest and most sacred treasure of the home, children.”<sup>310</sup> (The Society of Parents and Teachers of School ART. 103, Amado Nervo, 1936, Nueva Rosita)

This chapter examines the dissonance between familial ideals of society and the adjudication of child sexual crimes. Social and judicial prejudices toward poor, rural, and female-headed households negatively impacted victims whose families failed to conform to ideals of the patriarchal model. Bianca Premo’s definition of patriarchy is based on the belief that individuals, depending on their age and gender, were “naturally subordinate to an authority figure, usually a man, who held superiority based on the hierarchical model of the Western family.”<sup>311</sup> Premo’s definition describes the unequal power relations between adults and children that are reflected through child sex crimes. However, as Ana María Alonso says, the mid-nineteenth century laws ushered in a modernization of

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<sup>310</sup> The words of La Sociedad de Padres de Familia y Maestros de la Escuela ART. 103 “Amado Nervo,” were directed in a letter to the district judge in Múzquiz, Coahuila in 1936. “Consideramos un deber inalienable para los encargados de suministrar la justicia y velar por el bienestar y tranquilidad de la sociedad, castigar con todo el rigor de la Ley a estos individuos que sin escrúpulos de ninguna naturaleza y sin respetar los más elementales principios de moralidad, constituyen un peligro para la salud pública. Por tal motivo, esta Sociedad de Padres y Maestros, encarece a Ud. Intervenga ante este acto de afrenta y oprobio, para que se castigue de una manera ejemplar a este individuo que no sabe respetar el Tesoro más grande y sagrado de los hogares, los niños. Averiguación instruída en contra de Alberto González por atentados al pudor, tentativa de violación y lesiones internas, Caja 1936 Penal, AGPJC, 51, No. 610.

<sup>311</sup> The Roman definition of patriarchy is a father’s right to rule over his children. Bianca Premo’s definition of patriarchy takes a broader view. Bianca Premo, *Children of the Father King: Youth, Authority, & Legal Minority in Colonial Lima* (Chapel Hill: University of North Carolina Press, 2005), 9-12.

patriarchy. Liberalism brought reforms to patriarchal authority. The home was subject to state intervention, especially when fathers were abusive; incest is an example of the state's authority to curtail parental rights. But as Alonso explains, the very prosecution of sexual crimes—estupro and rapto—reveals a compromise between state and patriarchal authority. Without the complaint of the victim or her guardians, the state could not prosecute these types of crimes automatically.<sup>312</sup>

Since colonial times, minors enjoyed protected legal status through civil and criminal legislation. The law required that children had to be 14 or older to testify in civil cases and 20 or older to testify in criminal cases.<sup>313</sup> These clauses were meant to safeguard children, but it also appeared that officials believed that children's declarations were tainted, and hence, authorities were suspicious of child witnesses. Other laws outlined punishment for minors who committed crimes. Minors found guilty of criminal offenses received reduced prison terms—sometimes served at a correctional facility rather than at a penitentiary.<sup>314</sup> Sentences modeled toward rehabilitation reflected positivist influences that advocated for education rather than for punishment. Officials understood sexual violence as a social problem that education could correct.<sup>315</sup> Similarly, the lawbooks contained provisions meant to protect children against sexual crimes. Estupro and rape statutes used age as a marker for granting younger victims greater

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<sup>312</sup> Alonso, "Love, Sex, and Gossip," 44. The law allowed a victim and her family the option to maintain anonymity in matters that if aired would result in greater harm.

<sup>313</sup> Victor Uribe-Urán, *Fatal Love: Spousal Killers, Law, and Punishment in the Late Colonial Spanish Atlantic* (Stanford: Stanford University Press, 2016), 42-43. In cases where children testified, officials regarded minors' declarations as a presumption or a clue.

<sup>314</sup> *Código penal para el Distrito Federal (1873)*, 48, 74. See Articles 127 and 224-225.

<sup>315</sup> Swedberg, "Dangerous Women and Macho Men," 108.

protections against sexual predators. Laws regulating incest protected children against interfamilial sexual abuse.

This chapter argues that in the realm of sexual crimes against children, legislation reflected an ideal rather than a reality—because judiciary biases failed to protect the majority of children from sexual danger within and outside the home. Children from poor families were often viewed as deserving less legal protections. Judges in Coahuila exhibited biases against litigants from lower-class sectors, and court rulings suggested that the plaintiff’s gender made a difference.<sup>316</sup> Officials believed that working-class men were naturally lascivious, and authorities thought that the victims had seduced the men.<sup>317</sup>

Scholars working in the colonial period in Mexico discovered that young girls were implicated in their sexual violence. Lipsett-Rivera argues that defendants and their defense attorneys manipulated the notion of *malicia* (malice) to sexualize the rape of young girls and to evade prosecution. Malicia indicated sexual awareness and transformed young, innocent children into temptresses capable of luring a man into sex.<sup>318</sup> Likewise, Castañeda’s analysis of sexual crimes against children during the colonial period in Guadalajara shows that judges believed that the testimony of some girls was not truthful. Therefore, girls’ declarations alone were insufficient evidence to prosecute rapists.<sup>319</sup>

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<sup>316</sup> Garza, *The Imagined Underworld*, 19; Piccato, *City of Suspects*, 108, 113; Shelton, *For Tranquility and Order*, 92. Shelton says that female relatives who filed criminal complaints were less likely than a male relative to successfully win an estupro case.

<sup>317</sup> Swedberg, “Dangerous Women and Macho Men,” 108.

<sup>318</sup> Lipsett-Rivera, “The Intersection of Rape and Marriage,” 577.

<sup>319</sup> Carmen Castañeda, “La Memoria de las Niñas Violadas,” *Encuentro* 2, no. 1 (October-December 1984): 54.

For this reason, modern judges, like their colonial predecessors, ruled that incest and estupro victims had consented or were willing participants in sexual acts perpetrated against them. A child's failure to resist, scream, and to notify adults about sexual improprieties and especially about ongoing sexual abuse embodied malicia.<sup>320</sup> Judges in Coahuila did not often cite malice; instead, courts referred to children's innocence, sexual inexperience, and chastity. Legal clauses that connected with victim's ages were part of the modern evolution of the concept of malicia.

In some cases, the gender of the victim appeared to shape the outcome of a case. For instance, the abuse of a male child had a greater likelihood of being classified as a rape crime, which carried a harsher sentence.<sup>321</sup> Cases involving female children often were classified as estupro, which meant that the girl had been seduced and consented to the sexual relations. Though male children testified that suspects had offered gifts and money in exchange for running an errand, as a pretext to lure the children into a secluded area where they were abused, the law deemed that a male child was incapable of being seduced.<sup>322</sup> Thus, the difference in the classification was based on the victim's gender.<sup>323</sup> Women and children's cases, as Piccato argues, were "downgraded by judges to statutory rape, or simply abduction . . ."<sup>324</sup> Piccato attributed this distrustful view of female victims to judicial prejudice. This chapter begins with a discussion of the Mexican family model

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<sup>320</sup> Lipsett-Rivera, "The Intersection of Rape and Marriage," 577-578.

<sup>321</sup> Six of the eight cases involving male children were charged as rape.

<sup>322</sup> For example, Criminal instruída contra Simón Huerta por violación, AGPJC, Caja 1921 Penal, #508; Criminal instruída contra Simón Huerta por violación, AGPJC, Caja 1922 Penal, #434; Criminal instruída contra Francisco Jaramillo por violación, AGPJC, Caja 1927 Penal; Causa instruída contra Manuel Muñoz Medina por violación, AGPJC, Caja 1936 JIPST, Exp, 1-21.

<sup>323</sup> Estupro crimes applied only to women whereas rape was gender neutral.

<sup>324</sup> Pablo Piccato, "El Chalequero" or the Mexican Jack the Ripper: The Meanings of Sexual Violence in Turn-of-the-Century Mexico City" *Hispanic American Historical Review* 81, no. 3-4 (2001): 623-651.

as depicted by civil law, by parental rights and expectations, and by children's rights and roles within the family.

### **The Family**

The 1859 Law on Civil Marriage placed marriage proceedings under the purview of civil authorities.<sup>325</sup> As discussed in the introduction, liberal legislation reflected the ideal family unit as nuclear, headed by the father. Civil law granted fathers paternal authority over their children.<sup>326</sup> A married woman's legal identity was subordinate to that of her husband. Arrom's work notes that the wife, without her husband's permission, could not litigate in court, enter into civil contracts, or exercise legal representation over her children. But a single, widowed, or separated woman could legally hold paternal authority over her children.<sup>327</sup>

Scholars have linked women's expanded rights over their children with the Bourbon reforms and liberalism.<sup>328</sup> Lipsett-Rivera identified changes in the significance of marriage, the family, and women's custodial rights with female education. She also notes that subtle changes linked with eighteenth century reforms also impacted the legal sphere. In courts, wives asserted their maternal moral authority, and officials granted

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<sup>325</sup> Sloan, "The Penal Code of 1871," 303.

<sup>326</sup> The national and state civil codes used to describe the family, family relationships, marriage, and laws regulating illegitimate children are based on an analysis of the 1884 Civil Code (national), 1898 Civil Code (state), 1917 Law of Family Relations (national), 1928 Civil Code (national, in effect in 1932), and the 1941 Civil Code (state). The Porfirian-period civil codes I refer to are the 1898 Civil Codes; for the postrevolutionary period, I refer to the 1917, 1928, and 1941 legislation. (The national 1870 Civil Code was in effect prior to the implementation of the 1884 Civil Code.)

Patria Potestad referred to paternal authority over the person and over the goods of legitimate sons, natural legitimate sons, and over recognized children. *Código civil del Estado de Coahuila (1898)*, 47. See Articles 365, 366, and 374. Also see my discussion of Arrom's work in the introduction. Arrom, "Changes in Mexican Family Law," 310.

<sup>327</sup> Arrom, "Changes in Mexican Family Law," 309.

<sup>328</sup> Bourbon reforms also aimed to inculcate in Mexico City's poor urban inhabitants the value of sobriety, propriety, and hard work. See Pamela Voekel, "Peeing on the Palace: Bodily Resistance to Bourbon Reforms in Mexico City," *Journal of Historical Sociology* 5, no. 2 (June 1992): 183-208.

them child custody. Like Arrom, Lipsett-Rivera found that lawmaker's legal debates during the nineteenth century reflected social views that mothers had the right to exercise control over their children. Situations in which a husband failed to support this family and gave his wife and children *malos tratos* (spousal abuse) challenged father's rights to patria potestad in court proceedings.<sup>329</sup> Similarly, Coahuilense judges recognized mother's rights to litigate on behalf of their children. But, for the most part, officials did not challenge paternal rights, even in cases involving alleged sexual crimes.<sup>330</sup>

Further, the ideals espoused through the 1917 Law of Family Relations for greater equality between spouses and shared parenting did not radically alter gender relationships. Rather, those codes reified normative roles for women and men.<sup>331</sup> At the same time, state intervention in the homes and lives of families that failed to conform to the ideal family created another version of the household for families facing legal troubles. In those cases, the state, through laws, gave women greater economic freedom to engage in labor and to fulfill their husbands' home obligations. While the family and civil laws may appear paradoxical, that characteristic was symptomatic of the era of Mexican state formation.<sup>332</sup> To be sure, the Mexican state made these legal concessions to women whose family life failed to adhere to the ideal of the father-headed household. But, officials desired that the Mexican citizenry adopt a middle-class version of the

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<sup>329</sup> Sonya Lipsett-Rivera, "Marriage and Family Relations in Mexico during the Transition from Colony to Nation," in *State and Society in Spanish America during the Age of Revolution*, ed. Victor Uribe Urán (Wilmington: SR Books, 2001), 121-148. Lipsett-Rivera's investigation focuses on *malos tratos* (spousal abuse) and suits for ecclesiastical divorce petitions.

<sup>330</sup> I found one case in which a judge deprived a defendant of his rights to paternal authority.

<sup>331</sup> Ann Varley, "Domesticating the Law," 145-161.

<sup>332</sup> Social reforms initiated by the post-revolutionary Mexican state aimed to promote change in the citizenry. Alan Knight, "Popular Culture and the Revolutionary State, 1910-1940," *Hispanic American Historical Review* 74, no. 3 (1994): 394.

family that adhered to traditional conservative gender and family roles. The next section focuses on minors, the father-child relationship, and immediate and extended family members' rights and responsibilities to one another and in particular, to minors.

### **Authority, Minors, and the Extended Family**

According to civil law, individuals who had not reached the age of majority, 21, were minors. Minors had two options for emancipation: (a) marriage and (b) receiving the father's approval for emancipation when they turned 18.<sup>333</sup> Single women, even those who had reached the age of majority, 21, were not permitted to leave the paternal home until they were 30.<sup>334</sup> Minors who wished to marry needed to satisfy the age requirements for marriage. Both the 1884 and 1898 civil codes agreed that males must have turned 14 years of age and females, 12. All other minors remained under paternal authority. The law also established that a minor's domicile was that of the father.<sup>335</sup> Following the Mexican Revolution, the 1917 laws raised the legal age requirement for marriage to 16 for men and 14 for women.<sup>336</sup>

The family hierarchy created under the civil codes reinforced patriarchal authority. Paternal grandparents became the legal representatives of children who became orphans due to parental death, interdiction, or by abandonment.<sup>337</sup> The laws granted preferential authority to paternal family members over maternal relatives. Only when the paternal grandparents were unable to care for a child would the maternal grandparents gain custody, and under this system, the maternal grandfather received priority over the

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<sup>333</sup> *Código civil del Estado de Coahuila* (1898), 72. See Articles 590-591.

<sup>334</sup> *Código civil del Estado de Coahuila* (1898), 73. See Article 597. This was meant to guard women's sexual modesty.

<sup>335</sup> *Código civil del Estado de Coahuila* (1898), 23, 47. See Article 160 and 368.

<sup>336</sup> Pallares, *Ley sobre relaciones familiares*, 41. See Article 18.

<sup>337</sup> *Código civil del Estado de Coahuila* (1898), 23. See Articles 162.

maternal grandmother. Patria potestad carried an expectation of a functioning, male-headed household.<sup>338</sup> The family relationships legally obligated parents and children to reciprocate alimentos. Extended family members from both the paternal and maternal relations also were obligated to provide for children whose parents were unable.<sup>339</sup>

As noted, the 1917 Law of Family Relations provided equality between mothers and fathers in the legal representation of the children. Mothers and fathers both exercised equal authority over children. Civil laws continued to privilege the rights of the paternal line over grandchildren, but the family legislation no longer discriminated by gender. Grandfathers and grandmothers exercised equal control over their grandchildren. However, these family laws continued to reflect the view that the family ideal was composed of a nuclear unit, and when parents were absent or unable to provide for their children, it fell within the responsibility of extended family members, on both sides, to care for children.<sup>340</sup>

### **Sexual Crimes against Minors**

Similarly, Coahuila's Criminal Code of 1900 contained codes aimed at protecting the life and welfare of children. Laws against abortion and infanticide protected the unborn (fetus) and infants. The crimes of abortion and infanticide typically involved the mother, and the law punished these crimes more severely when they involved women who were married<sup>341</sup> However, as scholars have shown, the law also took into account

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<sup>338</sup> *Código civil del Estado de Coahuila* (1898), 47. See Articles 366, 367.

<sup>339</sup> *Código civil del Estado de Coahuila* (1898), 28. See Article 207.

<sup>340</sup> *Pallares, Ley sobre relaciones familiares*, 75. See Articles 239-242.

