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Fighting Rebellion, Criminalizing Dissent: Governmental Responses to Political Criminality in Mexico and Colombia, 1870s - 1910s

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FLORIDA INTERNATIONAL UNIVERSITY

Miami, Florida

FIGHTING REBELLION, CRIMINALIZING DISSENT: GOVERNMENTAL RESPONSES TO POLITICAL CRIMINALITY IN MEXICO AND COLOMBIA, 1870s – 1910s

A dissertation submitted in partial fulfillment of the

requirements for the degree of

DOCTOR OF PHILOSOPHY

in

HISTORY

by

Adrian Alzate Garcia

2019

To: Dean John F. Stack, Jr.
Steven J. Green School of International & Public Affairs

This dissertation, written by Adrian Alzate Garcia, and entitled Fighting Rebellion, Criminalizing Dissent: Governmental Responses to Political Criminality in Mexico and Colombia, 1870s – 1910s, having been approved in respect to style and intellectual content, is referred to you for judgement.

We have read this dissertation and recommend that it be approved.

_____
Bianca Premo

_____
Okezi Otovo

_____
Matthew Mirow

_____
Karl Harter

_____
Victor Uribe, Major Professor

Date of Defense: March 20, 2019

The dissertation of Adrian Alzate Garcia is approved

_____
Dean John F. Stack, Jr.
Steven J. Green School of International & Public Affairs

_____
Andrés G. Gil
Vice President for Research and Economic Development
and Dean of the University Graduate School

Florida International University, 2019

DEDICATION

To my parents, for their unconditional love and support.

To Renán Silva, my first mentor, to whom I owe my passion for history.

ACKNOWLEDGMENTS

The list of people I wish to thank for their support and company during the last five years is long and extends beyond the limits of this section. I apologize in advance for not including here all people whose names deserve at least a brief mention. They might not appear in these pages, but they still have a very special place in my heart. I hope life gives me the chance of expressing them my gratitude in person.

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Finally, I want to thank those that kept me afloat during five years of academic, professional, and emotional challenges. My parents, Gabriel and María Eugenia, were the most important support I had. Week after week they did all they could for making me feel that home was not as far as it actually was. Carlos, Ángela, Daniel, and Camila were always there for reminding me what family love was and how powerful it could be. Megan, with her patient love, her sweet devotion, and her many lessons, was my light in the darkness, the pillar of my sanity, the force behind all my endeavors, and the responsible for most of my accomplishments in the last few years. I do not have words for expressing how much I owe Andrés and his unconditional friendship and loyalty. Thank you all for helping me being the person I am now and achieving all that I have achieved thus far. This accomplishment is as yours as it is mine.

ABSTRACT OF THE DISSERTATION

FIGHTING REBELLION, CRIMINALIZING DISSENT:

GOVERNMENTAL RESPONSES TO POLITICAL CRIMINALITY IN

MEXICO AND COLOMBIA, 1870s – 1910s

by

Adrian Alzate Garcia

Florida International University, 2016

Miami, Florida

Professor Victor Uribe, Major Professor

Political Crimes represent one of the most neglected areas in the historical scholarship on modern Latin America. It is an enduring absence that, for decades, has prevented historians from developing richer understandings about the functioning of politics, the evolution of legal phenomena, and the workings of both war and peace in the region. This dissertation addresses this historiographical void trough a comparative study of governmental responses to political criminality in Mexico and Colombia between the 1870s and the 1910s –years that frame the rise and fall of the Mexican Porfiriato and the Colombian Regeneration.

A study of political, legal, and social history, the dissertation explores and analyzes how governments in Mexico and Colombia understood and responded to political offenses such as treason, rebellion, and subversion. How legalistic were these responses? How respectful of the rule of law they were? What do these responses reveal about the logics of justice, state power and repression in late-nineteenth century Latin America? What do they tell about the relationships between state and citizens in the region? A wide collection of

primary sources helps answer these questions. Sources include newspapers; memoires; collections of laws and decrees; legislative debates; legal essays; criminal expedients; judicial processes; and a diverse number of petitions for judicial protection and state leniency.

