

# Introduction: Rethinking the Criminalization of Childbirth: Infanticide in Premodern Europe and the Modern Americas

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SARA McDOUGALL AND FELICITY TURNER

On October 2, 2020, a newborn infant girl was discovered in the trash in an airport bathroom in Doha, Qatar. There was a rush to secure the infant's life, which was successful. There was a rush, also, to find the infant's mother, an effort that involved subjecting several women to intrusive physical examinations to determine if they had recently given birth, leading, eventually, to international outcry.<sup>1</sup>

As it later turned out, according to Qatari authorities, the woman who had abandoned the infant in the airport restroom was "an Asian national" who had fled the country. They asserted as well that she had sent a picture of the infant and a message to the man they identified as the father, also an "Asian national." The authorities denounced the woman as a "fugitive convict," calling for her extradition to Qatar and seeking to prosecute her for attempted murder, with a prison sentence of up to 15 years.<sup>2</sup> We do not know how Qatari officials found the man they identified as the father,

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1. Livia Albeck-Ripka and Yan Zhuang, "Women on Qatar Airways Flight Are Strip-Searched, Sparking Outrage in Australia," *New York Times*, October 26, 2020. <https://www.nytimes.com/2020/10/26/world/australia/qatar-airways-women-strip-search-baby.html?auth=link-dismiss-google1tap> (accessed March 18, 2021). On this see also <https://msmagazine.com/2020/11/23/qatar-airlines-women-strip-search-baby/> (accessed March 18, 2021).

2. Laura McMaha, "Qatar Authorities Charge Woman for Allegedly Dumping Baby in Bathroom Bin at Doha Airport." <https://www.news.com.au/travel/travel-updates/incidents/qatar-authorities-charge-woman-for-allegedly-dumping-baby-in-bathroom-bin-at-doha-airport/news-story/0fcffc169e84def9ab80a544a6851de1> (accessed March 18, 2021).

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Sara McDougall is Associate Professor of History at John Jay College and the Graduate Center, City University of New York <[smcdougall@jjay.cuny.edu](mailto:smcdougall@jjay.cuny.edu)>. Felicity Turner is Associate Professor of History at Georgia Southern University <[fturner@georgiasouthern.edu](mailto:fturner@georgiasouthern.edu)>. The authors wish to thank the contributors to this forum, in addition to Cassia Roth, Nazanin Sullivan, and James Schmidt, all of whom originally participated in the 2019 roundtable at the American Historical Association conference in Chicago that inspired this forum.

but they had ample tools to establish parentage. Foreigners who come to Qatar to join its massive expatriate population of migrant workers are required to provide blood samples.<sup>3</sup>

We have yet to learn, and may never learn, the circumstances of the pregnant woman. If she had been a migrant worker pregnant from extramarital sex, her pregnancy would have put her at risk of imprisonment as punishment for what is considered a serious crime in Qatar. As explained in detail by reporter Ana Santos as part of her 2017 Pulitzer-funded project “Women’s Crime and Punishment,” pregnant migrant workers are all too often incarcerated in Qatar. As a result, women have regularly concealed pregnancies and abandoned or killed infants, especially the many women whose employers have confiscated their passports, or who cannot afford to travel abroad.<sup>4</sup> Foreign newspaper accounts of the incident amplified the rhetoric of overseas politicians, who framed the actions of the Qatari authorities as exceptional: the regressive actions of an authoritarian state dedicated to the oppression of women and the exploitation of migrant labor, and with a religious code that sharply curtailed options for those with unwanted pregnancies.<sup>5</sup>

For a group of scholars who have been working together on the history of infanticide, there was much that was all too familiar about these events. Certainly concealed pregnancy and abandonment of infants, as well as neonaticide, is a seemingly timeless and tragic problem, particularly in societies that criminalize extramarital sex and limit access to contraception or abortion, as does Qatar. The Qatari airport officials’ intrusive and offensive examinations of the female travelers’ bodies are not so surprising either, sadly, and particularly for those of us who study the modern era. Where the Qatari case does diverge is in the proposed punishment that the woman who abandoned the infant would face, especially if the sentence was carried out. Incarceration for 15 years would, in fact, be a considerable departure from the historical handling of suspicions of infant murder that we have been investigating. As the forum demonstrates, in the times and places we study, there was a general reluctance to prosecute or punish

3. Gregory Walton, Reuters/Agence France-Presse. <https://www.courthousenews.com/qatar-says-identified-parents-of-dumped-baby-in-airport-scandal/> (accessed March 18, 2021).