<sup>341</sup> *Código penal del Estado de Coahuila de Zaragoza* (1900), 116-119. See Articles 567-584. The crime of infanticide was mitigated by the following factors: (a) the woman enjoyed a good reputation; (b) she hid her pregnancy; (c) she concealed and did not register her infant's birth; and (d) whether the infant was her son. Cases that met those four factors received a reduced sentence.

mitigating factors such as when a woman committed a crime in an effort to conceal dishonor.<sup>342</sup> Nora Jaffary has noted that in the nineteenth century, Mexican officials prosecuted infanticide and abortion in greater numbers.<sup>343</sup> Other laws criminalized child abandonment with harsher sentences based on the age of the abandoned child. In these cases, the law set different sentences when the crime involved a newborn or a child younger than seven. Abortion, infanticide, and child abandonment crimes emphasized the familial relationship between the victim and the perpetrator. Parents who abandoned a child in a foundling home were not permitted to retrieve the child and thus lost custodial rights—yet did not face criminal prosecution.<sup>344</sup>

In the same way, in sexual crimes, the courts considered the age of the victims as well as of the assailants. Crimes such as estupro, rape, and indecent assault resulted in harsher prison sentences based on the age of the victim. Of 255 criminal trials examined, 31 defendants received a punishment.<sup>345</sup> Figure 4 shows that 87 percent of these cases involved a victim 18 or younger. Approximately 39 percent of crimes punished were perpetrated against a victim 10 or younger. Further, six of the eight cases involving male victims resulted in prosecution. This suggests that perhaps officials found these type of

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<sup>342</sup> Lipsett-Rivera underscores that nineteenth century judges were primarily interested in uncovering women's motivations for a crime of infanticide. Authorities understood the rationale behind infanticide to be the desire to protect the honor of the family by killing an illegitimate offspring. See Lipsett-Rivera, "A Slap in the Face of Honor," 192-194. See also Kristen Ruggiero, *Modernity in the Flesh: Medicine, Law, and Society in Turn-of-the-Century Argentina* (Stanford: Stanford University Press, 2004).

<sup>343</sup> Nora E. Jaffary, "Reconceiving Motherhood: Infanticide and Abortion in Colonial Mexico," *Journal of Family History* 37, no. 1 (2012): 3-22. This is due partly to the growing importance of motherhood. Jaffary notes that greater infant mortality rates during the colonial period as well as officials' views about who infanticide harmed impacted how these crimes were adjudicated. The lives of fetuses and newborns were secondary to the "preservation of women's honor and livelihood."

<sup>344</sup> *Código penal del Estado de Coahuila de Zaragoza* (1900), 126. For child abandonment crimes, see Article 623.

<sup>345</sup> N = 255, not 282 because this analysis excludes adultery, infanticide, bigamy, and appeals cases.

sexual crimes as posing a greater threat to public morality. Appendix A includes detailed information on the type of punishment, crime classification, and the age and gender of the victims.

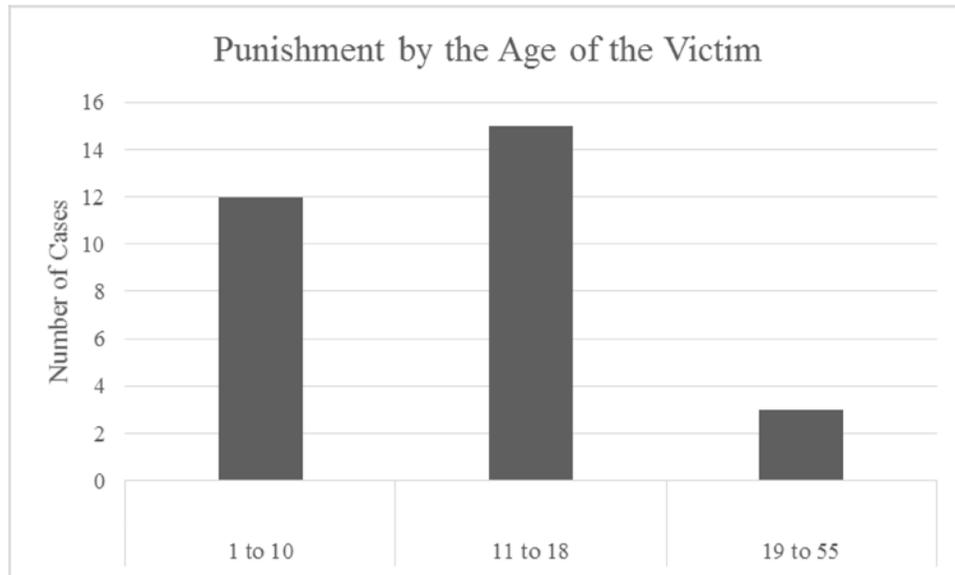


FIGURE 4. Punishment by the Age of the Victim

The next section focuses on the impact that age exerted in criminal law. To reiterate, estupro crimes involved sexual intercourse, employing seduction or deceit, with a chaste and honest woman. The sentencing guidelines suggested that lawmakers intended to protect young girls from sexual seducers. For instance, the most severe punishments were given to estupros committed against girls younger than 10 and crimes against girls between the ages of 10 and 14. These cases carried sentences of eight and four years, respectively. Crimes involving young women older than 14 received a lenient prison sentence of between five and 11 months.<sup>346</sup> In estupro cases, virginity was not directly prescribed by the law but did play a role in shaping the judge's verdict. And,

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<sup>346</sup> *Código penal del Estado de Coahuila de Zaragoza* (1900), 155. See Articles 782-783. This third subgrouping involves cases where men refused to honor their promise of marriage.

defendants themselves questioned a young woman's virginity as a defense to avoid criminal punishment.

These references to age suggested that legislators who drafted the national penal code of 1871 believed that age conferred some level of maturity and lived experience. A girl who had not reached the age of 10 deserved greater protection than the category involving women who were older than 14. It appears that lawmakers took into account that the age requirement for marriage for women was 12, and women who were close to the age of marriage were considered sufficiently developed to make sexual choices.<sup>347</sup> Sentencing guidelines for rape cases also were based on the age of the victim. State law was vague, stipulating only that cases involving a woman older than 14 were to receive a five-year prison sentence and that cases involving a minor received a sentence of eight years.<sup>348</sup> This clause implied that this code considered the age of 14 to be a critical period marking the onset of puberty.

Incest was defined as a crime committed by blood relatives. However, lawmakers were cognizant that family composition was more than biological and therefore criminalized sexual relations between stepparents and stepchildren. Sexual relationships among some collateral lines were criminalized: brother-sister, uncle-niece, and nephew-niece.<sup>349</sup> More importantly, what this legal definition excluded were relationships based on spiritual kinships, such as godparents, which colonial laws had prohibited. Further, the

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<sup>347</sup> Szasz, "Sins, Abnormality, and Rights," 65-68. *Código civil del Estado de Coahuila (1898)*, 23. According to civil law, the age of majority was 21, and the age requirement for marriage, for women, was 12. Yet, codes pertaining to estupro referenced crimes committed against young women older than 14. It suggests that legislators believed that the age of 14 demarcated a distinct development phase in a young woman's level of sexual maturity, life experience, and that she possessed the cognitive ability to make informed sexual decisions. The minimum age requirements for marriage increase after 1917.

<sup>348</sup> *Código Penal del Estado de Coahuila (1900)*, 155.

<sup>349</sup> The law did not spell out the legality of relationships between first cousins.

law excluded numerous extended family members whom the criminal documents revealed committed sexual crimes precisely by taking advantage of their ties within the family unit. These individuals exploited their close proximity to the plaintiff. Sexual penetration of children by family members carried additional prison time. In cases involving incestuous crimes, the state had the authority to intervene and curtail the parental and inheritance rights of the accused. These laws suggested that lawmakers perceived that younger victims deserved greater legal protection, and further, these provisions appeared to protect victims from sexual abuse by family members and other individuals in positions of authority.

Coahuila's Criminal Code of 1900—and the federal code of 1871—did not adequately capture a portrait of the Mexican family. What the law suggested was that modern legislation envisioned the essence of the family as nuclear, composed of parents and their dependent children. And yet, according to the criminal documents, some households were composed of nuclear members as well as of aging parents, aunts, uncles, cousins, in-laws, and other individuals who lived in the household. Here, the legal definition of “a family” certainly did not depict extended and informal family arrangements.

Further, lawmakers' perception of incest was foremost a familial crime and, secondly, a sexual crime. Penal law differentiated sexual crimes based on evidence of penetration, age of the victim, and the methods utilized to obtain a victim's compliance, such as deceit and violence. The court also considered the victim's incapacity to resist, due to physical or mental reasons. Accordingly, incest was judged on the above elements and, based on that criteria, was categorized as deflowering or rape. For this reason, some

cases were documented as incest, but the greater number of cases appeared as deflowering and rape.<sup>350</sup>

Under the 1871 Criminal Code, incest was viewed as a subset of rape and estupro and was penalized as an aggravating crime.<sup>351</sup> In contrast, incest under the national 1931 Criminal Code was no longer an aggravating factor; the crime gained a separate chapter.<sup>352</sup> The legal shift from viewing incest as an aggravating factor to creating a separate chapter for incest showed a redefinition of incest from a subset of rape and estupro to legally evolving into a type of sexual crime. Compared to the revised estupro laws, incest crimes carried longer prison sentences. But victims younger than 14 received greater protection if their case was prosecuted as a rape, rather than as incest, because in those cases, the rapist received an eight-year prison term.<sup>353</sup> The use of violence, the age of the victim, and the affinity of the perpetrator, which the code's text stipulated could be female as in a stepmother, were factors taken into account during sentencing.

The primary legal protection implied that the state was protecting the integrity of the family. Rather than protecting the victim, legislators, with the propagation of species in mind, were preoccupied with regulating sexual relationships between kin.<sup>354</sup> The jurist

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<sup>350</sup> *Código Penal del Estado de Coahuila* (1900), 155-156. 127.

<sup>351</sup> *Código penal para el Distrito* (1936), 127. Martínez Roaro, *Delitos Sexuales*, 129-130.

<sup>352</sup> González de la Vega, *El Código penal comentado*, 246. And, *Código penal para el Distrito* (1936), 127. See Article 272. Under the revisions, family members received punishments of one to six years. "Incest cases involving siblings received a prison sentence of between six months and three years. Judges had the authority to not only deprive parents of patria potestad but could place minors under the care of the Consejo Supremo de Defensa y Prevención Social. Underage perpetrators who were siblings were placed in educational or correctional facilities for their education, correction, and rehabilitation." See Martínez Roaro, *Delitos sexuales*, 130-131.

<sup>353</sup> González de la Vega, *El Código penal comentado*, 242, 246. The rape of an impuber carried a 2-8 year prison term. The revised sentence for incest was a 1-6 year prison sentence.

<sup>354</sup> Lee M. Penyak, "Incestuous Natures: Consensual and Forced Relations in Mexico, 1740-1854" in *Sexuality and the Unnatural in Colonial Latin America*, ed. Zeb Tortorici (Oakland: University of California Press, 2016), 162-187.

Eduardo Pallares made a similar statement “The interests of the species make it necessary that the family is subject to legal and moral standards. . . .”<sup>355</sup> Hence, the victim-defendant familial relationship dictated how the state intervened. For instance, in a father-daughter incestuous case, the state deprived the father of his right to patria potestad, and further, the law protected the victim’s inheritance by depriving the father of the ability to inherit from that child. The court cases offered no indication of whether the father retained patria potestad and rights to inheritance to additional children he might have.

Incest cases sometimes involved fathers and uncles, brothers-in-law, cousins, and *amasios* (an extramarital relationship). Informal unions were not included within the legal definition of incest. Similar to other sexual crimes, incest cases were filed when a family member noticed a young woman’s pregnancy or by witnessing the crime. Unlike estupro, where parents often wanted to procure a marriage negotiation, punishment of the offending family member was the primary motive behind filing a complaint. However, the reasons behind seeking punishment were complex. Incest was a betrayal and a sexual offense perpetrated by a family member against the family unit rather than an outside crime committed by a stranger. Sexual activity between relatives was legally considered egregious. The complaints also indicate that some family members believed that if the crime were unreported, the family might face legal sanctions. The perpetrator’s actions affected multiple family members, disrupting bonds between family members. Incest blurred the lines, resulting in sexual impropriety. Similar to other sexual offenses,

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<sup>355</sup> Pallares, *Ley sobre relaciones familiares*, 12. In Spanish, it reads, “Los intereses de la especie hacen necesario que la familia quede sujeta a normas jurídicas y morales. . . .” See also Alexandra Minna Stern, *Eugenic Nation: Faults and Frontier of Better Breeding in Modern America* (Berkeley: University of California Press, 2005).

it was the family that filed the majority of incest cases. Based on the cases examined, mothers filed complaints in the majority of incest investigations, followed by complaints by the father.

Indeed, based on the cases involving children that were reviewed in this study, the judicial system made distinctions based on the age of the child victim. In this respect, as is argued in this chapter, the laws reflected conceptions of childhood as deserving of special protection, but actual legal practice did not offer these protections to child sexual victims. Instead, there were magisterial biases when families failed to conform to notions of the ideal family and when family members failed to meet elite notions for familial roles. Further, child cases lacked witness testimony considered credible by courts. Cases involving older victims, such as adolescents, were held to standards similar to those of rape cases. Thus, an older plaintiff's actions were interpreted as sexual consent and judges overlooked the element of moral violence. In the next section, to understand what families believed was at stake for them, I examine judiciary biases found in cases involving child victims and juxtapose those legal and elite notions of the family against plaintiff and community notions of the family and children.

### **Perspectives on Children, Families, and Parental Roles**

During the nineteenth century, elite interests in child protectionist efforts manifested in the form of educational and welfare programs. In Coahuila, as in other parts of Mexico, state-led educational reforms occurred. Compulsory laws mandated education for boys and girls by the age of 7. The municipality records contain reports on the number of students attending classes and counts by gender. Rancho schools also

generated statistical records.<sup>356</sup> Along with changes in social and educational realms, children's roles in the home and society were redefined. Ann Blum's study of child circulation practices, adoption laws, and foundling homes (institutions for orphaned or abandoned children) in Mexico City examined changes in the meaning of childhood as a distinct developmental phase. The institutional practices of foundling homes served as an example of children's importance in Mexican society, as more children were retrieved by their mothers and as adoption rates for childless families increased. Blum notes, ". . . the process of expanding that protection to include all children regardless of class was scarcely smooth on an ideological level and, in practice, was incomplete."<sup>357</sup> While child labor laws depicted children as dependents and not as workers, many family and childhood ideals were largely middle-class and failed to apply to poor children. While middle-class families' advocated play and other leisurely activities, it was these same middle-class families that employed poor children as apprentices with the expectation that they would earn their wage in exchange for a home. Through these practices, elites in their bourgeois homes constructed an ideal of children as innocent that did not apply to poor children or to their families.<sup>358</sup>

Female and religious magazines published during the late 1800s and early 1900s depicted elite notions of children, motherhood, and fatherhood. In *El Album De La Mujer*, advertisements and images of domestic tranquility abounded. Ads depicted

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<sup>356</sup> Archivo Municipal de Saltillo. AMS, PM, c113/1, e138.

<sup>357</sup> Ann S. Blum, *Domestic Economies: Family, Work, and Welfare in Mexico City, 1884-1943* (Lincoln: University of Nebraska Press, 2009), xxi.