Overall, the dissertation argues that governmental responses to political criminality entailed different yet complementary purposes. First, they aimed to protect public order from episodes of rebellion and insurrection. Second, they had the goal of neutralizing the activities of dangerous dissidents. Third, they allowed governments to trace and retrace the limits between legitimate and criminal expressions of political dissent. Political crimes were a fluid and mutable criminal category that allowed authorities to prevent and fight rebellion and maintain dissenters under strict control. Responses to political crimes involved both legal and extralegal strategies, and often redefined the limits of what laws and constitutions considered valid regarding the state's actions against its own citizens. These redefinitions had different meanings and consequences in Mexico and Colombia, conditioning substantial differences in the legal and judicial experiences of political dissidents in each country.

TABLE OF CONTENTS

ABBREVIATIONS AND ACRONYMS

ACC	Archivo Central del Cauca, Popayán, Colombia
AGN	Archivo General de la Nación, Bogotá, Colombia
AGNM	Archivo General de la Nación, Mexico City, Mexico
AHM	Archivo Histórico de Medellín, Medellín, Colombia
SJC	Archivo Histórico de la Suprema Corte de Justicia, Mexico City, Mexico

I. INTRODUCTION

On January 4, 1904, the Mexican journalist Ricardo Flores Magón arrived to Laredo, Texas, after fleeing his homeland. A few months after crossing the border, Flores Magón had walked out of Mexico City's prison, after serving some time as a political prisoner. Authorities had arrested him after shutting down one of his many newspapers and accusing him of attacking and slandering governor Bernardo Reyes and other high-profile people at the service of President Porfirio Díaz. It was not the first time that Flores Magón had gone to jail under such accusations. Since the early 1890s, when he and his brother Enrique started what would become a protracted career as opposition journalists and *antiporfirista* agitators, Ricardo Flores Magón had had several encounters with Porfirian authorities. In 1901, for instance, authorities had shut down his paper *El Demócrata* and forced him to flee Mexico City and seek refuge in the town of Pachuca. Later that year, the Porfirista General Bernardo Reyes ordered the suspension of another of his publications, *Regeneración*. This time, the brothers Flores Magón would be arrested on charges of slander and spent a few months in prison. A year later, the same Bernardo Reyes ordered the arrest of the writers of *El Hijo del Ahuizote* on analogous charges, which put the brothers Flores Magón back in jail. Ricardo and Enrique walked free soon after, but a judge allied of Reyes ordered their re-imprisonment after charging them with insulting the government.

By the moment Ricardo Flores Magón left his country, it was more than clear that there were no guarantees for his journalistic work in the Mexico of Porfirio Díaz. Little did he know that his years as a political exile in the United States would be even harder. Settled

down in St. Louis, Missouri, the brothers Flores Magón reopened *Regeneración* and founded, with other fellow exiles, a political organization with the goal of coordinating *antiporfirista* resistance on both sides of the border. The thousands of miles between Ricardo Flores Magón and Mexico City, nevertheless, could not save the journalist from Díaz's iron fist. In 1906, Mexican authorities hired a private detective company in Missouri with the goals of gathering information about their political organization and collecting proofs that could lead to eventual arrests by American authorities. The detective company succeeded in making a case against Flores Magón, and soon American authorities would order the shutting down of the paper and the temporary arrest of Ricardo and many of his fellows. His alleged participation in a frustrated revolutionary plot against Díaz that same year worsened his situation. Cornered, Ricardo moved to Los Angeles, where he clandestinely continued his journalistic work. By August 1907, the Missouri detectives discovered his hideout and, with no formal warrant or judicial order, arrested him and put him in jail.

Mexican authorities immediately requested Ricardo's extradition. American authorities rejected the request by arguing that Flores Magón was a political prisoner, and the law protected political criminals and refugees from extradition. Díaz and his people did not give up, and filed a second extradition request after accusing Ricardo of a series of non-political crimes including robbery, homicide, and criminal libel. This second request proved unsuccessful as well, not only because of the far-fetched nature of the charges but also because American authorities refused to treat the prisoner as a non-political criminal. Finally, their Mexican counterparts realized that, although it was impossible to have Flores Magón back in Mexico, it was still plausible to ensure his sentencing and imprisonment in

the United States. In consequence, Porfirian authorities tried to make a case against Ricardo and his people that could lead to a trial for violation of neutrality laws. They succeeded. In 1909, Flores Magón and other Mexican exiles faced a trial in Arizona for conspiracy to initiate a military expedition against Mexico from American territory. Jurors found them guilty and a judge sentenced them to 18 months of prison. Their release in August 1910 would not mark the end of Ricardo's life as a prisoner in the United States. In fact, Flores Magón would spend in jail more than half of the time between his arrival to the United States in 1904 and his death in a prison in Leavenworth, Kansas, in 1922.[1]

