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**WHY PABLO PARRA WASN'T EXECUTED:
Courts and the Death Penalty in Mexico, 1797-1929**

I. *Protecting the Rights of the Accused and Condemned in Mexico.* II. *Pablo Parra.*
III. *The First Instance.* IV. *The Appeal and Sentencing Review.* V. *Declining Capital Punishment.*

Protecting the Rights of the Accused and Condemned in Mexico

As some readers may well be aware, there is practically no body of literature on early national jurisprudence in Mexico. And while there are studies that offer an historical overview of the history of law during that era, no author has ever suggested innovative or bold new developments in legal tradition during the initial decades after independence. References to new developments in Mexican law are reserved for the second half of the nineteenth century with amparo legislation and the codification movement.¹ Still, the historiography rarely even acknowledges innovation as a characteristic of Mexican law, preferring instead to describe it as idealistic.² From a discourse perspective, I suggest that it is time to recognize Mexican law as innovative and recognize Mexican protection of the rights of the accused and condemned as part and parcel of an innovative tradition in Mexican law.

The Iberian roots for the protection of the rights of the accused and condemned can be found in the Siete Partidas, royal decrees, and cédulas.³ Additionally, Mexican lawmakers and judges drew on and contributed to that richly innovative legal culture. For the issues at hand today, late colonial innovations included the 3 August 1797 Royal Pragmatic and 1798 order that required a minimum panel of three judges in all capital

¹ Well known surveys of Mexican law during the early national era focus on constitutions, amparo, and the codification movement during the latter decades of the 19th century. Most authors have drawn on the schema initially established by Guillermo Flores Margadant; see, for example, Cruz Barney, *Historia del derecho en México*, pp. 513-622; González, *Historia del derecho mexicano*, pp. 53-80; Soberanes Fernández, *Historia del sistema jurídico mexicano*, 50-80.

² Rippy, "The New Penal Code of Mexico," *HAHR* 10:3 (August 1930): 295-298. Rippy did in introducing the 1929 Penal Code use the word innovative; more persistently, and persisting in the literature to this very day, though, he termed Latin American laws and constitutions in general, and Mexico laws in particular, "idealistic."

³ Mayorga García, "Derecho indiano y derecho humano," *Memoria del X congreso del Instituto Internacional de historia del Derecho Indiano*, t. II, (México: Escuela Libre de Derecho y UNAM, 1995): 1032. Online at <http://www.bibliojuridica.org/libros/libro.htm?l=819>.

cases.⁴ Additional royal cédulas prior to the end of the colonial era prohibited the use of testimony or confessions obtained through torture – or bribery; abolished hanging in favor of the garotte because of the particularly repugnant nature of hangings; and banned whipping as a corporal punishment throughout the empire.⁵ After independence Mexican lawmakers continued that innovative tradition. Particularly noteworthy, the general dispositions in the 1837 judicial administration law established mandatory procedural and sentencing reviews in all criminal cases (art. 121); and subsequent legislation in 1841 required attorneys, state’s attorneys, and judges to cite the legal foundations of their arguments and opinions.⁶ As a consequence of that 1841 decree, the rich judicial archives in Mexico permit us to trace and assess the efforts by Mexican courts to protect the rights of defendants, what today we might term human rights, in capital cases particularly prior to the 1929 penal code which abolished capital punishment in the federal district and territories.

For the purposes of this occasion, I am going to focus on one particularly heinous crime, committed in June 1851, from among the tens of thousands of simple (*juicios verbales de lo criminal*) and serious criminal complaints and case files in ordinary and military jurisdiction in the Mexico City judicial archives.⁷ I will discuss the investigative phase, the evidence, and the legal justifications that led the appellate courts to revoke a first instance death penalty sentence. Be forewarned, this is a brutal case.