<sup>358</sup> Ann S. Blum, "Bringing It Back Home Perspectives on Gender and Family History," *History Compass* 4, no. 5 (2006): 914.

children as the “angels” of the home.<sup>359</sup> Articles written by men and women, for female middle-class audiences, exalted feminine education because it helped make women loving mothers and good wives.<sup>360</sup> These magazines were not intended for working-class consumption. The women in the magazines had surnames such as Beaucourt and Duvivier, and the women inside their pages read European novels such as *Crime and Punishment*.<sup>361</sup>

The magazines also reflected the growing interest in puriculture (scientific parenting). Magazines contained ads filled with images of domestic tranquility. One headline read “The happy home,” and in the background a woman sat knitting while her two well-groomed, clean children—a boy and girl—played quietly by her side with a small kitten wearing a ribbon. The back cover of that magazine contained the following ad,

A marriage without children is comparable to a dance without music, children are the indispensable harmony of the home, but parental happiness will not be complete if your children lack health. If your children look pale and sickly give them a remedy to strengthen their bones while helping them grow while providing them with health and happiness that they need.<sup>362</sup>

On the bottom appeared an image of the emulsion, the scientific medicine providing the essential vitamins to help enrich the children’s blood and fortify their bones.

These magazines also portrayed fatherhood through domesticity. “The Anniversary,” an article in a magazine, described the courtship and marriage of a socially

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<sup>359</sup> Ramón Valle, “Cuentos color de historia: Una madre, *El Album de la Mujer*, May 24, 1885, 203-204.

<sup>360</sup> Antonio de P. Moreno, “La emancipación de la mujer,” *El Album de la Mujer*, June 28, 1885, 256-257.

<sup>361</sup> Louis Leon Martín. “La señal Olvidada,” *Mignon: El periódico de las damas*, November 1934, 9-10. The magazine was published monthly in Puebla and cost .25 pesos. It contained articles on the latest fashion, work, art, and literary works.

<sup>362</sup> “Un Hogar Feliz,” *Mignon: El periódico de las damas*, November 1928.

affluent couple. Following their wedding, they travelled all over Europe on their honeymoon, but after the birth of their son, the husband stayed at home when his wife grew ill. At home, the husband entertained himself by painting a portrait of his son. The story conveyed middle-class notions of fathers within the home, rather than notions of a man who headed to the cantina to get inebriated. The story also portrayed conceptions of the good father and of healthy, leisurely activities such as painting. Further, the role of the good husband and father meant not only spending time at home but also devoting time and attention to one's children.<sup>363</sup>

Religious magazines published during this period in other parts of the world and circulated in Mexico further reinforced these family values and fatherly roles. Stories about the family and children filled the pages of the Catholic magazine, *La Hormiga de Oro*. One article told the story of a father whose child became ill. While the boy slept, the father stayed by his bedside, weeping in helpless despair over his son's pain.<sup>364</sup> Similar to the women's magazines, articles portrayed young women participating in skiing contests and playing instruments at music conservatories. There were images of female benevolence societies and their charitable work. Another article, "A Model School," discussed how the school dedicated itself to cultivating Christian mothers and excellent homemakers. This school reinforced religious ideals of piety, domestic economy, and applied scientific principles to improve the dietary quality of the home's nutrition. In the

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<sup>363</sup> J. Mattioli, "El Aniversario," *Mignon: El periódico de las damas*, November 1928, 2-8.

<sup>364</sup> "El divino encanto de los niños," *La Hormiga De Oro: Ilustración Católica*, March 1920, 99-101.

course, women took turns being the homemaker, cooking, washing, sewing, and ironing, all the responsibilities of a true homemaker and mother.<sup>365</sup>

The women's and Catholic magazines revered the "family," domesticity, and bourgeoisie motherhood. Education enabled women to care for the home—not to make women equal to men or to enable them to engage in outside affairs working in male occupations. The magazine articles reflected suitable employment positions for women. Even Mexico's first female doctor, while working in a male profession, would be working with female and child patients because her "delicate fingers could heal more gently the wounds of a child than could the virile hands of a man."<sup>366</sup> According to these magazines, the father headed the ideal family. Home life was harmonious, and children deserved protections and special care because they represented the treasure of the home. These magazines printed in the nineteenth and twentieth centuries, as Blum notes in her work, portrayed an elite version of the family. The children who filled the magazines' pages had educational and leisurely opportunities to engage in art, music, and sports, and their sanitized life contrasted sharply with the plebian women, men, and children who appeared before Coahuilense courts. In some instances, it seemed that because victims lacked a family or were led by single, female-headed household, their family status predisposed them for violence. In these cases, they had no alternative but to resort to the justice system for assistance. By extension, the courts and judge became a metaphor for the father, but judges were not necessarily benevolent.

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<sup>365</sup> Modesto H. Villaescusa, "Una escuela modelo: Para formar madres cristianas y excelentes amas de casa," *La Horminga De Oro: Ilustración Católica*, July 17, 1920, 376-377.

<sup>366</sup> Concepción Gimeno de Flaquer, "La primera doctora Mexicana," *El Album de La Mujer*, September 4, 1887, 74. In Spanish the text reads: "Los dedos rosados de la mujer pueden curar mas suavemente las heridas del niño que la dura mano varonil."

## **Incorporating Middle-class Notions of the Family into Legal Perspectives**

Magistrates involved in sexual cases affecting children embraced similar viewpoints depicted in the female and religious magazines. However, many families that initiated court cases did not resemble those of the magazines. The families that filed criminal complaints were often poor, illiterate, and working class. Single, working-class mothers worked informally, sometimes selling tortillas in the market or toiling as domestic servants. Other women were not civilly married and, instead, lived in consensual unions. In child cases involving married parents, half of the time, the mother initiated the criminal complaint. Further, some families found themselves in the judicial system when the patriarch committed a sexual crime.

Thus, the magistrates viewed these families as problems. Mothers assumed roles that corresponded to the father as head of the household. Other families were formed through informal unions that failed to adhere to proper notions of marriage. Further, some women abandoned their home and children so they could work. Fathers sometimes also failed to act as the authority in the home. In other cases, even when the father was not the offender, the father was not the one filing the legal complaint.

Despite the familial and parenting problems magistrates observed in the legal complaints filed, some magistrates' opinions drew on the conception of the child as being innocent. European intellectuals such as Rousseau constructed the notion that children were born with a *tabula rasa*, a blank slate. In addition, thinkers of the romantic tradition

believed that because of a child's state of innocence, their morality was superior to that of adults.<sup>367</sup>

The notion of children's purity emerged through court language. One magistrate said that given the child's young age, she spoke the truth. According to him, children were not sexually perverse, nor did they possess knowledge to concoct allegations of sexual impropriety against their own family members. Instead, the crime reflected the offender's own moral depravity. The suspect's behavior revealed something about his criminal composition and his *mentalité*. This explained why the police found one father sleeping after raping his daughter. Sleeping was part of the relaxing pathological effect of coitus, especially in individuals who were tired and *viciosos* (ridden with vice). The writings of the renowned Mexican criminologist of the time, Carlos Roumagnac, defined the *vicioso* as a "corrupt individual lacking the ability to refrain from acting on his perverse desires."<sup>368</sup> Further, Burrola's actions showed a lack of remorse. According to the judge, he slept because he never imagined that his daughter had the courage to complain to the authorities, and thus, he thought he had gotten away with the crime.<sup>369</sup>

In another case involving incest, the language used by the judge reflected the idea that this type of crime existed only within problem families. The common belief was that incest occurred primarily among uneducated rural folks, "personas rusticas" (country people).<sup>370</sup> The rustic comment helped explain where incest occurred and why it continued. In addition to the geographical preconceptions, clearly there is a class bias.

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<sup>367</sup> Sloan, *Runaway Daughters*, 132-133.

<sup>368</sup> Carlos Roumagnac, *Por los mundos del delito: Los criminales en México ensayo de psicología criminal* (Mexico: Tipografía "El Fenix," 1904), 20.

<sup>369</sup> Causa instruída contra Nieves Burrola por violación, AGPIC, Caja 1898.

<sup>370</sup> Causa instruída contra J. Rosario Velásquez, AGPIC, Caja 1911 Penal, #1006, No. 25.

Elites believed that sexual promiscuity and incest were normal characteristics of the lower classes.<sup>371</sup> Due to the reverential fear given to the father and the fear of the daughter of being beaten by her father, the daughter acceded to her father's sexual requests.<sup>372</sup>

The media reported and described child abuse crimes committed by lower-class households in urban settings. In the print press, José Guadalupe Posada's broadsheets published by Antonio Vanegas depicted images of children tortured and killed at the hands of family members.<sup>373</sup> One image in 1902 involved a barber living in Saltillo who decapitated his 11-year-old daughter. As if that was not sufficiently scandalous, the headline read, "Said individual declared he committed another repugnant crime in her person." In other words, he had raped the child prior to killing her viciously.<sup>374</sup> Members of the upper classes created these illustrations, but lower-class audiences consumed such printed material. Sexual crimes against children perpetrated by the family were repugnant. The nature of such crimes provoked scandal and incited public morality. However, audiences were not merely drawn to the sensational aspect of sexual crimes; they were reacting to these injustices from a moral position. The wrongs represented offensive actions that went against notions of public morality and good customs.

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<sup>371</sup> Piccato, *City of Suspects*, 123.

<sup>372</sup> Causa instruída contra J. Rosario Velásquez, AGPJC, Caja 1911 Penal, #1006, No. 25.

<sup>373</sup> Sloan, *Runaway Daughters*, 65. The Arroyo print house was established around 1880.

<sup>374</sup> "Crimen nunca visto! Tomás Sánchez, barbero que está establecido en Saltillo, degüella á su tierna é indefensa hija de 11 años de edad," (1902) Mexican Broadside Collection, Center for Southwest Research, University Libraries, University of New Mexico, No. 106. See also María Teresa Espinosa, "The Horrifying Flyers: Crime and Punishment in Posada's Engravings" *Revista Arbitrada de Artes Visuales* Jan/June 2014 available online [http://www.discursovisual.net/dvweb33/TT\\_Marite.html](http://www.discursovisual.net/dvweb33/TT_Marite.html) accessed October 5, 2015. See also Patrick Frank, *Posada's Broadsheets: Mexican popular imagery, 1890-1910* (Albuquerque: University of New Mexico Press, 1998).

Similarly, in numerous criminal cases, judge's opinions evaluated cases, to a certain extent, based on constructions about appropriate family norms and values.

The print press captured images of deviant families. These sensational news stories included crimes perpetrated within and by a household headed by a female. One story involved a woman who sewed her 6-year-old niece into her clothing.<sup>375</sup> In other images, the prints portrayed Guadalupe Bejarano, along with her son, involved in the torture of a young domestic, Cresencia Pineda. Other images conveyed the public uproar that followed Bejarano's arrest; apparently, mobs cursed and threw rocks at the woman. The atrocity committed by the barber against his daughter and the image of an aunt who viciously tortured her young niece revealed middle-class biases against lower-class members of society. According to these images, it was the poor who were criminals, carrying out horrendous acts of violence against family members. Further, the case of Guadalupe Bejarano stirred uproar because details suggested that both the mother and son had physically hurt their domestic worker. Bejarano was a repeat criminal offender, and other broadsheets discussed how years earlier she had committed a similar crime for which she received a prison sentence.<sup>376</sup> The family structure in these cases certainly deviated from the ideal family and notions surrounding the idea of the good father or mother. Certainly, families were not supposed to carry out crimes in unison. Additionally, the story of the treacherous aunt revealed the existence of informal adoption practices in

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<sup>375</sup> "El jurado de la Bejarano. El Crimen de la Calle de los Vizcaínas. El martirio de la niña Cresencia Pineda," Mexican Broadside Collection, Center for Southwest Research, University Libraries, University of New Mexico. Cresencia Pineda worked as a domestic for Guadalupe Martínez de Bejarano.

<sup>376</sup> "Guadalupe Bejarano en las bartolinas de Belén. Careo entre la mujer verdugo y su hijo." Mexican Broadside Collection, Center for Southwest Research, University Libraries, University of New Mexico.

which children were raised by extended kin. Some children were circulated within the extended family to provide family members with a companion, as in the case of an aging relative, or to provide members with free housework. Large families that were overburdened and unable to feed, clothe, and provide adequate housing for children resorted to such informal adoption practices.

### **Applying Emerging Conceptions of Childhood within Court Rulings**

The following sections explore under what conditions magistrates during court cases utilized those emerging conceptions of childhood. In the majority of cases, magistrates' actions suggested that the age of the plaintiff and the age of witnesses were factors that magistrates considered in determining a suspect's innocence or guilt. Testimony given by children was deemed unreliable and insufficient to substantiate claims of abuse. Further, in cases involving older children who did not speak up about the abuse, the magistrates reverted to the familiar notions of resistance and consent that they used in sexual crimes involving adults. In those cases, the plaintiffs' lack of resistance was tantamount to participation and consent of the sexual relationship. In this way, laws involving sex crimes against children, as with laws in deflowering and rape cases, greatly disadvantaged child plaintiffs—meaning that in the realm of sex crimes, not all children, not even the vast majority of children, received justice from the legal system. These court practices were prevalent from the Porfirian through the postrevolutionary periods.

The next section examines two cases of suspected incest and discusses how the testimony of older children played a role in judges' rulings. In an 1877 case, Juan Alarcon filed an incest criminal complaint against his brother, Nicolás Alarcón, 54, and his pregnant 14-year-old daughter, María Isidora Alarcón. The case qualified as an

estupro. Based on the case notes, the magistrates did not portray the young woman as an innocent child. In her testimony, she told the court that four years ago, she and her uncle had initiated a sexual relationship. When the court questioned her about whether she had been aware of the familial relationship between herself and the defendant, she replied that she knew that he was her uncle but that she was unaware that the relation was a crime. Her uncle denied the sexual relations and, instead, blemished her reputation by telling the court that he heard gossip that the girl was involved with a married man. His defense attorney used a different strategy. He told the court that, supposing his client had sexual relations, there was no deflowering because no force had been exerted.<sup>377</sup>

The court must have had some reservations about the case because the magistrate absolved the defendant of the crime. Understanding the magistrate's legal decision in this case requires a thorough analysis of the statements made by the young girl and the defendant. There was a significant age difference between the young girl and her uncle. While she was currently 14 years old, the girl's testimony, if accurate, revealed that she was 10 when the sexual relationship with her then 50-year-old uncle began. If the crime had started when she was 10, then, why did María Isidora's case not garner the court's sympathy? After all, the girl was also pregnant. To the court, her age at the time the crime allegedly began was irrelevant. A 14-year-old, in the court's opinion, should know the difference between right and wrong. The girl was aware that the defendant was her uncle. Though she claimed ignorance that a sexual relationship with her uncle was prohibited under state law, the court was more concerned with not only the girl's current age but also with the crime's continuation. For the judge, the length of the sexual relationship

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<sup>377</sup> Criminal por incesto contra Nicolás Alarcón, AGPJC, Caja 1877, No. 32.

suggested active participation and consent of sexual intercourse, rather than a patterned abuse.<sup>378</sup>

The defense attorney argued that the young woman had sexually consented. According to the attorney, his client had not used force because the young woman had not been seduced or deceived into sex; therefore, the elements of a deflowering charge had not been satisfied. The court's ruling showed that the procedure that the magistrate followed was to determine whether the plaintiff met the criteria for a deflowering case, and the allegation of incest was secondary. Not having fulfilled proof of deflowering, there was no incest complaint to follow. The ruling also suggested that incest, similar to deflowering and rape cases, came down to one person's word against another's. In this case, the defendant, defense attorney, and magistrate reverted to calling on former notions embodied in deflowering and rape cases. Further, in incest cases, the crime's continuation was conflated to signify that the girl's lack of resistance equated to consent of the heterosexual relationship. What this court ruling disregarded was the power differential between the plaintiff and the defendant. Not only was Nicolás four decades older than María Isidora, he was her uncle, and as part of patriarchal authority, children were taught to obey elders and male family members.<sup>379</sup>

In an 1898 case involving the rape of María Petra Burrola, 12, by Nieves Burrola, her father, the urban court in Torreon arrived at a different verdict.<sup>380</sup> The attack occurred when the girl's mother was out of town visiting a relative. When her father went to sleep, the girl fled to a neighbor's home to seek help. The neighbor then took action and

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<sup>378</sup> Criminal por incesto contra Nicolás Alarcón, AGPJC, Caja 1877, No. 32.