The story of Ricardo Flores Magón is nothing but an over-dramatic, tragicomic version of many other stories involving dissenters, opposition journalists, political agitators, and revolutionaries in Porfirian Mexico, between the late 1870s and the late 1900s. Across the Caribbean Sea, in Colombia, the experiences of dozens of liberal journalists and politicians during the same period paralleled those of their Mexican counterparts. Dissident leaders like Santiago Pérez and Rafael Uribe Uribe paid with prison, exile, and political and judicial persecution their challenges to the Regenerationist regime, a series of Conservative administrations that ruled the country between the 1880s and the first decade of the twentieth century. The cases of Flores Magón, Pérez, Uribe Uribe and many others on both sides of the Caribbean have more in common than the many circumstances linking the Porfiriato and the Regeneration in the late-19th and early 20th centuries. They all are cases of political dissenters whose actions were labelled as criminal;

[1] For two detailed accounts on Ricardo Flores Magón's life and his time in the United States, see: Claudio Lomnitz, *The Return of Comrade Ricardo Flores Magón* (New York: Zone Books, 2014); and Colin MacLachlan, *Anarchism and the Mexican Revolution: The Political Trials of Ricardo Flores Magón in the United States* (Berkeley: University of California Press, 1991).

experiences of dissidents suffering from state repression manifesting itself in several different forms; stories of political malcontents who paid with their freedom the price of their dissidence.

The case of Flores Magón also sheds light on a series of matters directly and indirectly related to these many stories. It illustrates the workings of a government that responded to "dangerous" political dissidence with criminalization, and that was able –and willing– to use a variety of legal and extra-legal strategies in order to prosecute and punish those who challenged it. It also shows that there existed a series of crimes and punishments more or less applicable to criminalize political dissidents, and that there were differences between "political" and "non-political" crimes. Likewise, it exemplifies the legal and judicial experiences of political criminals and prisoners when dealing with the relentless logics of state repression. On a deeper level, Flores Magón's story raises a number of questions regarding, for instance, the existing legislation that allowed governments to criminalize and punish political agitators and revolutionaries, or the legal and constitutional limits between "legal" and "illegal" political dissent. Other possible questions that the story raises have to do with the differences between "common" and "political" crimes; what political crimes meant to legislators, judges, legal experts, and political authorities; and how these actors reflected about the most appropriate ways to punish these offenses. Additional questions could include, for instance, whether or not punishment and repression were the only possible responses to these kinds of actions, and if there were other ways in which governments could have treated political criminals.

This wide set of matters and questions sum up the subject of this monograph, a comparative study of governmental understandings of and responses to political crimes in

Mexico and Colombia between the 1870s and 1910s. As such, it is a work of legal history, interested in analyzing these responses in terms of the laws that made them possible, the legal reinventions they fostered, and the legal conversations that accompanied them. It also pays attention to the ways in which people and the state interacted through the law and the justice system, and reflects on how these interactions worked for the benefit of both parts. It is, as well, a work of political history that explores questions regarding state power and legitimacy; citizenship and political agency; and political dissent and resistance. As a political study, this monograph also revolves around a more general question concerning the nature and functioning of Latin American authoritarianisms in the late 19th and early 20th centuries. It is, finally, a work of social history, focusing not only on the social –and political– uses of law and legislation, but also in how these laws and legal conversations affected people's lives, actions, and expectations.

The Porfiriato and the Regeneration: Comparing the Mexican and Colombian experiences

This is a comparative study framed within the context of two political regimes that emerged, evolved, and collapsed more or less simultaneously between the late 1870s and the 1910s: The Mexican Porfiriato and the Colombian Regeneration. The Porfiriato encompasses a period of 34 years, starting with the election of Porfirio Díaz as President of Mexico in 1877, and concluding with his departure to exile, in May 1911, during the first year of the Mexican Revolution. Díaz rose to power as the victorious leader of the Tuxtepec Revolution, an armed movement that in 1876 overthrew the administration of Sebastián Lerdo de Tejada, Benito Juarez successor. It was not the first attempt of Díaz at

seizing power. Before 1876, he had participated and lost in two presidential elections –one against Juarez and another against Lerdo– and led a failed rebellion in 1871. Both as a rebel and a presidential candidate, Díaz advocated for an anti-authoritarian and anti-centralist government, respectful of the constitution and of the division of public powers. His campaign against presidential reelection –a recurrent practice during the Juarez regime– was one of the most representative efforts of Díaz as an opposition leader during the early- and mid-1870s.[2]