Pablo Parra

Sweaty in spite of a late afternoon drizzle and visibly agitated, Pablo Parra, covered with dirt and his shirt torn, arrived at a dance in Jacoba Estrada’s flat in Mexico City around six in the afternoon on June 1, 1851.⁸ He left a short while later, finding his way across the city to the fountain in the Plazuela de Santa Cruz Acatlán. There, Pablo washed the dirt from his hands and arms and cleaned his shirt and pants; perhaps an hour or so later, he returned to the dance. Around nine that evening he finally went home, where his wife, Clea Torres – or perhaps a neighbor - told him that Benito Rodríguez, Pablo’s employer, was searching for little Gregoria, Benito’s five-year old daughter.⁹ Reacting immediately,

⁴ *Pandectas Hispano-Megicanas*, vol. II, pp. 659-661, n. 5262, Real Pragmatica de 3 de agosto de 1797, “Sobre la circunspección y tino con que debe procederse en la imposición de penas corporis afflictivas.”

⁵ *Ibid*, pp. 661-664, no. 5263, Real Cédula, “Que en adelante no puedan los jueces usar de apremios, ni de género alguno de tormento personal para las declaraciones y confesiones de los reos ni de los testigos, quedando abolida la práctica que habia de ello, con lo demas que se expresa;” n. 5266, Decreto de 22 de abril de 1822, “Abolición de la tortura, apremios y otras prácticas afflictivas;” n. 5267, Decreto de 24 de enero de 1812, “abolición de la pena de horca;” and no. 5269, Decreto de 8 de septiembre de 1813, “Abolición de la pena de azotes.”

⁶ Arrillaga, “Arreglo provisional de la administración de justicia en los tribunales y juzgados del fuero comun,” May 23, 1837, Capitulo VI, Disposiciones generales, art. 121; and Brito, “Sentencias,” pp. 406-407. Previously, only rarely did judges cite noted authorities or the law, see, Téllez González, *La Justicia Criminal*, pp. 236-237.

⁷ The exact number of simple and serious criminal cases in the judicial archives in Mexico City is virtually impossible to determine. We do know that the Suprema Corte de Justicia de la Nación transferred 19,933 case files dating between 1840 and 1865 to the archive of the Tribunal Superior del Distrito Federal in 1893; see Archivo, Supremo Corte de Justicia de la Nación, libro 591, *Expedientes entregados al Tribunal Superior del Distrito Federal, 1804-1865*. According to the inventory of cases between 1821 and 1832 in the office of the *comandante general* in Mexico City, 965 complaints and arrests led to the opening of 965 case files; see Archivo General de la Nación, Ramo Archivo de Guerra, vol. 1030, “Causas concluidas” and Arnold, “Rebellion and Dissent in the Republican Military: Assessing Military Justice.”

| ⁸ Casasola, *Colección, de alegaciones y respuestas fiscales*, 60 and 81.

| ⁹ *Ibid.*, 63.

Pablo joined the search for little Gregoria, insisting that a friend accompany him. Along with other concerned citizens in that most populous city, he continued to search for little Gregoria for several days. When Pablo returned to work three days later, no one had found any signs of the little girl.

Two days after he returned to work, on June 6, some people in the neighborhood yelled out that a pack of dogs was devouring the body of a small child.¹⁰ Rushing to the scene, Benito Rodríguez felt his worst fears come true. The dogs had dug little Gregoria's body out of a shallow grave and eaten the lower part of one of her arms and part of her buttocks. The autopsy findings reported that even though her body was partially decomposed, the evidence showed that her internal organs were torn, swollen, and deeply bruised. Little Gregoria had been brutally raped and had died from blood loss.

Local police immediately began interviewing people in Gregoria's neighborhood. Pablo Parra quickly became the focus of that investigation after a number of witnesses stated that they had seen him carrying her into a nearby shop between 4:30 and 5 o'clock the afternoon she had disappeared.¹¹ Others reported that they had seen Pablo carrying Gregoria in his arms and walking in the direction toward where the dogs had found her little body. Pablo denied any knowledge of the girl's death. Yes, he had carried her away from her home without the knowledge and permission of her parents, but only to buy a cookie for her at a nearby store. According to his testimony, he had left Gregoria outside the store and told her to go home. However, the testimony of a number of witnesses contradicted Pablo's story. Furthermore, Benito Rodríguez and an investigator who had arrived at her burial site stated that they saw cookie crumbs on Gregoria's dress when they found her.¹²