<sup>379</sup> Ibid.

<sup>380</sup> Causa instruída contra Nieves Burrola por violación, AGPJC, Caja 1898, No. 221.

reported the crime to the authorities. The municipal doctors examined the girl and concluded that her hymen was torn. The doctor's notes attributed her hemorrhaging due to the introduction of an "outside member."<sup>381</sup> In the words of the doctor, the girl was sexually penetrated, and her extensive bleeding had stained her clothing.

The girl's father offered another explanation. He denied the accusation and explained to the court that someone else had dishonored his daughter. He said that when he arrived home, he found his daughter in a sad state. He feared that she had been dishonored and took her to the "*jacalito*" (shed) to examine her private parts. He offered his comadre as a witness, but his comadre testified the defendant had not been with her.<sup>382</sup> The magistrate's choice of language portrayed a benevolent vision of childhood. He ruled that due to the girl's age, 12, and innocence, she could speak only the truth. The magistrate was not reacting to the crime as an offense against the family. Instead, he found that the defendant's actions were an offense to public morality and to good customs. Sexual crimes that were perceived as having affected the community rather than the individual took on greater importance because they rocked the entire social order of the community. Shelton maintains that in Sonora, crimes against good customs were collectively recognized by the community as impacting the interests of society as a whole.<sup>383</sup> Certainly the judge in the case viewed Nieves' actions as an abuse of his patriarchal authority. Further, the entire community had learned about the crime. Nieves' behavior offended the well-being of the community and was viewed as a perversion of

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<sup>381</sup> Sentencia No. 267 Marzo 8, 1898. Causa instruída contra Nieves Burrola por violación, AGPJC, Caja 1898, No. 221.

<sup>382</sup> Declaración del acusado, Nieves Burrola. Causa instruída contra Nieves Burrola por violación, AGPJC, Caja 1898, No. 221.

<sup>383</sup> Shelton, *For Tranquility and Order*, 10.

customs against children, which in the judge's words were "innocent, without malice and perversion." Further, he said the girl could not have concocted such a "repugnant and horrendous act" against her own father.<sup>384</sup> Unconvinced by the defendant's story, the court found it illogical that a father who found his daughter bleeding would fall asleep, and the defendant's assertion that he was with his comadre infuriated the court officials.

In this case, the magistrate's notion of innocence was connected to the young girl's age. Further, the judge assumed a surrogacy of protector because the girl was alone while her mother was out of town. At the same time, the court found Nieve's action incongruent with how a normal father would react if his child was injured. If the scenario the defendant had depicted were true, then a good father would have looked for help rather than exhibit insensitivity to his child. The verdict was that the father was guilty of rape and incest. An appeal judge reversed the original sentence from 16 years of work and prison to eight years. The court determined that the father had used moral and physical violence to commit the crime, and thus, his parental rights were removed.<sup>385</sup>

Unlike the previous case, the magistrate's opinion focused on the girl's age. Given María Petra's youth, she fit the category of innocence, and thus, the judge accepted her testimony as credible. In the judge's perception, young children did not conjure sexually perverse stories to implicate family members. The court determined that the girl deserved legal protection. In the former case, María Isidora was 14, and both her uncle and his defense attorney characterized her as a sexually experienced young woman. The court interpreted the continued illicit relationship as tantamount to consent. Further, her

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<sup>384</sup> Causa instruída contra Nieves Burrola por violación, AGPIC, Caja 1898, 2-3.

<sup>385</sup> Ibid.

uncle's declaration that she was involved with another married man created an image of María Isidora as a worldly woman undeserving of legal protection. In contrast, the 12-year-old plaintiff disclosed the sexual abuse and sought help. The most important element of the case hinged on outside corroboration when her neighbor filed the criminal complaint. The adjudication of child sexual cases demonstrated that judges in Coahuila placed enormous weight on witness testimony and discriminated against a plaintiff who was unable to offer corroborating evidence. Thus, the cases were adjudicated in a fashion similar to how adult rapes were judged.

In another case involving a father-daughter incestuous relationship, the court was also suspicious of the plaintiff's actions. This case showed that incestuous crimes affected the harmony and order of the family and disrupted family dynamics. In this case, it opened a space for another member of the family to assume authority of the household. In 1911, two brothers, Dionisio and Pedro Velásquez, filed a criminal complaint against their father, J. Rosario Velásquez, for raping and impregnating their 18-year-old sister, Manuela Velásquez.<sup>386</sup> The brothers' presence assumed legal representation of the sister and family. Dionisio and Pedro's motivations were not completely clear. It appeared that they wanted to punish their father for offending the entire family and to defend the honor of their pregnant sister.

The father did not deny the accusation. He admitted to engaging in multiple carnal acts with his daughter. However, his testimony suggested that though he had committed sexual acts with his daughter, his household had been in order. He said that he, the daughter, and his wife had lived peacefully until the sons denounced his action—as if to

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<sup>386</sup> Causa instruída contra J. Rosario Velásquez por estupro, AGPJC, Caja 1911 Penal, #1006, 2.

imply he had kept the relations private and the sons' charges had caused the scandal rather than his own actions.<sup>387</sup> As if in defense of his patriarchal rights, the father asserted that the family had lived in peace and that because the sexual relations he maintained with his daughter were a secret, he had not disturbed the community's public morality. Sarah Chambers found patriarchs making similar claims. Fathers as male heads of households enjoyed citizenship rights that left crimes committed in the private realm outside of legal interference.<sup>388</sup>

In contrast to her father, Manuela's testimony described the violence she had experienced. She testified that the first time her father approached her, the two were alone on the road on their way to the city; they lived on a ranch on the outskirts of Saltillo. In her words, the young woman said her father solicited sexual relations from her. He told her "*que se prestará con él*" to give herself to him.<sup>389</sup> She said that she refused to give in to his desires, but as her father grew insistent and seeing that the two were on the road at night, she feared being beaten by him. Seeing that no one was around who could assist her, she finally acceded to her father's sexual demands. The spatial context of violence in Manuela's case is significant. From Manuela's perspective, her father took advantage of the night, the solitariness of countryside to, for the first time, carry out his sexual desires. The location of the sexual violence seemed to construct an especially terrible situation for Manuela, but it also gave her story some legitimacy before the court. The countryside

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<sup>387</sup> Declaración del acusado, J. Rosario Velásquez. Causa instruída contra J. Rosario Velásquez por estupro, AGPJC, Caja 1911 Penal, #1006, 2, 4.

<sup>388</sup> This included the right to use domestic violence. In her study, Chambers used 184 criminal cases filed between 1784 and 1824 and 1,205 cases heard by judges from 1825-1854 in Arequipa, Peru. Chambers, "Private Crimes, Public Order," 34.

<sup>389</sup> Declaración de Manuela Velásquez. Causa instruída contra J. Rosario Velásquez por estupro, AGPJC, Caja 1911 Penal, #1006, 2, 4.

symbolized disorder, depraved sexuality, and violence. The space served to reinforce the notion that the plaintiff and her father were backward country folk in comparison with orderly people who lived in an urban landscape.<sup>390</sup>

After hearing the young woman's story, the court believed that the defendant had employed moral violence. However, the judge believed that the problem in this case involved the overall family and their social position. The family lived on the outskirts of the city. Given their remote residence, the family was uneducated, and thus, the court believed that the young woman gave in to her father's proposition due to the fear her father wielded over her. Indeed, lawmakers believed that these types of crimes occurred out of moral fear; the intimidation of being physically hurt and the family hierarchy partly had explained the power relationship of incest. However, the magistrate's opinion displayed a bias against poor, rancho families in using their economic and social positions to explain that it was in these families that incestuous crimes occurred—not typically in educated, urban, and affluent families. The court documents exclude examples of incest in prominent families, but that did not mean that those families did not perpetrate those crimes against family members.<sup>391</sup> It only suggested that wealthier families guarded their affairs more closely and that they might have other ways of dealing with these types of situations.<sup>392</sup>

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<sup>390</sup> Lipsett-Rivera, *Gender and the Negotiation of Daily Life in Mexico*, 41-49.

<sup>391</sup> Joanne Ferraro, *Nefarious Crimes, Contested Justice: Illicit Sex and Infanticide in the Republic of Venice, 1557-1789* (Baltimore: Johns Hopkins University Press, 2008). Ferraro's study includes father-daughter incest within affluent families.

<sup>392</sup> Piccato explains that a couple of things seem to contribute to negatively influence elite perceptions on criminality. The media and criminologists believed that abnormal sexuality was more prevalent among the poor; incest was specifically viewed as a depravity that occurred among plebians. Further, poor complainants' decisions to air their private lives in the court system were proof that the lower classes lacked propriety and hence had no honor to lose. Piccato, *City of Suspects*, 116. Laura Shelton also

Manuela's testimony exhibited ambiguity toward the actions that the court might take toward her father. From the start of her testimony, she told the court that she forgave her father's actions. The second time she testified, perhaps because her mother and brothers wanted the case closed, she omitted prior details.<sup>393</sup> Family pressure to desist and to drop the case might have explained why the young woman did not share all of the testimony from her first court appearance. Families knew the criteria that magistrates looked for in deflowering cases; therefore, if Manuela had testified that she had acceded willingly to her father's sexual requests, then that meant that the definition for deflowering was unfulfilled, and thus, no crime had occurred. During her second testimony, did Manuela purposely omit details involving moral violence to enable the father's prompt release?

Family members displayed diverse responses to the defendant's legal responsibilities in incest cases. In this case, the information given within the transcript suggested that the two brothers filed the complaint without their mother's support; in fact, the mother did not testify in the case. As the defendant testified, his two sons intervened and turned to the legal system for assistance with their family's private ordeal. Second, following Manuela's second testimony, her two siblings returned to court to withdraw from the criminal complaint. They offered three explanations for stopping the court from pursuing the criminal charge. First, her brothers stated that the defendant forgave their father. Second, her brothers declared that in consideration of their mother and the familial ties that bound them, they wanted to withdraw their complaint. Finally, they added that

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makes this point that poor children were viewed as having little honor to protect. See *For Tranquility and Order*, 88.

<sup>393</sup> Declaración de Manuela Velásquez. Causa instruída contra J. Rosario Velásquez por estupro, AGPJC, Caja 1911 Penal, #1006, 2, 4.

their sister had not been deflowered because she had consented to the sexual relationship. According to their family's perspective, familial bonds compelled them to refrain from taking further legal action.

While the father's sexual relations had affected their family, her brothers believed that the kinship bond outweighed the offense and that it had become their duty to attempt to reintegrate their family. Reconciliation came at the expense of their sister, whom the brothers blamed for the family's tragedy. Manuela's failure to resist her father's sexual advances meant to them that no crime had occurred because the sex was consensual.<sup>394</sup> The court also interpreted Manuela's actions as consent of the sexual relationship. While her lack of education and life on the rancho explained the moral fear she felt toward her father, the ongoing nature of their sexual relationship demonstrated consent. She was 18 years old and should have resisted her father's advances more forcefully or asked for help. Again, the two brothers and the court fell back on the notions of resistance and consent used in other sexual cases.

### **Cases of Incest Excluded from the Legal Definition**

Codified law punished incestuous relationships involving stepparents, but informal unions held no civil status, and thus, such cases did not meet the legal definition of incest. Lawmakers' reluctance to include *amasiato* may be explained by the pejorative connotation associated with this practice. Criminologists connected "violence, and crime in general, with the high frequency of common-law unions, separations, and sexual

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<sup>394</sup> Escrito presentado por los acusadores. Causa instruída contra J. Rosario Velásquez por estupro, AGPJC, Caja 1911 Penal, #1006, 2, 7.

disorder.”<sup>395</sup> In these cases, defendants avoided an incest charge because they were live-in lovers. This was the situation involving Sara Barajas, a 14-year-old, who in 1920 filed a criminal complaint accusing Guillermo Barajas, her father, of continuous acts of incest. The defendant denied being Sara’s father and even denied knowing Antonia Morales, her mother. Based on witness’ testimony, however, the defendant publicly presented the young woman as his daughter.<sup>396</sup> The story was complex; the defendant and the girl’s mother were lovers, but when the mother died, by default, he became her adopted father. Through the mother’s death, he gained access to the girl, whom he publicly passed off as his daughter. Without proof of a birth certificate to verify the girl’s age and her birth parents, the girl had no actual family to verify her accounts. Eventually, the young woman desisted from further charges and departed for Mexico City, because apparently that was where she was from and was in Saltillo only because of her mother’s death (the case offered no information about how she would pay for the trip’s fare).<sup>397</sup> The case tested the flaws of the criminal definition of incest. The defendant was aware that if the case qualified as incest, additional prison time would be levied, and thus, the defendant worked to dispel any notions that he was the young woman’s legitimate father.

Other lovers or amasios also were charged in deflowering cases. In 1935, Silvestra Vázquez, a 35-year-old widow residing near Saltillo, witnessed Matilde Cena, her 55-year old lover, with her 12-year-old daughter, Carmen Meza.<sup>398</sup> Silvestra told the court that for the past four years, she had been making “vida marital” (marital life) with

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<sup>395</sup> Piccato, *City of Suspects*, 113.

<sup>396</sup> Declaración de testigo. Causa contra Guillermo Barajas por violación, AGPJC, Caja 1920 Penal, # 452, No. 50.

<sup>397</sup> Causa contra Guillermo Barajas por violación, AGPJC, Caja 1920 Penal, # 452, No. 50.

<sup>398</sup> Causa instruída contra Matilde Cena por estupro, AGPJC, Caja 1935, JIPST Exp. 100-165, 1.

Matilde, though they were not civilly married. Silvestra had six children, and her eldest, Carmen, helped her watch the children while she sold food at the market. The mother testified that to support her large family, she left her children alone, while she sold corn tortillas from 11:00 a.m. to 3:00 p.m. and from 7:00 to 9:00 or 10:00 p.m. She awoke at 4:00 a.m. to find Matilde with Carmen. Silvestra and Matilde's relationship departed from legal constructs of the nuclear family. In this case, this was Silvestra's second relationship, at least, and she was only living with Matilde. Her daughter Carmen's surname was Meza not Vázquez, conveying that she had been recognized by her father. It also seems that during the four years, Matilde had fathered a child with Silvestra. Silvestra did not keep quiet about what she witnessed; she confronted Matilde, who left and did not return until later that night. When he returned, she claimed that he told her that if she kept quiet about what she saw, he would continue helping her.<sup>399</sup>

The mother used notions of honor seen in other deflowering cases to enlist the court's assistance. She portrayed herself as a hard-working mother who turned to selling tortillas in the marketplace to support her large family. Similar to other working mothers, she relied on her eldest daughter's help to watch the younger children while she was away from home. She depicted herself as a good mother, who cared for her daughter and protected her. She told the court that she had trusted Matilde because he was an older man and had raised her children. She thought that his age, their forged kinship ties, and their cohabitation in the same household had inspired feelings of affection and respect. Now she lamented the harm her daughter suffered. Though Silvestra left her home to

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<sup>399</sup> Declaración de Silvestra Vázquez. Causa instruída contra Matilde Cena por estupro, AGPIC, Caja 1935, JIPST Exp. 100-165, 1, 4.

work, she went to great lengths to protect her daughter. She kept Carmen off the street, fearing she might be harmed. She did not realize that the greatest danger was in her own home with Matilde. Through her words, Silvestra emphasized that because they had been together for four years and because he had helped raise her children, she believed they were a family.<sup>400</sup>

The accused, Matilde, had testified that he and Silvestra had lived together as husband and wife. Through his testimony, he depicted himself as an honorable man. He worked as a construction worker, earning two pesos daily. He said he provided economically for Silvestra's six children. Matilde did not deny having engaged in sexual relations with the young girl; instead, he shifted the responsibility to the mother by claiming that it was Silvestra's idea. According to the defendant, Silvestra told him he was free to engage in sexual relations with Carmen as long as he financially provided for the girl. If Carmen resisted, he said, Silvestra told him to use force by threatening to hit or kill her. Second, he added that Carmen was not a virgin; her reputation had been compromised because she had stayed out some nights. Third, he said Carmen consented to the sexual relations after he told her that it was her mother's idea. Fourth, he explained that the reason Silvestra brought up the accusation was because he arrived home late after drinking and that Silvestra was jealous of Carmen. As a final resort, he told the court he was willing to marry the girl.<sup>401</sup>

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<sup>400</sup> Declaración de Silvestra Vázquez. Causa instruída contra Matilde Cena por estupro, AGPJC, Caja 1935, J1PST Exp. 100-165, 1, 4.