As a new president, Díaz faced serious political and economic challenges. Decades of civil war had left Mexico in a critical state, with a ruined and poorly developed economy, high levels of external debt, a fragmented and disconnected national community, and a country plagued with local and regional strongmen unwilling to submit to a central authority. These challenges determined the goals of his administration: the reestablishment of public order and the prevention of civil warfare, the improvement of the country's finances and the modernization of its economy, and the consolidation of his political hegemony throughout the country. "Peace and progress," as well as "less politics, more administration," became from the beginning the main banners of the Porfiriato.[3]

Díaz tackled these challenges with relative success. During his administration, he and his officials managed to stabilize public finances –by reducing public expenditures and creating new taxes– and to restructure Mexico's foreign debt, which in turn stimulated the

[2] Elisa Speckman Guerra, "El Porfiriato," in *Nueva historia mínima de México ilustrada* (México: El Colegio de México, 2008), 337-338.

[3] Speckman Guerra, "El Porfiriato," 362. Also: Sandra Kuntz Ficker and Elisa Speckman Guerra, "El Porfiriato," in *Nueva Historia General de México*, ed. Erik Velásquez García *et al* (México: El Colegio de México, 2010), 487-488.

flow of foreign capital and investment. The construction of railroads and the enhancement of ports helped connect the country's many and diverse regions and boosted its economy. Porfirista administrations also succeeded in developing industry and foreign trade, as well as in integrating Mexico to the international economy through the exportation of mineral and agricultural products. An unprecedented demographic growth and strong migration processes that invigorated the Mexican population accompanied these economic changes. In the political field, Díaz tried to consolidate peace and order through a strategic combination of pragmatism, patronage, force, and intimidation. Although peace remained an elusive goal during most of his administration, these strategies would certainly help Díaz build and maintain a delicate balance of power between the center and the provinces. This would grant Mexico a level of political stability that, although relative, contrasted strikingly with what the country had gone through during most of its post-independent life.[4]

The Porfiriato experienced different phases throughout the three decades of its existence. Its first phase corresponds to Díaz's first administration, from 1877 to 1880. During these first years, Díaz attempted to lay the foundations for the restructuring of the Mexican economy, the pacification of the country through the neutralization of potential – and actual– contenders, and the building of a network of regional and local political alliances. Consistent with his initial political program, he would also promote a constitutional reform in 1878 prohibiting the immediate reelection of presidents, and once

[4] Speckman Guerra, "El Porfiriato," 370-372; Romana Falcón, "La desaparición de jefes politicos en Coahuila. Una paradoja porfirista," *Historia Mexicana* 17, no. 3 (1988), 423-424; William Beezley, *Judas at the Jockey Club and Other Episodes of Porfirian Mexico* (Lincoln: The University of Nebraska Press, 1987), 16-17; and Paul Garner, "The Civilian and the General, 1867-1911," in *A Companion to Mexican History and Culture*, ed. William Beezley (Sussex: Blackwell Publishing, 2011), 296.

his term was over, in 1880, he handed the presidency to his fellow Manuel González.[5] Díaz would return to the presidency in 1884. This second phase of the Porfiriato would extend towards the early1900s, and was characterized, among other things, by Díaz's efforts to concentrate and centralize power and consolidate his hegemony throughout the country.

The consolidation of the Porfirian hegemony during these years relied on multiple strategies of cooptation, patronage, manipulation and negotiation. Díaz used state governments, political *jefaturas* –local political headships–, and other mid- and high-rank administrative positions to both reward allies and bring potential contenders into the fold. He also managed to build and strengthen ties with regional political bosses in control of extensive clientele networks, and to maintain political stability in the regions through the strategic rotation of governors and *jefes politicos* in debt with him. By manipulating the appointment of regional and local authorities, Díaz succeeded in spreading his power throughout all Mexico and neutralizing possible threats against his hegemony. This network of allegiances, favors, and rewards also helped Díaz ensure the political cohesion of the nation and align the multiple and diverse regional powers under his wing.[6]

During this second phase, Díaz's style became increasingly personalist, and the figure of the democratic leader that rallied against reelection and supported the division of public powers experienced significant changes. The president would progressively diminish the power of the legislative and judicial branches, until making them mere appendixes of the federal Executive. Two constitutional reforms, one in 1887 and another

[5] Speckman Guerra, "El Porfiriato," 338.