Courts in Mexico City have long recognized that crimes of violence against children - such as abduction, rape, and murder - are particularly heinous crimes, crimes that truly horrify most members of society. Before the modern era of codification and, most recently, conventions and laws designed to protect the human rights of victims and perpetrators, mid-nineteenth century state's attorneys and judges took special care in seeking justice for society's weakest and most vulnerable victims. Those charged with administering justice also recognized the need to adhere rigorously to fundamental rules of law lest an accused become a victim of revenge rather than be held accountable to society and its laws.¹³ In

¹⁰ Ibid., 62.

¹¹ Ibid., 66 and 80.

¹² Ibid., 67.

¹³ Extant constitutional laws and implementing legislation in Mexico during the early 1850s recognized five distinct legal jurisdictions: ordinary jurisdiction (administered by local and state appellate courts); state jurisdiction (administered by state appellate courts); federal jurisdiction (administered by federal district and circuit courts and the Supreme Court of Justice for the adjudication of federal law cases and cases involving federal officials, such as secretaries of state and congressmen as defendants); military jurisdiction (administered by military courts for the adjudication of civil, criminal, and military law cases involving members of the military and members of their immediate families as defendants); and ecclesiastical jurisdiction (adjudicated by Church courts for criminal and ecclesiastical law cases against members of the Church). Plaintiffs and defendants in Mexico City and the federal territories appealed their cases to the Supreme Court, acting in its capacity as an ordinary jurisdiction appellate court (audiencia). Extant laws also limited cases to three instances; in the case of Mexico City, defendants and plaintiffs appealed judicial findings and sentences issued by first instance judges to the Supreme Court acting in its capacity as the ordinary jurisdiction appellate court for the federal district and territories. The Supreme Court had three chambers (salas); the first chamber most commonly dealt with conflict of jurisdiction cases; the second and third chambers reviewed and adjudicated appellate cases in turn. A three-judge panel handled second instance

brief, the courts sought to balancing society's demand for justice and the rights of the accused, convicted, and condemned.

The First Instance

The preliminary investigation of any crime involved the establishment of the body of the crime, the identification of the perpetrator of the crime, the detention of that person, the deposing of witnesses, and recording any confession by the accused.¹⁴ The body of the crime formed the fundamental bases of a criminal case. Extant jurisprudence clearly distinguished between the body of the crime and the evidence or proof that connected a particular individual or groups of individuals to a crime. Investigators had up to forty days to establish the body of a crime and connect the evidence to a particular person.¹⁵ In the case against Pablo Parra abduction, rape, and murder formed the basis for the investigation. Toward that end investigators interviewed potential witnesses, deposed witnesses, deposed the prime suspect, and collected any written evidence.

Traditional jurisprudence recognized two types of evidence or proof, defined as conclusive proof (*prueba plena* or *completa*) and partial proof (*prueba semi-plena* or *incompleta*).¹⁶ In criminal cases both conclusive and partial proof included the legally deposed confession of an accused, the testimony of at least two eyewitnesses, notarized documents, a judge's ocular observation, and circumstantial evidence (*conjetural* or *indicios*). Partial proof also included an extrajudicial confession to a second party or hearsay, the testimony of a single witness, personal papers or papers not notarized, unsubstantiated logical presumptions, and the reputation of the accused based on the testimony of a single witness.

Investigators and state's attorneys preferred indisputable evidence of the body of a crime and conclusive proof and legal confessions. Judges particularly appreciated confessions by the accused. Those accused, however, did not have to confess or testify against themselves. In the case against Pablo Parra, for example, he did admit that he had taken little Gregoria from the doorway of her home, but nothing more; however, multiple eyewitnesses proved that he had Gregoria in his arms in the store where he bought her a cookie.¹⁷ Additional eyewitnesses stated that they had seen him with Gregoria in his arms as he walked toward a nearby side street (*callejón*). In brief, investigators built the case against Parra on the basis of an accumulation of partial proof: witness testimony about his heading toward a side street, witness testimony concerning his appearance when he arrived at Estrada's room an hour later, witness testimony of his washing himself in the fountain,

cases; a five judge panel would hear arguments and review the evidence or procedures of the second instance panel. For the court's bylaws and internal regulations see, Reglamento, 13 May 1826, in *Colección de ordenes y decretos de la Soberana Junta Provisional Gubernativa y soberanos congresos generales de la nación mexicana*, (Mexico City: Imprenta de Galván, 1829-1840).