<sup>401</sup> Declaración de Matilde Cena. Causa instruída contra Matilde Cena por estupro, AGPJC, Caja 1935, J1PST Exp. 100-165, 1, 5.

Through these statements, the accused cast himself as an honorable man who fulfilled the duties required of a man. Male obligations, as the head of household, included financially supporting his home. Matilde claimed he earned two pesos daily and that he cared for Silvestra's six children (it is not clear how many of these children were biologically his). Further, by shifting the responsibility to the mother, he again was portraying himself as not legally responsible by depicting Silvestra as a corruptor of minors who had initiated her own daughter into perversion. Shelton explains that judges sometimes believed that women made up stories to implicate their lovers, and therefore, the judges perceived their testimonies with suspicion.<sup>402</sup> Similar to other defendants, he claimed that the girl did not fulfill the legal elements of deflowering by claiming that she was not chaste and honest and that she had consented to the sexual relationship—and therefore, no crime existed. Indeed, Matilde's testimony exhausted all possible defenses to evade legal responsibility, arguing that the girl did not meet the crime's requirements. As a final resort, he offered to marry the girl. Carmen and her mother were likely baffled at Matilde's offer of marriage, considering that he and her mother had shared a marital bed. However, making an offer of marriage had been a strategy used by rapists since colonial times to escape legal ramifications.<sup>403</sup> Modern laws on *estupro* and *rapto* forced the cessation of criminal investigations when men married the young women.<sup>404</sup> Sloan

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<sup>402</sup> Shelton, *For Tranquility and Order*, 92.

<sup>403</sup> Lipsett-Rivera, "The Intersection of Rape and Marriage;" Lipsett-Rivera, "A Slap in the Face of Honor," 194. Ecclesiastical and family members pressured young women to marry their rapists.

<sup>404</sup> *Código penal para el Distrito* (1936), 125-126. See Articles 263, 270.

has pointed out that until 1991, Mexican men could offer to marry their victims and escape prosecution on the charges of rape and raptó.<sup>405</sup>

In her testimony, Carmen recounted ongoing nonconsensual sexual abuse for the previous five months. She testified that Matilde took advantage of her mother's absence to abuse her. Her accounts described instances of moral and physical violence to abuse her. She said that during the first attack, she screamed for help due to the pain she felt and added that Matilde's attitude toward her produced a fear in her. After the first abuse, Matilde told Carmen to keep quiet, or he would kill her. He also intimidated Carmen by telling her that her mother would be angry with her and that her mother would kill her if she found out what happened. Other times, he implied she was a prostitute, saying things such as, "*que en la forma como lo había hecho, así se ganaban dinero las mujeres y que él se lo iba a dar*" (the way he had done it to her was how women earned their money, now he would give it to her).<sup>406</sup> That meant he would pay her for sex because she was a prostitute; however, those were words used to denigrate the girl because he never gave her any money or anything else. During cross-examination, Carmen explained to the judge that on the nights that Matilde claimed she was not in her home, on those nights, she had visited her aunt in desperation to escape Matilde's sexual abuse. Carmen also defended her reputation and honesty, testifying that she has never had a boyfriend, much less had sexual relations with anyone other than Matilde.<sup>407</sup>

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<sup>405</sup> Sloan, *Runaway Daughters*, 179.

<sup>406</sup> Declaración de Carmen Meza. Causa instruída contra Matilde Cena por estupro, AGPJC, Caja 1935, J1PST Exp. 100-165, 1, 8.

<sup>407</sup> The outcome of the case is unknown. In the case's final notes, Matilde made fianza (bail). Causa instruída contra Matilde Cena por estupro, AGPJC, Caja 1935, J1PST Exp. 100-165, 1.

What the case illustrated was that some families departed from conceptions and definitions prescribed by the criminal codes. Further, laws pertaining to incest omitted scenarios that made it difficult for those families to prove that a sexual crime had been committed. Magistrates also had their own conceptions about the family that many families were unable to satisfy. Notions about children's innocence also did not apply uniformly to all cases, as the actual age of the child seemed to connect with those childhood conceptions of children born free of malice and perversion. Judiciary bias was evident in cases that alleged ongoing sexual abuse, as judges interpreted a victim's lack of resistance as a consensual sexual relation. Judges held young girls and adolescents to standards similar to cases involving adult victims. Here again, persistent abuse was viewed as consensual, and courts failed to give adequate weight to legal notions such as moral violence. Families and plaintiffs' complaints, by comparison, raised issues about the adequacy of laws such as incest. Parents and even siblings filed criminal complaints into their daughter's and sister's sexual crimes, albeit motivated by diverse reasons, including attempts to protect family honor and to uphold their own plebian notions that they were honorable and working-class members of society. Often, incest cases failed to offer a glimpse into the survivor's voice, especially in cases involving small children. In cases involving older girls and young women, however, their testimony—although filtered by judge's questioning and the record-keeping of court secretaries—and some transcripts did offer greater insights into litigants' own responses and forms of dealing with sexual abuse.

## Female Agency in Incest

Some victims of incest showed resiliency in confronting their attackers. In 1903, Cipriana Aguirre, 17, filed a criminal complaint charging her uncle, Jesús María Siller-Peña, with incest.<sup>408</sup> As a result of the abuse, she was six months pregnant and homeless. Her predicament began when she asked her mother for permission to help her aunt with the workload at rancho La Carbonera. This was not an unusual request; the young girl had helped with rancho chores in the past. She then testified that during the previous month, her uncle had entered her bedroom, around midnight, and attempted to seduce her with gifts in exchange for sexual relations. He offered half of his wealth if she acceded. Alternating his tone from forceful to tender, he continued to woo Cipriana and promised to safeguard her well-being. Nonetheless, Cipriana said she declined because she understood the great “wickedness” of her uncle. The following night, he entered her room at about the same hour, and again she resisted. By the third night, weary from the lack of sleep from the prior two nights, exhausted by his mistreatments during the day, and for her own “lack of courage as a woman,” her uncle was successful in his pursuit.<sup>409</sup> However, she said that she did not allow herself to be “fornicated willingly, except that her strength was not sufficient to resist.”<sup>410</sup> She said she did not scream because she

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<sup>408</sup> Criminal instruída contra Jesús María Siller-Peña por violación y estupro, AGPJC, Caja 1903 Penal, #788, 18.

<sup>409</sup> Her words were, “Por la cobardía propia de su sexo y por el miedo y respeto que le tenía a su tío . . .” Declaración de Cipriana Aguirre. Criminal instruída contra Jesús María Siller-Peña por violación y estupro, AGPJC, Caja1903 Penal, #788, 18, 2-3.

<sup>410</sup> Declaración de Cipriana Aguirre. Criminal instruída contra Jesús María Siller-Peña por violación y estupro, AGPJC, Caja 1903 Penal, #788, 18, 2-3.

wanted to avoid a scandal in her family, and she also felt fear and “respect” for her uncle (she repeated the word respect in her statement).<sup>411</sup>

Cipriana’s mother also testified in court. Herculina testified that, initially, her sister-in-law did not want to disclose her reasons for asking that Cipriana leave. Later, she confessed that she had witnessed her husband with Cipriana. Herculina believed that the crime was especially “infamous and cowardly,” given their close familial relationship.<sup>412</sup> Her brother-in-law had shamelessly and publicly aired his relationship with Cipriana. He had admitted to Señora Macedonia that he had seduced his niece. Thus, he did not deny his involvement; instead, he offered to come to an arrangement with the girl’s mother. He told Herculina that he felt it was wrong to place Cipriana in the Asilo de Las Arrepentidas, meaning that he assumed he had the right to express an opinion that was contrary to her father’s decision to put her in the reformatory. Lipsett-Rivera argued, “Many rapists viewed their act of violence as conveying an implied right to possess their victims that gave them a continued authority over them.”<sup>413</sup> In his discussion of masculinity and power, Stern also highlights how some men’s behavior suggested that they believed that “sexual possession” gave them permanent rights over a woman.<sup>414</sup> In this case, it is unclear whether Jesús María Siller-Peña believed he had continued rights to Cipriana’s body. Certainly, his conversation with Señora Macedonia indicates that he believed he was entitled to voice his opinion about Cipriana’s future lodging. At other

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<sup>411</sup> Declaración de Cipriana Aguirre. Criminal instruída contra Jesús María Siller-Peña por violación y estupro, AGPJC, Caja 1903 Penal, #788, 18, 2-3.

<sup>412</sup> The mother’s words were, “infame y más cobarde.” Declaración de Herculina Sánchez. Criminal instruída contra Jesús María Siller-Peña por violación y estupro, AGPJC, Caja 1903 Penal, #788, 18.

<sup>413</sup> Lipsett-Rivera, “The Intersection of Rape and Marriage,” 578.

<sup>414</sup> Steve Stern, *Secret History of Gender: Women, Men, and Power in Late Colonial Mexico* (Chapel Hill: University of North Carolina Press, 1995), 76.

public events, the uncle boasted about his sexual prowess involving the offended girl at her family's expense, joking that he was good at "*engordar a las mujeres*" (literally, fattening women or impregnating them).<sup>415</sup> In this case, similar to Petra's case discussed in Chapter 4, the victim brought up the offensiveness of her assailant's words. In this case, the uncle's comments wounded the family and Cipriana because he exhibited no shame about what he had done. Instead, he openly and publicly disclosed his sexual affairs and indiscretions, and this added to the public humiliation that the family and the young woman experienced.

On the other hand, her father, Tomás, a farmer, was upset at both his daughter and brother-in-law. He testified that he was outraged at his daughter and at "*el ladrón de su honra*" (the thief who took her honor) because the act was perverse. News of the incest spread, and he had found out from another sister, María, that Arcadia, his sister, had caught them in the act. And when the wife confronted her husband, he simply took off to the Hacienda de los Gonzalez. In his anger, Tomás told his wife to figure out where to place Cipriana so she would not be a bad example to the family.<sup>416</sup>

Cipriana's story differed from that of a typical sexual victim because her testimony suggested that she employed legal assistance throughout her case.<sup>417</sup> In her testimony, in order to gain the court's consideration, she strategically utilized the best defense at her disposal to portray herself as a chaste and honest young woman. Painting her situation as worthy of protection, she did not blame her parents. Instead, she said,

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<sup>415</sup> Declaración de Herculana Sánchez. Criminal instruída contra Jesús María Siller-Peña por violación y estupro, AGPJC, Caja 1903 Penal, #788, 18, 4.

<sup>416</sup> Declaración de Tomás Aguirre. Criminal instruída contra Jesús María Siller-Peña por violación y estupro, AGPJC, Caja 1903 Penal, #788, 18, 5.

<sup>417</sup> Cipriana was represented by an attorney during a separate civil proceeding, but during the criminal suit, evidence of counsel is not captured within the court transcript.

they could not have anticipated what might happen because she previously had visited her aunt and uncle without any problems. To make a determination of rape, judges looked for signs of moral and psychological pressure and actual physical violence.<sup>418</sup> In her testimony, Cipriana described her uncle's use of both types of violence. When discussing her resistance, Cipriana resourcefully used normative views of femininity to her advantage, stating that because of her feminine fragility, she lacked the forcefulness and the strength to resist. Further, Cipriana's statement stressed respect to explain the moral pressure. In his study of incest trials occurring between the late colonial era to the period following Mexican independence, Lee Penyak discussed the subordinate position of children, particularly of girls, within households that made them vulnerable to familial abuses. Confessional manuals asked children whether they respected their parents and without arrogance obeyed parental authority.<sup>419</sup> Hence, social and religious customs informed notions of respect that children were taught to maintain within a family hierarchy. Respect was owed to parents not only by children but also by children of other family members. While obedience and respect were concepts embedded within social norms, paternal and familial authority did not extend to engaging in sexual relationships with a daughter, niece, or sibling. Cipriana had not consented to a sexual relationship with her uncle, as she affirmed more than once that her intent was to avoid scandal, to spare the feelings of her aunt and cousins, and because she could not physically resist her uncle's strength.

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<sup>418</sup> *Código Penal del Estado de Coahuila (1900)*, 155. Article, 784.

<sup>419</sup> Penyak, "Incestuous Natures," 162-187. See also Nora E. Jaffary, "Incest, Sexual Virtue and Social Mobility in Late Colonial Mexico," in *Gender, Race and Religion in the Colonization of the Americas*, ed. Nora E. Jaffary (Burlington: Ashgate Publishing Company, 2007).

Families involved in incestuous cases displayed ambivalent feelings. Tomás' testimony conveyed anger, loathing, and shame toward his daughter and brother-in-law. He also threw Cipriana out of their home so that she would not be a bad example to other family members. Herculina, on the other hand, remained supportive but also concerned about public opinion. The mother's words described the crime in terms of the shame the situation caused for Cipriana in the community.<sup>420</sup> She understood the crime differently from her husband. She was genuinely concerned for Cipriana and noted the pain that was evident in her daughter's testimony. The father primarily exhibited anger over his loss of familial honor; after all, it was his daughter and sister who were affected by this incestuous affair. This case also showed that victims of incest are punished as much, if not more, than the perpetrator. Cipriana described the sexual violence as fornication or sin, giving the crime a religious undertone.

Overall, the family's testimonials suggest that their reactions to the crime in part were understood in terms of their own locus of identity within the family unit—that is to say, the multiple roles and identities created between family members through their ascending, descending, and collateral lines. The incestuous relationship completely eroded the relationship Cipriana formerly enjoyed with her aunt, which appeared to be close. For her father, the incest affected his relationship with his daughter, brother-in-law, and sister. For her aunt, the crime impacted her relationship with her niece, husband, sister-in-law, and brother. Hence, Cipriana faced the sexual offense not only as a personal, private crime through her pregnancy but experienced the crime through how it

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<sup>420</sup> Criminal instruída contra Jesús María Siller-Peña por violación y estupro, AGPJC, Caja 1903 Penal, #788, 18, 4.

impacted her familial relationships with every member of her immediate and extended families.

The fact that few sexual crimes ever receive a punishment in court pushes the bounds of what justice means. Cipriana eventually dropped the charges against her uncle after settling civilly for 1,000 pesos. The settlement was a sizable amount of money and represented his financial responsibility to their unborn child.<sup>421</sup> The financial settlement was also unusual because I found no other litigants who were awarded any money. Perhaps to Cipriana, the economic restitution, not a ruling of guilt, entailed justice or at least an equitable settlement. Similar to other cases, there were social and economic disparities between the attacker and the victim—in this case, between Cipriana’s family and her affluent uncle. That might also explain why the accused was never arrested after the plaintiff filed a formal complaint. It also might explain why the suspect chose to settle civilly to avoid further scandal. The public scandal it caused, however, did not break up the marriage of her uncle and aunt. A testament drafted by Arcadia, the aunt, in 1917 affirmed that she remained married to Jesús María but that they never had children. In her will, Arcadia divided her inheritance among her husband, an adoptive son, a nephew, and also included her brother, Tomás, Cipriana’s father.<sup>422</sup> In the end, Cipriana’s family, similarly to Manuela’s, opted for family reconciliation over punishment.