[6] Garner, "The Civilian," 296; Falcón, "La desaparición," 425-428; Kuntz Ficker and Speckman Guerra, "El Porfiriato," 489; and Friedrich Katz, dir., *Porfirio Díaz frente al descontento popular regional (1891-1893): Antología documental* (México: Universidad Iberoamericana, 1986), 21.

in 1890, eliminated all restrictions to the immediate reelection of presidents and state governors, which allowed Díaz to be consecutively reelected in 1888, 1892, 1896, 1900, 1906, and 1910. Several governors in the states seized this opportunity and managed to remain in power for a decade and even longer. In Tlaxcala, for instance, Prospero Cahuantzi remained in power for 26 years; Mucio Martínez, in Puebla, ruled for 18 years straight; while Bernardo Reyes, in Nuevo León, did it for 20 years. The progressive concentration of power into Díaz's hands, the consolidation of his networks of patronage, and his uninterrupted reelections allowed him to claim for himself a role as "patriarch of the nation […], custodian and arbiter of the rules of conduct of political life."[7] The rise of Díaz as Mexico's patriarch went hand in hand with the growing authoritarianism of his regime and the increasing repression against political dissent both in the states and at the federal level.

The third phase of the Porfiriato corresponded to its crisis and ultimate debacle during the first decade of the twentieth century. Opposition to Díaz, his manipulation of regional politics, and his authoritarian style escalated throughout the decade, and became a serious threat with the foundation of the *Partido Liberal Mexicano* or PLM in 1906. Led by a group of *antiporfiristas* exiled in the United States, and supported by a handful of political clubs throughout Mexico, the PLM progressively succeeded in channeling discontent towards Díaz. Led by the brothers Ricardo and Enrique Flores Magón, the PLM had a political agenda that combined claims for economic nationalism, political freedom, and presidential rotation , all combined with plans to overthrow Díaz through an armed

[7] Kuntz Ficker and Speckman Guerra, "El Porfiriato," 493; and Garner, "The Civilian," 297. The quote corresponds to Garner.

insurrection.[8] Díaz's repressive reactions against the PLM and its members both in Mexico and abroad not only proved unsuccessful, but also bolstered criticism of and opposition against his political style. His decision to run again for president in 1909 would stoke even more the flames of opposition. The Mexican revolution broke out just a few months after Díaz's electoral victory in 1910.[9]

The end of the regime and the outbreak of the Mexican revolution were not exclusively the result of a growing political dissidence under the leadership of the PLM. Years of political stagnation, internal factionalism, and deep rivalries between civilian and military Porfiristas also erode the regime and forced it to implode. The perpetuation in power of Díaz and several of his governors rendered the regime old and worn out. The regional networks of allegiance that supported the Porfirian hegemony turned stagnant and unable to respond to changing social and political circumstances in the states. Competition between Porfirista factions for political and administrative positions tore the regime apart, affected its self-confidence, and ultimately broke up the delicate balance of power that for years had maintained loyalties in relative order keeping rivalries at bay. The 1909 electoral campaign not only signaled the definitive breakup between the civilian and the military groups, but also made evident profound disagreements and uncertainties regarding Díaz's succession and, therefore, the continuity of the regime. By Díaz's new and final

[8] MacLachlan, *Anarchism*, x-xi, and 1-4. See also: Kuntz Ficker and Speckman Guerra, "El Porfiriato," 501.