¹⁴ Escriche, *Diccionario razonado*, "Juicio criminal informativo," 363; Helvia Bolaños, *Curia filípica mexicana*, cuarta parte, segunda sección, para 22, 383.

¹⁵ Ley de 23 de mayo de 1837, art. 131, ". . . en los casos en que deba abrirse el juicio plenario, se recibirá la causa o prueba por un corto término, prorogable según las circunstancias de aquella hasta cuarenta días; y solo en el caso de que hayan de examinarse testigos o recibirse alguna otra prueba a distancias tan considerables que no fuere bastante aquel término, se podrá prorogar hasta sesenta . . ."

¹⁶ Escriche, *Diccionario razonado*, "Prueba en materia criminal," 585-587.

¹⁷ *Ibid.*, 66.

witness testimony about the cookie crumbs still on Gregoria's body after the dogs had begun to feast on her, and the medical autopsy report. The overwhelming amount of partial proof and circumstantial evidence served to substantiate the case against Pablo Parra, who never did confess to the rape and murder of Gregoria Rodríguez.

Sentencing laws had long given judges the discretion to take mitigating circumstances into account when issuing sentences not explicitly defined by law.¹⁸ In the case against Pablo Parra, though, the first instance judge found no mitigating circumstances that might lessen Parra's sentence. That judge found Parra guilty of abduction, rape, and murder and sentenced him to death.

The Appeal and Sentencing Review

Mandatory procedural and sentencing reviews of major crimes by an appellate court and the right of the convicted to appeal a sentence guaranteed the legality of judicial findings and sentences.¹⁹ In Mexico City and the Federal District during the early 1850s the Mexican Supreme Court acted as the appellate court for ordinary jurisdiction criminal and civil cases. At the appellate level, the state's attorney (*fiscal*) prepared a brief in which he evaluated the proof of the body of the crime, identified a motive, discussed how the evidence linked an accused to the crime, expressed his support or objection to the first instance sentence, analyzed the evidence, and presented the jurisprudence that supported his position. After assessing the arguments presented by the defense attorney, who in the Parra case argued that the nature of the evidence was insufficient to impose the death penalty, and by the state's attorney, who argued that the court should uphold the death penalty.

Pablo Parra's case came before the appellate court because Parra appealed the first instance court's death penalty sentence. The court reviewed the second instance case file in April 1852 and heard the defense and prosecution's oral arguments. Intent on convincing the court to uphold the death penalty, the state's attorney did not rely solely on Mexican laws and traditional continental laws to explain his judicial reasoning. He also drew on the recent Italian criminal code, the new 1848 Spanish criminal code, French and British treatises, and diverse legal scholars. Nevertheless, the appellate court revoked the death penalty, sentencing Parra instead to 10 years in prison, the maximum alternative sentence. Citing a plethora of laws, the court noted that the death penalty could not be imposed in a case in which the evidence, and in this case all of the evidence, might be classified as partial proof.

Dissatisfied with the court's revocation of the death penalty, the state's attorney then appealed the second instance sentence. He again argued in support of the death penalty at the third instance hearing in October 1852. Once again, Parra's defense attorney argued that the evidence was insufficient to warrant the application of the death penalty.

¹⁸ Escriche, "Pena arbitraria," 532.

¹⁹ During the late colonial era judges were not required to cite the legal foundations for their findings; still research shows that judges exercised judicial discretion and more commonly imposed moderate sentences rather than capital punishment; see Scardaville, "Justice by Paperwork." Subsequently, the 9 October 1813 implementing legislation for judicial administration under the 1812 Spanish constitution mandated that audiencias conduct sentencing and procedural reviews; the centralist congress in Mexico on 23 May 1837 enacted a provisional judicial administration law that extended that requirement to courts throughout Mexico. Subsequently, state's attorneys, defense attorneys, and judges throughout Mexico cited the laws and jurisprudence upon which they based their legal arguments and findings.