4. Ana P. Santos, <https://pulitzercenter.org/reporting/where-pregnancy-prison-sentence> (accessed March 18, 2021); Ana P. Santos, <https://pulitzercenter.org/projects/womans-crime-and-punishment> (accessed March 18, 2021).

5. See, for instance, “Qatar officials say mother of abandoned baby was a ‘convict’ who fled the country” *ABC News Australia*, November 23 2020, accessed at [https://www.abc.net.au/news/2020-11-24/qatar-officals-say-mother-of-abandoned-baby-identified-fled/12913702?utm\\_source=abc\\_news\\_web&utm\\_medium=content\\_shared&utm\\_content=link&utm\\_campaign=abc\\_news\\_web](https://www.abc.net.au/news/2020-11-24/qatar-officals-say-mother-of-abandoned-baby-identified-fled/12913702?utm_source=abc_news_web&utm_medium=content_shared&utm_content=link&utm_campaign=abc_news_web) (March 18 2021).

that varied little across time and place, a trend that changes only with the arrival of modernity.

The contemporary case of the unknown and unnamed woman from Qatar accused of abandonment and attempted murder throws into stark relief the significance and the ongoing relevance of the questions that framed the contributions to this forum: in what ways and why have cities, states, and/or nations sought to regulate women's pregnancies and childbirth? In particular, how did secular and religious authorities treat these women when they suspected them of abortion, neonaticide, or infant murder? By juxtaposing medieval France, early modern Geneva, the nineteenth-century United States, and nineteenth-century Mexico, "Criminalizing Childbirth" demonstrates the benefits of both comparative and global sociolegal approaches to these shared historical questions. Both individually and collectively, these contributions, which situate a range of pregnancy and childbirth related crimes—infanticide, infant murder, and child abandonment—in a historical context, demonstrate how the Qatari example, particularly as reported in the media, flattened the messy and complicated histories of childbirth-related crimes.

Employing a range of judicial sources, the articles that follow paint a rich picture of the varied ways in which authorities historically scrutinized infant murder and child abandonment. Sara McDougall makes use of records of royal pardon and miracle stories to demonstrate how Christian ideals of mercy and complex and gendered notions of female honor contributed to a culture of pardoning women suspected of killing their illegitimately conceived infants in late medieval France. In another example of surprising tolerance for illicit pregnancy and childbirth, Sara Beam documents how the infamously intolerant authorities of Calvin's Geneva turned a blind eye as women suspected of out-of-wedlock pregnancies disappeared and then reappeared without any infant but in the employ of important families as wet nurses. Looking to nineteenth-century infanticide trials in Puebla, Mexico, Nora Jaffary begins with a similar reluctance to punish women suspected of infanticide, but points to a transition toward intensified surveillance, and hardening attitudes about women and maternity. Similarly, Felicity Turner identifies a parallel transition in relation to the nineteenth-century United States, with the emergence of prisons complicating convicted women's access to clemency.

As the contributors to this forum argue, authorities historically did pursue indictments against women accused of infant murder and abandonment. But just as often, legal and clerical authorities chose not to prosecute those whom they suspected of the offenses. Moreover, of those women actually prosecuted, a surprising number were either acquitted or pardoned for the offense. Placing these regions, times, and legal

regimes in conversation therefore highlights important and striking similarities, illuminating important shifts from regulatory tolerance and forgiveness of crimes related to childbirth to increasing enforcement of laws that surveilled and punished women for pregnancy-related crimes. Indeed, as this forum demonstrates, contrary to popular and persistent belief—beliefs evident in reporting on and about the Qatari case—a hard line approach to the criminalization of childbirth is a distinctly modern phenomenon: a product of a shift away from discretionary sentencing in the legal system and an outcome of the professionalization of medicine in the twentieth century.