[9] Garner, "The Civilian," 299.

inauguration in 1910, almost nothing remained of the powerful and cohesive political machinery that had prevailed almost unquestioned throughout more than three decades.[10]

Díaz's success at consolidating his hegemony throughout the country, stabilizing regional politics, and neutralizing or co-opting potential political and military contenders did not necessary translate into permanent peace and total absence of internal conflict. Despite the Porfiriato's many efforts to prevent rebellion and internal turmoil, political turbulence proved unavoidable and the country experienced dozens of insurrections, insurgent movements, and revolutionary expeditions. The late 1870s, for instance, would witness a series of agrarian revolts in central Mexico involving people from the states of Mexico, Querétaro, Guanajuato, and San Luis Potosí. They extended from 1877 to 1881.[11] In June 1879, a Lerdista rebellion took place in the port of Veracruz, leaving a tragic balance for the rebels.[12] Several rebellions and revolts took place in the 1880s. Only in 1885 alone, the state of Veracruz would experience three revolts ranging from armed political movements to peasant uprisings. There were at least two regional rebellions in 1886, one in Tamaulipas, led by Pedro Dávila, and another in Zacatecas, led by Trinidad García de la Cadena. 1887 would experience at least one regional insurrection, once again

[10] Garner, "The Civilian," 299; and Speckman Guerra, "El Porfiriato," 358 and 362. See also: Falcón, "La desaparición de jefes politicos," 424.

[11] Galván, Luz Elena. "Estado de México." In *Porfirio Díaz frente al descontento popular regional (1891-1893): Antología documental*, ed. Friedrich Katz (México: Universidad Iberoamericana, 1986), 26.

[12] Carlo Di Fornaro, *Díaz: Czar of Mexico*, second edition (New York: Carlo de Fornaro, 1909), 41-46.

in the state of Veracruz. This state, in fact, remained in almost constant turmoil during a great part of the Porfiriato, with a total of 27 revolts between 1876 and 1898.[13]

The 1890s were a particularly conflictive decade, resulting from mounting dissatisfaction towards Díaz, changing rivalries over regional power, and an agrarian crisis that affected a great portion of Mexico's countryside.[14] The decade started with the rebellion of Juan Galeana and Cornelio Álvarez in Guerrero, in April 1890, and the armed incursions from the United States led by Francisco Ruiz Sandoval, in mid-1890, and Catarino Garza, in September 1891.[15] Between 1891 and 1892, at least two peasant revolts with religious overtones erupted in Guerrero and Chihuahua. The first one involved a short-lived catholic insurrectionist movement led by José Cuevas in 1891. The second one was the indigenous and millenarian rebellion of Tomochic, which started in December that year and finished in October 1892 with the extermination of all rebels and the almost total eradication of the town by the federal military.[16] 1893 experienced at least four regional insurrections, one in Coahuila, led by the Carranza family, another in Chihuahua, led by Luis Terrazas, and three more episodes in Guerrero. The incidents in Guerrero included the rebellion of Canuto Neri, the uprising of Diego Álvarez, and an agrarian movement led by

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[13] Reneé González de la Llama, "Los papeles de Díaz Manfort: una revuelta popular en Misantla (Veracruz), 1885-1886," *Historia Mexicana* 39, no. 2 (1989), 476. Elliot Young, *Catarino Garza's Revolution on the Texas-Mexico Border* (Durham: Duke University Press, 2004), 60.

[14] Katz, *Porfirio Díaz,* 11-12, 15, and 18.

[15] Jaime Salazar Adame, "Movimientos populares durante el Porfiriato en el Estado de Guerrero," in *Porfirio Díaz frente al descontento popular regional (1891-1893): Antología documental*, ed. Friedrich Katz (México: Universidad Iberoamericana, 1986), 98-99, and 113-116; and Young, *Catarino Garza's Revolution*, 78 and 98.

[16] Salazar Adame, "Movimientos populares," 117; and Paul Vanderwood, *The Power of God Against the Guns of Government: Religious Upheaval in Mexico at the Turn of the Nineteenth Century* (Stanford: Stanford University Press, 1998), 1 and 277.

some Father Castañeda. In April that year, a multitudinous demonstration against governor Bernardo Reyes in Monterrey, Nuevo León, ended up in a serious riot that left dozens of casualties and a large number of political prisoners.[17] The 1900s were far less conflictive than the previous decade, with only a major revolutionary attempt promoted by the PLM that Porfirian authorities discovered and frustrated on time.[18]

This sequence of rebellions and insurrectionary events not only helps debunk the myth of the *"Pax Porfiriana*" that the early historiography on the Porfiriato made common during most of the twentieth century.[19] It also provides this study with numerous opportunities for exploring and analyzing how Díaz and his regime responded to political turbulence and internal strife. Partially inspired by the Mexican experience, the Colombian Regeneration also offers diverse opportunities to explore these questions in a comparative manner.