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<sup>421</sup> Criminal instruída contra Jesús María Siller-Peña por violación y estupro, AGPJC, Caja 1903 Penal, #788, 18.

<sup>422</sup> Archivo para la memoria de la Universidad Iberoamericana Saltillo. “Fondo Aguirre García.” MX, COAH, UIAS, AM, F Aguirre García, c 2, e 4, d 46, 6 ff, accessed May 1, 2016, <http://www.archivoparalamemoria.com/index.php/fondos/documentos/2/68>. It would be interesting to explore whether the adoptive son included in Arcadia’s will was her husband and Cipriana’s illegitimate offspring.

The next sections explore the role of the community in sexual cases involving children. As previously described, community members played vital roles as witnesses to provide evidence, and in the latter case, witness testimony verified incriminating statements made by the defendant. In another case, when the family shared its experience with a community member, the family learned that the defendant was a habitual offender who had committed similar crimes with other girls similar in age to that of the plaintiff. In this manner, community and gossip served to provide evidence to gain credibility in the court setting and as an informal way of alerting other members of the community of the sexual offense. Further, exposing the defendant's actions functioned as a tool that communities used to publicly humiliate a criminal. This indicated that communities resorted to informal methods to impart their own forms of local, unofficial justice outside of the courtroom.

### **The Role of Communities**

In the following three cases, the community played a role. In 1912, in the municipality of San Pedro, María Susana Alanís filed a criminal complaint against Pedro Ortíz for his foiled assault against her 8-year-old daughter, María Susana Castro.<sup>423</sup> The mother told the court that the stranger's intention was an attempt against her daughter's reputation and honor. In her police report, the mother stated that about 15 minutes after leaving for school with three friends from her neighborhood, one of the girls returned to alert her that a stranger with a beard took her daughter.

When María Susana was found, she testified that the stranger approached her, took her by the hand, and asked if her father still worked for the Hacienda de Purcell. She

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<sup>423</sup> Criminal contra Pedro Ortíz por atentados al pudor, AGPJC, Caja 1912 Penal, #640.

said the stranger forced her to walk through the street toward the Cuartel. María Susana said the stranger threatened and forced her to walk with him. As they walked past the Batallion 32, where soldiers were stationed, he warned her that if “she screamed, he’d kill her or he’d throw her in jail and there she’d die.”<sup>424</sup> After a woman intervened, the stranger tried to entice the girl with a five-peso bill, but the child paid him no attention. She told the court that while they walked, he told María Susana he was taking her to “Lipa,” whom she said she did not know. Several times, she broke free from his grasp, but each time the stranger grabbed her until a woman, whom she said she did not know, intervened, telling the stranger to let the girl go. Finally, she fled, making her way to school, where her mother met her.<sup>425</sup>

The stranger, Pedro, was visiting from a different town. He was a 34-year-old, married shoemaker who lived in Monterrey, Nuevo Leon. He explained in court that he was passing through the city because he was seeking work. The defendant claimed he saw a little girl headed to school, and this image evoked memories of his own daughter. Thus, Pedro asked the little girl, “Comadre, para donde va” (“Friend, where are you headed?”) To this inquiry, the girl replied, “To school,” and he told her “to apply herself and gave her a centavo.”<sup>426</sup> The girl was alone when he saw her, he said, and they had walked in the same direction for about two blocks. He alleged that he had been looking for a friend and stopped at a bar seeking information, but, unable to find his friend, he wound up back in the place where he first encountered the girl. When the police

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<sup>424</sup> Declaración de la niña, María Susana Castro. Criminal contra Pedro Ortíz por atentados al pudor, AGPJC, Caja 1912 Penal, #640, 6-8.

<sup>425</sup> Ibid.

<sup>426</sup> Declaración del acusado, Pedro Ortíz. Criminal contra Pedro Ortíz por atentados al pudor, AGPJC, Caja 1912 Penal, #640.

questioned Pedro, “What motive would the girl have to point him out?” he was unable to come up with a reason and replied, “I am incapable of acting against a young girl. I am not a beast.”<sup>427</sup> Pedro’s use of the word beast gives a glimpse into societal views toward sexual crimes against children. Scholars have shown that the rape of young children was viewed as a characteristic of an unnatural sexual appetite. Thus, communities viewed these sexual crimes as offenses against civilized values and public morality.<sup>428</sup>

The judge asked María Susana’s three friends to identify the stranger, but only one was able to point him out. Her 7-year-old friend was unable to testify at all. Her 6-year-old friend looked at the outsider with “curiosity and attention,” then declared that it was not him. The third child, an 8-year-old, told the court that the girls thought he was the “loco,” (the crazy) who wandered the streets. She identified Pedro as the stranger who took Susana.<sup>429</sup>

Community surveillance played a significant role in this case. Through the assistance of the unknown woman, the girl was able to get away from the defendant. Further, after the mother filed the criminal complaint, police learned from a young boy the whereabouts of the outsider. The youngster told authorities that he saw the man near the train station and even told them that another policeman had arrested him when he bothered some women near the tracks. Two additional female witnesses, who claimed seeing the defendant as he walked by their homes with the girl, also testified. Community

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<sup>427</sup> Declaración del acusado, Pedro Ortiz. Criminal contra Pedro Ortiz por atentados al pudor, AGPJC, Caja 1912 Penal, #640, 4-5. His words in Spanish, “No soy bestia para obra de esa manera con una niña de tan corta edad.”

<sup>428</sup> Shelton, *For Tranquility and Order*, 75. Shelton uses the distinction between barbaric and civilized practices. In Sonora, perpetrators who committed sodomy and raped young children threatened the social harmony of the community, religious practices, and moral values.

<sup>429</sup> Declaración de la niña, María García. Declaración de la niña Guadalupe de la Cruz. Criminal contra Pedro Ortíz por atentados al pudor, AGPJC, Caja 1912 Penal, #640, 10-11.

members played a role in locating the plaintiff, and other witnesses prevented Pedro from harming the girl. In this case, the community acted as surveillance in the neighborhood. Members noticed trouble and intervened. People also were suspicious of individuals who looked out of place and then reported them to the police.

In this case, the magistrate had misgivings about some of the children's testimonies. The judge appeared to give María Susana's testimony serious consideration but seemed suspicious of her schoolmates' abilities to identify the suspect. In this regard, the judge's reactions to the children's testimonies were mixed. The judge believed that María Susana had no reason to wrongfully incriminate the defendant, but the other children's testimonies were not accepted at face value. To the law, the age of a witness was a critical factor in the credibility of the witness and of their ability to judge acts. All three children were younger than 8; one was unable to testify; another looked unsure; and combined, their testimonies were viewed as discrepant. In such cases, the courts regarded such testimony as lacking credibility.

At the same time, María Susana's case received different treatment from the incest cases that involved family offenders. Strangers who forced and abducted children were construed as criminals who threatened not only an individual family, but they represented a threat to the entire community. Thus, magistrates and other court personnel pursued the criminal case from the standpoint of protecting the social body. There was a perception that sexual crimes against children were public offenses, not private offenses. The defendant's own words reflected the societal notions about individuals who perpetrated sexual crimes against children: Such defendants were viewed as depraved savages or animals. There existed sufficient compelling evidence to punish the defendant,

but when the revolutionary forces in the area took the plaza of this villa, they released the defendant.<sup>430</sup>

Certainly, in the next criminal suit, the court personnel reacted similarly to María Susana's case. In 1917, in Torreon, Teresa Salazar, a 40-year-old widow, accused Fortino Baca, 30, of attempting to deflower her 8-year-old niece, María Amada Salazar.<sup>431</sup> Teresa testified that Fortino stopped by her home at 10 o'clock one night, and because he was inebriated, she allowed him to sleep on her floor. The record is fuzzy on the relationship between Fortino and Teresa. The transcript says he stopped by looking for a woman with whom he had an illicit relationship. Three other girls lived in the home with Teresa. One of them was María Amada, a displaced orphan born in Ciudad Chihuahua, who now lived with her aunt. While the girls and the defendant slept, Teresa talked with other female friends from her door.

Thirty minutes later, when Teresa returned, she found her friend, Alejandra Guajardo, shoving the defendant out the door. Alejandra, a 25-year-old widow, testified that when she entered the house, she found the defendant naked on top of Maria Amada, whose shirt was raised. She confronted the defendant and demanded that he stop, but he retorted that she should leave before she got him into trouble.<sup>432</sup> When Alejandra persisted, Fortino fled the home and hid. A police search was launched, and after the suspect was found, Fortino told the court he started drinking early that morning. He stopped by Teresa's home looking for Elvira, his lover, and Teresa allowed him to stay.

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<sup>430</sup> Criminal contra Pedro Ortíz por atentados al pudor, AGPJC, Caja 1912 Penal, #640, 28.

<sup>431</sup> Criminal contra Fortino Baca por estupro frustrado, AGPJC, Caja 1917 Penal, #590, No. 194.

<sup>432</sup> Declaración de Alejandra Guajardo. Criminal contra Fortino Baca por estupro frustrado, AGPJC, Caja 1917 Penal, #590, No. 194, 4.

In cross-examination, Fortino neither affirmed nor denied the accusations, arguing that in his inebriated state, he might have touched the girl's body, thinking it was Elvira.<sup>433</sup>

In this case, the prosecutor stated his opinions of child sexual crimes. He testified that the defendant used his drunkenness as an excuse—a scenario the prosecutor said he witnessed often. Yet conveniently, Fortino had fled; therefore, the prosecutor said the accused recalled what he wanted and conveniently forgot his “maldades” (wrongdoings). The public minister added, “If these crimes were punished the way they should be rather than with the benevolence of our code, women would have greater respect among us. Especially, female children who are the victims of so much lasciviousness!!”<sup>434</sup> The prosecutor's language offered some insight into the case. First, the accused used inebriation as a mitigating factor or method to diffuse his legal responsibility. Second, in the prosecutor's estimation, sexual crimes did not receive adequate attention or punishment, and sentences were lenient. The majority of the plaintiffs were women and primarily young girls, he noted. The prosecutor stated, “The law ought to be inflexible and tough on this type of crime because as is, it neither deters or provokes fear among lawbreakers; criminals who steal the greatest worth of a woman and even more, of a girl.”<sup>435</sup>

The magistrate's viewpoint was similar to that of the prosecutor. The judge applied Article 785, ruling that because the girl was asleep, this crime met the qualification of an unconscious person. The doctor who examined the girl found that she

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<sup>433</sup> Preparatoria de Fortino Baca. Criminal contra Fortino Baca por estupro frustrado, AGPJC, Caja 1917 Penal, #590, No. 194, 4-5.

<sup>434</sup> Preparatoria de Fortino Baca. Criminal contra Fortino Baca por estupro frustrado, AGPJC, Caja 1917 Penal, #590, No. 194, 4-5.

<sup>435</sup> Agente del Ministerio Publico. Criminal contra Fortino Baca por estupro frustrado, AGPJC, Caja 1917 Penal, #590, No. 194, 10.

showed no exterior signs of violence and her hymen was intact, and thus, he ruled that the crime was not consummated and that it was merely an attempt.<sup>436</sup> Here again, judiciary personnel's conceptions of children as innocent compelled judges and prosecutors to view sexual crimes against children as heinous. In doing so, the courts handed down harsher sentences in cases in which the suspect was a stranger, not a family member. Prior incidents alleging incest occurred at night while the victims slept, yet in none of them did those magistrates entertain applying Article 785. In this case, the witness testimony by an adult again made a vast difference. Had the only evidence been the 8-year-old's word against Fortino or had it been based on testimony from the other three children, the verdict would not have been one of guilt.

### **Sexual Abuse and Homicide, Venereal Diseases, and Repeat Child Offenders**

In the cases described thus far, I argued that the court system exhibited biases that served as a disadvantage to children in cases involving sexual violence. In some cases, families and plaintiffs failed to meet prescribed, normative views of the family. Other plaintiffs were unsuccessful because judges attributed complicity to the young children. In María Amada and María Susana's cases, courts were motivated to more vigorously adjudicate offenses committed by a stranger over crimes that occurred in the victim's home. Community members took more proactive roles in protecting children victimized by strangers versus children assaulted by relatives.

The next three cases reinforce discriminatory judiciary practices. These three cases represent the most perturbing of cases involving child sexual crimes. As such, the

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<sup>436</sup> Ejecutoria No. 63. Criminal contra Fortino Baca por estupro frustrado, AGPIC, Caja 1917 Penal, #590, No. 194, 4-5.

level of violence perpetrated against children was exceptional. On the other hand, given the particularly offensive nature of these cases, it is perplexing that the judges did not rule overwhelmingly to punish all three offenders. What these cases reveal is that in adjudicating child sexual crimes, the final determinant was the presence in court of a credible witness. But, I would also argue that the gender of the victim also factored into rulings. Following are the three cases, the facts, and an examination of judges' opinions, families, community involvement, and witnesses.

In 1922, the rape and slaying of 8-year-old Soledad Galicia generated a tremendous amount of community and familial involvement.<sup>437</sup> The media reported the crimes as *sin nombre* (unmentionable). The “*pacífica*” (pacific) city of Saltillo was stirred by the crime. A young boy found the little girl’s body while walking his burros toward the edge of a railroad under construction. The area was unpopulated and near a *noria* (water wheel) measuring a meter wide by a meter and half long and a depth of about 10 meters. The girl’s body was found floating in the water. The autopsy doctors and the law enforcement officials believed the girl had been raped, but they determined that the cause of death was asphyxia by drowning.

The victim lived with her single, working-class mother, Narciza Duque, and the little girl’s brother. The mother worked as a domestic servant. The evening before Soledad’s disappearance, she and her brother had asked for permission to play with a friend who lived on Calle Matamoros. When Narciza’s son returned at 8:40 p.m. without his sister, Narciza went out looking for Soledad. Unable to find her daughter, Narciza

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<sup>437</sup> Diligencia contra los que resulten culpable de los delitos de homicidio y violación, AGPIC, Caja 1922 Penal, #417, No. 308.

headed to the *cuerpo de guardia* (civil police) to report her disappearance. The police and neighbors searched unsuccessfully. The playmate, Virginia, 8, told the police that Soledad asked her mother for permission to play, but because it was dark, Virginia's mother said no, and she did not know where Soledad went afterwards.