Key to the defense and prosecution arguments was traditional jurisprudence that prohibited convictions based on suspicions and presumptions. The defense argued that the evidence was inconclusive. The state's attorney acknowledged that ley 7, tit. 31, Partida 7 expressly stated that judges could not convict individuals on the basis of suspicion.²⁰ The evidence in the case against Parra, though, was much more than suspicion. Drawing on the writings of a noted English writer, Jeremy Bentham, the state's attorney argued that the facts were linked to crimes; they formed the links of a chain of evidence in such a manner that the first act (abduction) was linked to the last act (murder).²¹ The evidence supported the facts; "positive demonstrations, precise deductions, clear proofs" supported the conclusions reached by the first instance judge even though Parra had not confessed to the rape and murder of little Gregoria. The state's attorney strongly urged the third instance appellate court to uphold the first instance death penalty sentence. He cited the *Siete Partida; ley 3, tit. 20, Partida 7* stated that the penalty for the forced rape of a woman was death.²² He cited ley 6, tit. 20, Libro 8 of the laws of Spain, which identified death as the penalty for rape. He cited leyes 1, 2, 4, and 10, tit. 21, Libro 12 of the laws of the Indies, which stated that death was the penalty for anyone who murdered another after betraying the trust of the victim.

The state's attorney also contested the findings of the second instance court, which had cited ley 12, tit. 14, Partida 3 to conclude that the absence of clear, conclusive proof - direct eyewitness testimony, a confession, or legal documentation - prevented the court from supporting the death penalty.²³ Reiterating his position that the evidence supported

²⁰ Rodríguez de San Miguel, *Pandectas*, 5234; and *Las siete partidas*, ley 8, tit. 31, part. 7: Que cosas deuen catar los Juezes, ante que manden dar las Penas : e por que razones las pueden crecer, o menguar, o toller. Catar deuen los Judgadores, quando quieren dar juyzio descarmiento contra alguno, que persona es aquella contra quien lo dan ; si es sieruo, o libre, o fidalgo, o ome de Villa, o de Aldea ; o si es mozo, o mancebo, o viejo: ca mas crudamente deuen escarmentar al vieruo, que la libre; e al ome vil, que al fidalgo; e al mancebo, que al viejo, non al mozo : que maguer el fidalgo, o otro one que fuesse honrrado, por su sciencia, o por otra bondad que ouiesse en el, fiziesse cosa por que ouiesse a morir, non lo deuen matar tan abiltadamente como a los otros, assi cono arrastrandolo, o enforcandolo, o quemandolo, o echandolo a las bestias brauas ; mas deuenlo mandar matar en otra manera, assi como faziendolo sangrar, o afogandolo, o faziendolo echar de la tierra, si le quisieren perdonar la vida. E si por auentura, el que ouiesse errado fuesse menor de diez años e medio, non le deuen dar ninguna pena. E si fuesse mayor desta edad, e menor de diez e siete años, deuenle menguar la pena que darian a los otros mayores por tal yerro. Otrosi deuen catar los Judgadores, las personas de aquellos contra quien fue fecho el yerro ; ca mayor pena meresce aquel que erro contra su señor, o contra su padre, o contra su Mayoral, o constra su amigo, que si lo fiziesse contra otro que non ouiesse ninguna destos debdos. E aun deue catar el tiempo, e el logar, en que fueron fechos los yerros. Ca, si el yerro que han de escarmentar es mucho usado de fazer en la tierra a aquella sazón, deuen estonce oner crudo escarmiento, porque los omes se recelen de lo fazer. E aun dezimos, que deuen catar el tiempo en otra manera. Ca mayor pena deue auer aquel que faze el yerro de noche, que lo faze del día : porque de noche pueden nascer muchos peligors ende, e muchos males. Otrosi deuen catar el logar donde judgan los Alcaldes, o en casa de algund su amigo, que se fio en el, que si lo fiziesse en otro logar. E aun deue ser catada la manera que que fue fecho el yerro. Ca mayor pena meresce el que mata a otro a traycion, o aleue, que si lo matasse en pelea, o en otra manera : e mas cruelmente deuen ser escarmentados los robadores, que los que furtran ascondidamente. Otrosi deuen catar qual es el yerro, se es grande, p pequeño : ca mayor pena deuen dar por el grande, que por el pequeño. E aun deuen catar, quando dan pena de pecho, si aquel a quien la dan, o la mandan dar, es pobre, o rico. Ca menor pena deuen dar al pobre, que al rico : esto, porque manden cosa que pueda ser complida. E despues que los Judgadores ouieren catado acuciosamente todas estas cosas sobredichas, pueden crecer, o menguar, o toller la pena, degund entendieren que es guisado, e lo deuen fazer.

²¹ The state's attorney did not cite which of Bentham's writings he referenced; some of his writings on civil and criminal legislation, though, had been translated into Spanish several decades earlier, for example, Bentham, *Tratados de legislación*.

²² *Op. cit.*

²³ Rodríguez de San Miguel, *Pandectas*, 3870; and *Las siete partidas*, ley 12, tit. 14, part. 3: Como el Pleyto criminal non se puede poruar por sospechas, si non en cosas señaladas. Criminal pleyto que sea mouido contra alguno en manera de acusacion, o de riepto, deue ser prouado abiertamente por testigos, o por cartas, o por

conviction and the crimes supported the death penalty, the state's attorney agreed with the Court that the law prohibited judges from convicting an individual and imposing a sentence based solely on suspicions. Nevertheless, he argued, the law referred to suspicions as vague, uncertain, and confusing conjectures, but not those conclusions based on facts and testimony that together proved the crime, linked the accused to it, and merited conviction and a sentence.

The state's attorney also cited the medical evidence to further argue his position. The post mortem examination of the Gregoria's body found that all of her sexual and adjacent organs were open, torn, and lacerated with signs of deep swelling that could only be attributed to rape.²⁴ The medical examiners also concluded that Gregoria likely died as a consequence of loss of blood from the wounds she suffered after being raped. Noting that witness testimony and medical evidence established that Gregoria had been abducted and had died as a consequence of her rape, the state's attorney argued that Parra's testimony was so full of contradictions that the court should not accept any of his statements. Included among those statements was Parra's accounting for his time, the hour between the time he was last seen with Gregoria and the time he showed up at Estrada's room. Parra claimed that he had gotten into a shuffle with a person in the neighborhood, but that he couldn't remember the name of that person. The state's attorney argued that the court should not consider Parra's unsubstantiated story about his whereabouts; he had opportunity to commit the crime and motive – his criminal appetite – and had presented no verifiable evidence or witnesses to the contrary.