Narciza's family got involved in the criminal investigation. Anselmo, her maternal uncle, identified the girl's body. He told police that his friend, Contreras, believed he knew who was responsible for his niece's death. His friend owned a cantina and said that a customer, who lived near where the body was found, had entered the cantina offering a knife in exchange for money to purchase alcohol. The man boasted that he had just "*deshonrado a una chamaca*" (dishonored a young girl), meaning he had a sexual encounter. Additional family members went to the police. A cousin on her father's side and another distant relative, a *commerciante*, also went to the police. The *commerciante* confirmed the story that Anselmo told police. Antonio, the owner of the cantina, who was also Contreras' business partner, told a similar story to the police.<sup>438</sup>

The accused, Herminio, a 28-year-old married barber, had a criminal record for robbery and for drunken and disorderly conduct. And he had an alibi. The defendant testified that he met a girl who he believed was 12-14 years old for sex near an arroyo. Herminio claimed that the girl's name was Pancha. Indeed, Pancha verified Herminio's story. Herminio's co-worker, Edmundo, also testified that he and the defendant had worked that Saturday until midnight when they left together for a dance. However, their

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<sup>438</sup> Diligencia contra los que resulten culpable de los delitos de homicidio y violación, AGPIC, Caja 1922 Penal, #417, 70, 19.

testimony was not believable, and Herminio was found guilty. Further investigations and an appeal transcript upheld the criminal judgment against the defendant.<sup>439</sup>

Similarly, a case in 1936 in the mining community of Nueva Rosita sparked much interest in the community.<sup>440</sup> Berta A. de Hernández noticed that her 8-year-old daughter, Manuela Hernández, had difficulty urinating. The mother examined the girl to find her genital area *alterada* (swollen) and her bloomers full of blood. A midwife examined Manuela and told the mother that her daughter had “a disease.” The mother claimed none of the girl’s family members had such a disease, which she believed indicated that sexual abuse had occurred outside the family.<sup>441</sup>

The court transcript documents an interrogation followed by subsequent interrogations of Manuela and three friends who had accompanied her when the sexual abuse occurred. Their testimonies verified that Alberto González, a 49-year-old local hotel owner, invited the girls into one of his hotel rooms. The eldest, Olga Alicia Ramos, 10, stated that Alberto took the girls up to a room and that he locked the door but that

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<sup>439</sup> Diligencia contra los que resulten culpable de los delitos de homicidio y violación, AGPJC, Caja 1922 Penal, #417, No. 308.

<sup>440</sup> Averiguación instruída en contra de Alberto González por atentados al pudor, tentativa de violación y lesiones internas, AGPJC, Caja 1936 Penal, No. 610.

<sup>441</sup> Based on current medical knowledge, if indeed the girl contracted the venereal disease gonorrhea caused by the bacterium *Neisseria gonorrhoeae*, then Manuela’s genital area had to have come into contact with an infected individual. We know that Manuela’s genitals were affected; thus, the mode of transmission must have occurred either through direct sexual intercourse or via contact with the infected individual’s semen. The inoculation period, which is the length of time it takes for the bacterium to multiply to sufficient concentrations that the body’s immune system detects the bacterium, is from seven to 14 days following infection. Most often, the first reported signs are pain during urination, abdominal pain, and a pusslike discharge. However, there are different signs and symptoms in men and women. During the early stages of infection, not all females show signs of disease or they might show only mild symptoms. Moreover, asymptomatic gonorrheal infections are more common among teens, with 67% of males versus 77% of females showing no symptoms. For adults, asymptomatic rates are 10% for males and 50% for females. Finally, there is one more important element that is relevant to this case. While the discovery of penicillin occurred in 1928, at least in the United States, widespread use of penicillin to treat gonorrhea did not occur until later, in 1941 during World War II. Given this information, it is unlikely that the accused received adequate treatment for his gonorrhea. Brian R. Shmaefsky, *Deadly Diseases and Epidemics: Gonorrhea* (New York: Infobase Publishing, 2011), 9-52.

Olga refused and stayed outside. Olga said the defendant handed her some candy, and she left while the girls stayed inside the room with Alberto.

The remaining testimonies were of 8-year-old children. Ofelia Treviño also said the defendant gave them peanuts and that she saw him lock up her friends. Likewise, Gertrudis Sandoval testified that the girls went into a room with the defendant and that her friends told her he had showed them pictures (the court transcript does not discuss what images the girls were shown) and did *travesuras* (mischievous things). However, she said that she did not see him lock up the girls. In a series of subsequent re-examinations, the girls' stories changed. One said they were inside the room. There was disagreement on whether the door had been locked. For example, Ofelia said Alberto took them up to the room and asked them to show him their *partes ocultas* (private parts).<sup>442</sup>

Further cross-examinations resulted in additional revelations. In another examination, Manuela said that Alberto asked the girls to come to his hotel. She told the judge that he laid the girls on a bed one by one, instructed them to lower their underwear and show him their *panochita* (a derogatory word for vagina). However, Manuela said that the girls did not want to do as he asked, and they went downstairs. In a follow-up cross-examination between Manuela and the accused, she shared the same story but instead of affirming that the girls went downstairs, she said that Alberto got on top of Gertrudis first and then on top of her. In another declaration, Manuela changed the sequence of the assaults. In that testimony, she said she was last, and it was her that

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<sup>442</sup> Careos entre niñas. Averiguación instruída en contra de Alberto González por atentados al pudor, tentativa de violación y lesiones internas, AGPJC, Caja 1936 Penal, No. 610.

Alberto hurt. Manuela insisted that they could not open the door. Her testimony was damaged by contradictions in which she and Gertrudis argued back and forth, one stating the other was present while the other denied being there. Gertrudis claimed that the defendant never locked her up, nor was she afraid of Alberto and that she did not believe he was a bad man.

Another cross-examination provided further details about what might have occurred. Olga testified that on the date in question, Manuela was very upset and had come downstairs crying but did not say anything. Prior to this date, Olga told the court how she had gone alone to the hotel and that the defendant asked her to go upstairs “but she never wanted to go because she was afraid.” This suggested that Alberto had assaulted other girls but they had kept quiet out of fear. It also is possible that they were asymptomatic or that Manuela was the only one assaulted, as Olga’s final statement suggested.<sup>443</sup>

For his part, Alberto González denied all of the allegations. According to Alberto, Manuela, at her mother’s prodding, was instigated to declare against him. Other individuals, such as Francisco Campos Flores, Leopoldo Fernandez, and Ignacio Colunga, got involved to further their political gains. Alberto told the court that he had contracted gonorrhea in 1905, approximately three years before he got married but that he no longer had gonorrhea and that his family was composed of seven healthy children. He claimed that Dr. Raitz had cured him of the disease and that it had not recurred. He disagreed with the municipal doctor’s conclusions that he had gonorrhea. Moreover, his

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<sup>443</sup> Careos entre niñas. Averiguación instruída en contra de Alberto González por atentados al pudor, tentativa de violación y lesiones internas, AGPJC, Caja 1936 Penal, No. 610.

main argument was not whether he took the girls into a room but that he could not have locked them inside because the rooms did not have an inside lock, only a *gancho* (a hook). He admitted to giving the girls nuts and money but denied raping anyone.<sup>444</sup>

Various worker-led groups joined Manuela's mother in seeking a successful outcome in her case. Among them were the *Sindicato industrial de trabajadores mineros, metalúrgicos y similares de la República Mexicana* (Industrial Union of Miners and Metalworkers of the Mexican Republic) and a women's group, *Sociedad protectora de la mujer* (Humane Society of Women), which was associated with clothing and other industries. The women's group wrote letters to the municipal president and to law enforcement officials involved in the case. Another women's group, *La sociedad mutualista femenil "Carmen Serdán"* (Women's Mutualist Society "Carmen Serdán"), addressed its letter to the presiding judge. The group referred to Gonzalez's actions as "*asqueroso y repugante caso*" (filthy and disgusting). The Sociedad Mutualista Benemérito de las Americas also directed its letter of support to the local judge, asking that its letter be considered in unison with other groups. Numerous reasons motivated the involvement of the *Cámara nacional de comercio* (National Chamber of Commerce). The accused obtained access to the plaintiff precisely because he was a business owner, the alleged crime occurred in the establishment, and it appeared that the accused was the president of the Chamber of Commerce.<sup>445</sup>

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<sup>444</sup> Declaración del acusado. Averiguación instruída en contra de Alberto González por atentados al pudor, tentativa de violación y lesiones internas, AGPJC, Caja 1936 Penal, No. 610.

<sup>445</sup> Averiguación instruída en contra de Alberto González por atentados al pudor, tentativa de violación y lesiones internas, AGPJC, Caja 1936 Penal, No. 610.

Manuela's parents were a driving force behind these petition letters. The letter written by the *Masonería Universal Templo* (Universal Masonic Temple) specifically mentioned being contacted by the Hernandez family; the letter was addressed directly to the governor. Finally, the *Sociedad de padres de familia y maestros de la escuela Art 123 Amado Nervo* (Society of Parents with Families and Teachers from the Article 123 School, Amado Nervo) urged that the case be made an example, because the perpetrator did not respect "the greatest and most sacred treasure of the home, children." The innkeeper's actions failed to respect morality and posed a danger to public health. The judges' opinions on Manuela's case were not unanimous. The case went through four review processes. The court of first instance found sufficient evidence for a conviction, but the second did not. A third review found sufficient evidence, but during the fourth review, the tribunal absolved the defendant of the crime by declaring that the witnesses were inhabiles, stating that even if the court had accepted their testimony, there was no absolute proof against the defendant.<sup>446</sup>

The third case also occurred in 1936 and involved a 9-year-old boy named Raul Hernández.<sup>447</sup> His mother, María Luisa Velazquez, filed the criminal complaint against a male stranger who sodomized her son. The mother told the court that the day before, her son had stepped out to take some tortillas to his grandmother. The boy testified that a stranger offered him 10 centavos in exchange for running an errand. Using this pretext, the man lured the boy to a place near the battalion, San Juan. It was dark, and once there,

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<sup>446</sup> Averiguación instruída en contra de Alberto González por atentados al pudor, tentativa de violación y lesiones internas, AGPJC, Caja 1936 Penal, No. 610.

<sup>447</sup> Causa instruída en contra de Manuel Muñóz Medina por violación, AGPJC, Caja 1936 JIPST Exp, 1-21.

the man threw the boy onto some adobe. Raul said he started to cry, but the man scared him by saying he would kill him with a knife if he did not stop crying. Be quiet, we are only going to play “a la ranita,” the boy said the man told him.<sup>448</sup> Crying, the boy tried to get up, but the man hit him. After a while, the man got up and told the boy to go home.<sup>449</sup> Doctors found evidence of trauma, excoriations on the boy’s abdomen, scraping along the inside of his leg, and anal tearing and hemorrhaging.<sup>450</sup>

Based on the boy’s description of what the stranger was wearing and on the testimony of a witness, the police apprehended the defendant. The defendant, Manuel Muñoz Medina, was a 24-year-old single soldier in the 28th regiment living in the battalion. He denied any involvement but then told the court that on the previous day, he had been released on a fine for the crime of indecent assault of a minor whose name he did not recall. He claimed to have been recused in his quarter at San Juan until his arrest by the police commandant. Thus, this was the second time the defendant had been arrested on charges of a crime of this nature. The court requested his criminal transcripts and found two additional cases of indecent assaults involving children. The first child testified that the suspect had squeezed her throat while covering her mouth but that she managed to scream and was heard by a shoemaker who yelled at the defendant to release her. In the other complaint, a young boy testified that the defendant called him over to run an errand. Once the boy approached him, the defendant grabbed him, and the boy told the court that the man had bitten him so hard on his cheeks that he still had teeth marks.

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<sup>448</sup> Declaración de Raul Hernández. Causa instruída en contra de Manuel Muñoz Medina por violación, AGPJC, Caja 1936 J1PST Exp, 1-21.

<sup>449</sup> Ibid.

<sup>450</sup> Causa instruída en contra de Manuel Muñoz Medina por violación, AGPJC, Caja 1936 J1PST Exp, 1-21.

He then grabbed the boy by the neck, but some individuals nearby managed to hear the commotion and intervened until the man released the boy. After the judge learned about Manuel's predilection for child victims, he sentenced the defendant to prison.<sup>451</sup>

The cases of these three children—Soledad, Manuela, and Raul—involved extreme acts of violence against children, yet sentences were handed down in only two of them. Soledad's and Manuela's cases generated an enormous amount of community and familial involvement. Reports of Soledad's case appeared in the newspaper.<sup>452</sup> Manuela's case attracted public involvement from unions and from women's and business organizations. The parents strategically asked these groups to target and pressure politicians and the judiciary apparatus involved in the cases. Letters, as noted, were sent to the municipal president, law enforcement officials, the presiding judge, another local judge, and to the governor. The groups that wrote the petition letters were aware that they were a part of a united initiative to obtain a guilty verdict. Equally important was that the language of the letters framed the case as an offense against public morality and the good customs of the community. The groups emphasized the defendant's repugnant actions and his lack of respect for morality. The teacher's union drew on conceptions of innocence, arguing that the court should make an example of the defendant to protect the home's greatest treasure. Finally, the letters demonstrated concern for the community's public health because the child contracted a venereal disease.<sup>453</sup>

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<sup>451</sup> Declaración del acusado. Causa instruída en contra de Manuel Muñoz Medina por violación, AGPJC, Caja 1936 J1PST Exp. 1-21.

<sup>452</sup> Diligencia contra los que resulten culpable de los delitos de homicidio y violación, AGPJC, Caja 1922 Penal, #417, No. 308.

<sup>453</sup> Averiguación instruída en contra de Alberto González por atentados al pudor, tentativa de violación y lesiones internas, AGPJC, Caja 1936 Penal, No. 610.

The letters centered on the health concerns of the postrevolutionary state. It was significant that the letter did not describe the case based on the sexual crime per se but on the consequences that were on the minds of national lawmakers. In Mexico City, reformers focused on health campaigns against venereal disease.<sup>454</sup> For instance, between 1916 and 1920, syphilis was considered the leading cause of a multitude of problems affecting children and population rates. Health campaigns culminated in the abolition of prostitution in Mexico during the 1940s.<sup>455</sup> Additionally, sexual crimes emphasized greater sanctions against defendants when the victim contracted a disease. For these two reasons, this court's sentencing did not reflect the expressed concern for public health that the codified law attempted to protect.

Again, statements of witnesses made a difference in these three cases. In Soledad's case, her family brought in three adult witnesses who testified that the defendant had boasted how he had dishonored a girl near the arroyo.<sup>456</sup> In Manuela's case, the witness testimony was made by four girls younger than 10. These young girls were subjected to multiple interrogations. Their testimonies were inconsistent and discrepant.<sup>457</sup> In Raul's case, the court found a witness who placed the defendant at the scene of the crime. The witness testified that he saw the defendant circling the block until he spotted the plaintiff. That and learning that the defendant was out on bail and had been

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<sup>454</sup> Cristina Rivera-Garza, "The Criminalization of the Syphillitic Body: Prostitutes, Health Crimes, and Society in Mexico City, 1867-1930," in *Crime and Punishment in Latin America*, ed. Ricardo D. Salvatore, Carlos Aguirre, and Gilbert M. Joseph (Durham: Duke University Press, 2001), 148-149. Rivera-Garza explores how syphilis became a criminal construct. As the case shows, officials did not always penalize offenders.

<sup>455</sup> Bliss, *Compromised Positions*, 98-100. Also see 187-205, the abolition of the Reglamento.

<sup>456</sup> Diligencia contra los que resulten culpable de los delitos de homicidio y violación, AGPJC, Caja 1922 Penal, #417, No. 308.

<sup>457</sup> Averiguación instruída en contra de Alberto González por atentados al pudor, tentativa de violación y lesiones internas, AGPJC, Caja 1936 Penal, No. 610.

arrested for two similar crimes involving children were sufficient evidence for the court to sentence the defendant to a prison term.<sup>458</sup> Conversely, in Manuela's case, the girls' testimonies were not deemed sufficient to fulfill the criteria of a credible witness. Because of their ages, the court asserted that the girls were unable to judge the actions of the defendant.<sup>459</sup>

## **Conclusion**

In sum, in adjudicating child sexual crimes, the judicial system made legal distinctions based on age markers. Laws accepted conceptions of childhood as a developmental stage worthy of extra legal protections. These idealized views of children are reflected through women's and religious magazines circulated during this time period. Nonetheless, magisterial decisions did not always protect children nor were sexual offenders always punished for their alleged crimes. These lax approaches to punishment resulted from numerous judiciary biases toward families and victims. Family structures that did not conform to the nuclear, patriarchal model were discriminated against. Female heads of households and individuals living in extramarital arrangements were viewed as less respectable. Extramarital arrangements failed to follow the moral traits of marriage. Further, the socioeconomic differences between judges and litigants also contributed to a dearth of guilty verdicts. Judges appeared to believe that poor families were partly to blame because they did not protect and monitor their children adequately. Cases involving familial abuse might have engendered judicial uproar if the judge determined

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<sup>458</sup> Causa instruída en contra de Manuel Muñoz Medina por violación, AGPJC, Caja 1936 JIPST Exp. 1-21.