conocencia del acusado, e non por sospechas tan solamente. Ca derecha cosa es, que el poeyto que es mouido contra la personal del ome, o contra su fama, que sea prouado, e aueriguado por prueuas claras como la luz, en que non venga ninguna dubda. E porende fallaron los Sabios antiguos en tal razon como esta, e dixeron, que mas santa cosa era, de quitar al ome cuppado, contra quien nonpuede fallar el Judgador prueua cierta, e manifiesta que dar juyzio contra el que es sin culpa, maguer fallassen por señales alguna sospecha contra el. Pero cosas y a señaladas, en que el pleyto criminal se prueua por sospechas, maguer non se auerigue por otras prueuas. E esto seria, quando alguno que ouiesse sospecha de otro, que le faze, o quiere fazer tuerto de su muger, e lo afrontare tres vezes, por escritura que sea fecha por mano de Escriuano publico, e ante testigos, diziendole, que se quite del pleyto della, e castigando aun a su muger, que se guarde de fablar con aquel ome. Ca si despues desso lo fallasse con ella en su casa, o en la de la muger, o en la del otro, que quiere fazerle desonra; o en huerta, o en casa apartada de fuera de Villa, o de los arrauales; puedelo matar sin pena ninguna, maguer non se pudiesse prouar, que ouiesse fecho yerro con ella. E esto puede fazer tan solamente por esta razon, porque despues del afrenta los fallo hablando en vno : mas si los fallasse hablando apartadamente en la Eglisia, despues que tal afrenta le ouiesse fecho, assi como de suso diximos, puede el marido prenderlos a amos a dos, e darlos al Mayoral de la Eglisia, o a los Clerigos que se acertassen y ; que los tengan guardados a amos a dos, apartadamente a cada vno dellos, fasta que venga el Judgador, que dos demande al Obispo, e que los tome para darles la pena que merecen, segun mandan las leyes de este nuestro libor, que fablan de los adulterios. Otrosi dezimos, que si en otro logar qualquier los fallare apartados en vno, luego el marido deue fazer afreuento de tres testigos, de como los falla hablando en vno; e de si, prenderlos, e darlos al Juez del logar : el Judgador puede, e deueles dar pena de adulterio; maguer otra prueua, o otro aueriguamientos non diesse contra ellos, si non tan solamente esta sospecha, que los fallaran hablando en vno, despues que el afreuento sobredicho les fue fecho. Otrosi dezimos, que quando alguno fuesse acusado, que fazia adulterio con alguna muger : e el, para defenderse, dixesse al Judgador, que ella era su parienta tan cercana, que non deuia ningund ome sospechar, que fiziesse tal yerro con ella; e entonce el Judgador, seyendo aueriguado el parentesco, e coydando que dezia verdad, lo quitasse de al acusacion; e despues desso acaeciesse, que la touievvse por barragana, o se casasse con ella despues que muriesse su marido; por tal sospecha como esta, dezimos, que puede ser dadao juyzio contra el, tan bien como si fuesse prouado al adulterio a la sazón que fue acusado. E esso mismo seria, si el Judgador maliciosamente lo diesse por quito del acusacion que le fazian del adulterio, o se fuyesse el de la prision en que estaua recaudado por razon de aquel pleyto; si despues desso fuesse fallado en verdad que tenia aquella muger por barragana, o se casasse con ella.

²⁴ “. . . que los órganos sexuales y todos sus adyacentes los encontraron abiertos, rotos, dilacerados y con restos de inflamación profunda, sin que estas lesiones puedan atribuirse a la acción de un instrumento vulnerante, sino a la de violación prematura.” Casasola, 64 and 86.

The state's attorney then raised additional point questions. Two witnesses stated that during those days when Parra had not gone to work that they had repeatedly seen him, ostensibly searching for Gregoria, lurking near the site of her burial.²⁵ Why didn't he return to work for three days? Why didn't he even return to his own home at night? Why after Parra had been taken into custody had he sent a written note to his wife, Clea Torres, that she had best "take care of herself because he was doomed . . . If Pablo Parra wasn't guilty of the death of Gregoria Rodríguez, why would he believe himself doomed after he had been arrested for that reason?"²⁶ The state's attorney's interpretation of the evidence, his citations of the legal foundations for his recommendation, and his logical reasoning still did not convince the court to sentence Parra to death for the murder of Gregoria Rodríguez. Once again, the judges refused to impose the death penalty. Pablo Parra would spend the next ten years in prison.

Declining Capital Punishment

Why didn't the appellate courts uphold the death sentence in the Pablo Parra case? What law supported the courts' decisions to reverse the first instance sentence? The appellate court judges did not support the death penalty because, they wrote, the death penalty should only be applied to perpetrators when their convictions were based on clear, conclusive evidence – *prueba plena*, as dictated by *ley 26, tit. 1, Partida 7*.²⁷ Thus, even though the evidence against Parra was compelling, it was not legally conclusive. To further support its finding the appellate court cited treatises and compilations to support their arguments: Antonio Gómez, *Variae resolutines juris civilis et Regii*, tit. 3, cap. 12, núm. 26; a recent edition of the *Curia filípica* (part. 3, para. 15, núm 18); the 1642 compendium by Pedro González de Salcedo, *De lege política ejusque naturali executine et obligatione tam inter laicos quam ecclesiasticos* (lib. 2, D., cap. 23, núm 7); the more recent Spanish author, José Marcos Gutiérrez, *Práctica criminal de España*; and a recent Spanish edition of Joaquín Escriche's *Diccionario razonado de legislación* (tomo 2, p. 347).²⁸

²⁵ Ibid., 83.