<sup>459</sup> Averiguación instruída en contra de Alberto González por atentados al pudor, tentativa de violación y lesiones internas, AGPJC, Caja 1936 Penal, No. 610.

that the child had been raped. But, cases considered to be consensual sexual relations between family members were not given legal protections. The shift from religious toward secular regulation of incest crimes left out numerous sexual relationships prohibited under Spanish laws. Under the secular laws of the mid-nineteenth century, sexual relationships involving extended family and godparents were no longer part of modern incest laws, but this did not mean that victims and their families did not assign religious tones to these crimes. The notion of children's innocence seemed to have evolved from the concept of malice. Under colonial laws, malice, not necessarily age, was used to sexualize children. Assigning sexual perversion to a child had served as an excuse for many rapists. Further, a child's gender could also have an impact on the court's posture, while crimes involving female children could be classified as a rape or estupro. When similar acts involved male children, the crimes were always classified as a rape, which carried a harsher punishment, but they also identified the crime as unwanted and violent. In contrast, estupros implied consent and disregarded the inherent violence underlying those crimes. Further, age could also disadvantage female victims if the crime was committed by a minor. Finally, subtle shifts in societal attitudes toward child sexual offenders began to emerge through cases occurring in the twentieth century. No longer were all offenders openly confessing to having engaged in sexual relations with a child. Nonfamilial suspects did not accuse children of seduction. Nonetheless, sexualized rhetoric continued to be articulated in cases involving intrafamilial abuses. These changes suggested that society had grown less tolerant of adult-child sexual relations—perhaps as the rise of the modern criminal category of pedophilia emerged.

## CONCLUSION

This study began as an effort to examine the role that regional differences play in the prosecution of sexual crimes. With that question in mind, I traced the historical and legal evolution of three sexual crimes: estupro, rape, and incest. Based on a comparative analysis between the national 1871 Criminal Code and Coahuila's 1900 Criminal Code, my findings revealed that definitions of sexual crimes did not differ. However, Coahuila's legislators showed greater leniency toward sexual offenders by imposing less-harsh prison sentences. Research in Coahuila's congressional archives revealed that legislators were not preoccupied with sexual crimes, but had other concerns. Moreover, lengthy delays, sometimes decades, took place between the implementation of the laws passed at the national level and then subsequently adopted at the state level. Thus, in 1871, the first year in which I examined cases, colonial laws remained in effect. Finding that colonial laws still guided legal practice well past the republican period adds to the relevance for regional studies to assess how the transition from Spanish laws to the liberal 1871 Criminal Code occurred in different parts of Mexico.

The laws themselves were indicative of elite perceptions toward criminality. Liberal laws impacted courtroom practice and constructions of honor. Plebian plaintiffs shaped their grievances based on the laws but also contested them. Shelton's study in Sonora and Cutter's earlier research in northern provinces in New Spain informed my analysis of how the judiciary apparatus and views on punishment were distinct and how

rural areas, despite their lack of resources and legally trained judges, operated.<sup>460</sup> The judicial system developed ways to address shortcomings through methods, such as communication between judges who had legal training, and through *oficios*. Given the remoteness of ranchos, auxiliary judges and other local mediators could launch a legal complaint and route it to the appropriate authorities for an investigation to commence. These examples illustrate accessibility to justice that other studies, such as Socolow's study for rural Buenos Aires, found were lacking.<sup>461</sup>

My analysis demonstrated that Coahuilenses interpreted sexual crimes differently from northern scholars. Shelton, similar to studies by Alonso in Chihuahua, emphasized that officials and community members were more concerned about maintaining peace and therefore often opted for sentences that emphasized reconciliation rather than outright punishment.<sup>462</sup> In Coahuila's courts, families claimed that sexual crimes were offenses against their familial order, but subtle shifts occurred when the offenses involved children. Crimes against children were often interpreted as transgressions against public morality and against good customs. These variations are explained by regional differences specifically, by how different areas of Mexico define notions of honor. Moreover, these changes suggest a reconceptualization of private, sexual offenses as moving from crimes against the family into broader concerns about how crime impacts the nation. Individuals and officials were mobilized by sexual crimes that threatened community values and norms, especially when the sexual practices went against standards of decency. These changes offer insights into how private matters are

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<sup>460</sup> See Shelton, *For Tranquility and Order* and Cutter, *The Legal Culture of Northern New Spain*.

<sup>461</sup> See Socolow, "Women and Crime," 53.

<sup>462</sup> Shelton, *For Tranquility and Order*, 4. Alonso, *Thread of Blood*, 8.

articulated not only in communities but increasingly became concerns of the Mexican state. Other tensions emerged between protections that judges granted and between entitlements that plaintiffs believed the law conceded.

The prosecution of sexual crimes did not improve with the transition from Spanish laws to the liberal laws of the mid-nineteenth century. Nonetheless, definitions of sexual laws did evolve, as the crimes of *estupro* and incest indicate. The prosecution of crimes of seduction maintained some continuity, as the written promise of marriage remained a salient aspect of prosecution for this crime. This archaic provision of the law finally was removed with the 1931 revision of the 1871 federal code.<sup>463</sup> However, other prejudicial aspects of *estupro* laws remained in place, such as the practice of emphasizing that the young woman had to be chaste and honest. Today, the legal concepts of chastity and honesty are no longer integral aspects of the written law.<sup>464</sup> Those two legal concepts were precursors to modern notions that blame the victim's sexual abuse on a woman's attire and that call into question a woman's sexual reputation through her sexual history.

The legal elements of rape laws from the penal code of 1871 to contemporary laws remain ingrained in the legal codes. Punishment and the legal definition of intercourse have changed. Coahuila's penal laws continue to punish offenders less harshly compared to the laws of the Federal District. Federal and state laws criminalize penetration—oral and anal—in addition to vaginal penetration, suggesting an improvement in the severity of the penalties called for in rape laws.<sup>465</sup> Incest, however,

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<sup>463</sup> *Código penal para el Distrito (1936)*, 125.

<sup>464</sup> Congreso de Coahuila de Zaragoza, “Código penal del Estado de Coahuila de Zaragoza (2016),” 150. See Article 394.

<sup>465</sup> Asamblea Legislativa del Distrito Federal, IV Legislatura, “Código penal para el Distrito

remains a nebulous category. The legal trajectory of laws related to incest crimes, from the colonial to the modern era, demonstrated that the type of relationships punished under Spanish laws grew lax under the secular state. Redefinitions of incest no longer included spiritual and informal kinships.<sup>466</sup> Upholding the nuclear family model permitted men who committed incest to escape additional punishments because the state did not criminalize extramarital relationships within the familial definition of incest. For example, crimes perpetrated by extended family members, such as brothers-in-law and uncles, also were not punished under incest laws and instead were classified as estupro crimes. In fact, few incest cases in this study were categorized as rape. The majority of incest crimes fell under estupro crimes, and thus, as Piccato argued, these judicial actions downgraded the severity of sexual crimes.<sup>467</sup> The estupro charge meant that the young woman had consented. Hence, rapists resorted to tainting a young woman's reputation or arguing that the girl was not chaste. Coahuila's lawmakers have reverted to viewing incest as a crime against the order of the family.<sup>468</sup> Incest is now in the same category as domestic violence, adultery, and bigamy, which suggests that even today, it is construed as a sexual practice that occurs in dysfunctional families. In comparison, Coahuila's laws on abigeato carry a harsher penalty than estupro or incest crimes, and the punishment of animal theft is virtually the same as that of rape.<sup>469</sup>

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Federal (2016),”40. See Article 174. Congreso de Coahuila de Zaragoza, “Código penal del Estado de Coahuila de Zaragoza (2016),”148.

<sup>466</sup> Penyak, “Incestuous Natures,” 165.

<sup>467</sup> Piccato, *City of Suspects*, 123.

<sup>468</sup> Gloria González-López, *Family Secrets: Stories of Incest and Sexual Violence in Mexico* (New York: New York University Press, 2015), 14. Sociologist González-López says that as of July 2013, half of the 32 penal codes defined incest as a crime against the family. She adds that Tlaxcala and Puebla had no laws on incest. Also see Congreso de Coahuila de Zaragoza, “Código penal del Estado de Coahuila de Zaragoza (2016),”132.

<sup>469</sup>Congreso de Coahuila de Zaragoza, “Código penal del Estado de Coahuila de Zaragoza (2016),”

The historic evolution of the penalties of sexual crimes indicates that the description of the charge of the crimes has an impact on the adjudication of these cases. With each sexual crime, legal codes placed barriers that prevented victims from obtaining a successful verdict. With estupro crimes, it was the elusive written promise of marriage; with rape cases, women sometimes were unable to prove violence and to verify that the sexual relations were against their will. The prosecution of incestuous crimes was impeded by the arbitrary flexibility of categorizing crimes as estupro or rape. Additional prison charges were not handed down in numerous cases because the victim-perpetrator relationships were not codified within the law books. And, the moral violence that enveloped incest, while recognized by some judges, was not given serious legal attention. Therefore, while the language of laws does impact cases, judicial practice shapes the outcome of a court case. The cases analyzed demonstrated, as others have established, that judiciary biases worked against plaintiffs. In addition to socioeconomic biases, other prejudices were constructed against plaintiffs who resided on ranchos. Judges in Coahuila, similar to officials elsewhere, utilized rhetoric that identified criminality as a characteristic of poverty. Other cases were biased because the families did not conform to the nuclear model. Despite these judicial prejudices, families continued to bring their cases before judges as well as to use other local mediators.

Nonetheless, families sometimes defined sexual crimes differently from the legal system. Families challenged the written promise of marriage clause in estupro cases, bringing in tokens of love, such as love letters to show that their daughter had been tricked and seduced. The majority of cases that were not dismissed by the court were

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132-158. See Articles 326, 384, 394, 418.

willingly dropped by the families; the reason for that was not always cited in the court records, but when it was cited, the reason often was because the families had come to an equitable settlement with the suspect. Families also were proactive in apprehending suspects, particularly when the case involved elopements. At a time when the police and judiciary system were lacking in enforcement, it was families who mobilized resources from within and through the community to locate family members. For this reason, prior to initiating a criminal suit and making an appearance, families already had worked with other local authority brokers, such as alcades and municipal presidents, to make an arrest, or had told a judge where to search for their daughter. Given the time period, this investigative maneuvering of families is indeed impressive and demonstrates the tenaciousness of families to find a missing daughter and to bring a suspect to justice. Families stated in their declarations that the crime was against family honor, but when crimes were perpetrated by kin, family members were also moved to action to protect a loved one from further abuse. Mothers filed complaints against incest, and their actions cannot be reduced to simply protecting family honor. Mothers were motivated by a greater sentiment of love for their child. Mothers sometimes witnessed children in physical pain; this was evident in court transcripts that described copious amounts of blood, bodily tearing, and tears the mothers saw in children whose bodies bore brutal physical violence. And, the realization that the sexual violence carried consequences that would become apparent in the days, weeks, and sometimes years to come no doubt also impacted families.

Victims of sexual violence were not only passive victims. Cases show that young women and even small children sought help, and many challenged what had been done to

them. From false and broken promises to brutal ongoing rape, young women were resilient. Young women's spirits were not always completely broken, as some came to the awareness that they had been seduced and therefore sought punishment of their boyfriend over marriage. They stood up to the men's statements and called them out for their lies. Sexual violence pushes the boundaries of how we define agency. As the cases showed, women and young children were not simply passive victims; they were also resilient. Moments where victims remained quiet during the assault sometimes were simply the female victim's choice to survive. Through these acts, young women attempted to avoid further violence, through beatings, and from other harm that might befall them if left alone on some solitary road. Victims' silence and lack of disclosure about ongoing abuse were not an acceptance of the sexual relations, as judges, defense attorneys, and defendants alleged when they constructed an artificial notion of consent. My intent is not to downplay the consequences of sexual violence by stating that all woman and girls challenged sexual crimes; such a claim would be inaccurate. However, it is also inaccurate to depict all young women as mere victims when some testimonies indicated that young women, depending on their possibilities and abilities, did survive and move on. And, in the words of Linda Gordon, they were heroes of their own lives.<sup>470</sup>

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<sup>470</sup> Gordon, *Heroes of Their Own Lives*, 7.

## APPENDIX

### Appendix A. Outcomes in Sexual Crimes, 1867-1938

Outcomes in Sexual Crimes, 1867-1938			
	Number of Defendants	Type of Crime	Age of Victim
9 years prison	1	Violacion	14
8 years prison, loss of paternal rights	1	Incest	12
8 years prison	2	Violacion (2)	10 (male)/ 5
7 years, 4 mo prison	1	Violacion	9
6 months prison	1	Estupro	48
6 years, 8 mo	3	Estupro (1); Allamiento de Morada, Vic	15/18
5 months prison	1	Atentados al Pudor	6
5 mo, fine 100 pesos	1	Estupro	18
5-11 mo prison; fine 100-150 pesos (reduced on appeal)	1	Estupro	15
4 years	1	Violacion	9 (male)
4 years prison, 35 pesos	2	Violacion Frustrada (2)	55
4 years educational facility	1	Sodomy	11 (male)
3 years, 8 mo prison; fine 16 pesos	1	Violacion	15
3 years, 2 mo, 4 days prison	1	Violacion	12 (male)
3 years, 2 mo prison	1	Estupro	8
2 years, 8 mo in penitentiary	1	Violacion	5 (male)
2 years, 8 mo in a correctional facility	1	Violacion	7 (male)
2 years, 4 mo, 15 days prison, 150 pesos fine	1	Allanamiento de Morada y Atentados a	22
2 years prison, fine 120 pesos	1	Lesciones, Atentados al Pudor	1 year 6 months
2 years, fine 150 pesos	1	Atentados al Pudor	7
1 year, 24 days prison	1	Conato Violacion	8
18 mo prison, fine 220 pesos	1	Atentados al Pudor	17
1 month arrest, first degree fine	1	Atentados al Pudor	17
10 mo, 15, days in correctional facility; fine 220 pesos	1	Atentados al Pudor	Undetermined
9 mo, aresto mayor (for injurias)	1	Injurias/ Corruption of Minor	15
30 days arresto menor; fine 15 pesos	1	Atentados al Pudor	5
15 days	1	Golpes, Conato Estupro, Violacion	15
Fine for clothing	1	Estupro	15
Fine for items, 5 pesos	1	Fuerza cometida	Undetermined
Confessed and awaiting sentence	1	Rapto	
Absolved and Freed	62		
Acquitted	65		
Family/Victim Desisted (44)			
Family pardon (4)			
Lack of Evidence (17)			
Statute of Limitations Expired	3		
Fled	8		
Released by revolutionary troops	1		
Suspect died during trial	1		
Suspects who married victim	5		
Suspects whose sentences were revoked on appeal			
8 years, 2 mo	1	Violacion	
2 years	1	Rapto	
20 pesos dote	1	Rapto	
4 year prison, 500 pesos	1	Rapto y Violacion	
3 years, 2 mo, 4 days prison	1	Violacion	
Undetermined	72		
Total	256		

\*These statistics do not include adultery, bigamy, infanticide, and appeals cases.

Note: Unless indicated, the gender of the victim is female. The number 256 includes a case involving multiple offenders, the number of court cases is N = 255.

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