²⁶ Ibid., 90.

²⁷ Ibid., p. 99; Escriche, *Pandectas* 4593; and *Las siete partidas*, Como el Juez deue librar la Acusacion por derecho, despues que la ouiesse oyda. La persona de ome es la mas noble osa del mundo ; e porende dizimos, que todo Judgador que ouiesse a conocer de tal pleyto sobre que pudiesse venir puerte, o perdimiento de miembro, que deue poner guarda muy africnadamente, que las pruebas que recibiere sobre tal pleyto, que sean leales, e verdaderas, e sin ninguna sospecha e que los dichos, e las palabras que dixeren firmando, sean ciertas, e claras como la luz, de manera, que non pueda sobre ellas venir dubda ninguna. E si las prueuas que fuessen dadas contra el acusado, non dixessen, e testifuassen claramente el yero sobre que fue fecha la acusacion, e el acusada fuesse ome de buena fama, deuelo el Judgador quitar por sentencia. E si por auentura, fuesse ome mal enfamado, e otrosi por las prueuas fallasse algunas presumpciones contra el, bien lo puede estonce fazer atormenta * [Hoy felizmente está abolido el bárbaro uso del tormento.] , de manera que pueda saber la verdad. E si por su conosciencia, nin por las prueuas que fueron aduchas contra el, non lo fallare en culpa de aquel yerro sobre que fue acusado, deuelo dar por quito, e dar al acusador aquella mesma pena que daria al ausado ; fueras ende, si el acusador ouiesse fecho la acusacion, sobre tuerto que a el mesmo fuesse fecho ; o sobre muerte de su padre, o de su madre, o de su auuelo, o de su auuela, o visauuelo ; o sobre meurte de su fijo, o de su fija, o de su nieta, o de su visnieta; o sobre muerte de su hermano, o de su hermana, o de su sobrino, o de su sobrina, o de los fijos, o de las fijas dellos. E esso mismo seria, si el marido accusasse a otro por razon de muerte de su muger, o ella fiziesse acusacion de muerte de su marido. Ca, maguer non la prouasse, non le deuen dar ninguna pena en el cuerpo : porque estos atales se mueuen con derecha razon, e con dloro, a fazer estas acusaciones, e non maliciosamente.

²⁸ The Mexican editions of Escriche's work were published as single volumes; the work cited by the appellate court justices was a multi-volume work. The most recent Spanish edition was a three-volume edition, published between 1847 and 1851. See González, 'Estudio introductorio,' 49-54.

Mid-nineteenth century judges and appellate judges did not have the option of sentencing a person to life in prison, not even a person convicted of the abduction, rape, and murder of a child. They did have a vibrant and innovative jurisprudential tradition and an extraordinary repertoire of laws, legal rules, and treatises. Legislators, defense attorneys, state's attorneys, and judges all understood that the legitimacy of the courts depended on strict adherence to procedural norms, the application of fundamental rules of evidence, and judicious judicial discretion.

While procedural norms, rules of evidence, and judicial discretion could insure the legitimacy of the courts, they could not prevent criminal violence. Still, witnesses, investigators, state's attorneys, judges, and appellate judges could and did seek justice for such victims. That appellate judges would not sentence some perpetrators to death underscores their valuing the rules of evidence, the rule of law, over the moral outrage and cries for retribution that accompanied public awareness of a heinous crime, even when that heinous crime was committed against society's weakest and most vulnerable members. Those rules required conclusive proof, *prueba plena*, to justify the death penalty. Long before the authors of the 1929 federal penal code argued that the courts should not be partners in the pursuit of revenge, Mexican judges understood that the purpose of law was the pursuit of justice, not only for the victims and survivors of heinous crimes but for the perpetrators as well.

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