As a period in Colombia's political and legal history, the Regeneration covers roughly from the mid-1880s to the early 1900s. These years include, among other major processes and events, the temporary arrival of "independent Liberalism" to power; growing political centralization symbolized by the enactment of the 1886 Constitution; the rise to power of the Conservative party; the enhanced presence of the Catholic church in multiple spheres of life; a renewed emphasis on and celebration of Hispanic roots; and, related to some of

[17] Galván, "Estado de México," 32-33; Falcón, "La desaparición," 439-440; and Adolfo Duclós-Salinas, *México Pacificado: El Progreso de México y los Hombres que lo Gobiernan* (San Luis: Imprenta de Hughes y Ca., 1904), 284-286.

[18] Lomnitz, *The Return,* 194-209.

[19] Garner, "The Civilian," 296; and González de la Llama, "Los papeles," 476.

these aspects, the civil wars of 1885, 1895, and 1899-1902 known as the Thousand Days' War. During the decades in question, Colombia would experience important political, legal, and economic transformations, as well as complex political conflicts whose escalation over time would bring serious and lasting consequences to the country.

As a political regime, Colombia's Regeneration came into existence between the late 1870s and early 1880s. It emerged out of the debacle of the federal regime that the Liberal Party had inaugurated decades ago, with the 1863 Constitution. After almost twenty years of existence under liberal rule, the federal experiment had left behind a long series of local and regional insurrections, alarming degrees of political instability, and a weak and undeveloped domestic economy. The federal period also had important consequences concerning the organization of partisan struggle in Colombia. It left behind a deeply fragmented Liberal Party, divided into "radical" and "moderate" or "independent" liberals, and a Conservative party eager for power after two decades of political exclusion. Both conservatives and independent liberals claimed for a substantial reform of the federative regime and the end of the political hegemony of radical Liberals, in control of the federal government since 1867. The electoral victories of General Julián Trujillo, in 1878, and Rafael Núñez, in 1880, marked the arrival of the independent faction to the national presidency, as well as the beginning-of-the end of the Liberal federal regime. Under the motto "Regeneration or Catastrophe," independent presidents advocated for a "reconstitution" of the nation based on political centralism, economic protectionism, and a stronger Executive able to ensure political stability and prevent further challenges to public order. The materialization of this political program, nonetheless, required the displacement

of radical Liberals from power, which independents managed to accomplish only by the mid-1880s.

By 1884, during the second presidency of Rafael Núñez, independent Liberals had managed to control the entire country with the exception of the department of Santander – historic stronghold of radical Liberalism. Cornered, Santander's radicals decided to make a final attempt at regaining power and started a rebellion against Núñez by the beginning of 1885. A coalition of independent and Conservative troops backed the president and suffocated the rebellion in a few months. The government's victory allowed Núñez to control the entire country and obtain national support for a constitutional reform that put an end to the federal regime and set the grounds for materialization of the independent program. Both independent liberals and conservatives worked in the drafting of a new Constitution, finally enacted in 1886. The new charter replaced the federal order with a centralist political organization, created a powerful Executive with wide legislative privileges, and gave the Catholic Church recognition as guardian of social order, public morality, and public education. It also provided the government, and especially the President, with multiple legal tools to prevent political unrest and contain actual or potential enemies of public peace. It was, to a large extent, a Constitution designed to "grant the government the necessary power to inspire respect towards authority and to warrant political stability."[20]

[20] Charles Bergquist, *Café y conflicto en Colombia, 1886-1910: la guerra de los Mil Días, sus antecedentes y consecuencias* (Medellín: Fundación Antioqueña para los Estudios Sociales FAES, 1981), 18; For its original English Version, see: Charles Bergquist, *Coffee and Conflict in Colombia, 1886-1910* (Durham: Duke University Press, 1978).

The regenerationist program of Núñez revolved around the notions of order, progress, stability, security, liberty, and justice. The independent leader believed that it was time for Colombia to join the wave of political change that was sweeping most of Latin America, where nations were looking for "conservative institutions able to grant them secure and solid peace." To Núñez and other contemporaries, Porfirian Mexico provided the most exemplary case of this continental process. In his opinion, Díaz had been more than successful in centralizing power, maintaining peace and order, and promoting progress. Under Díaz, Núñez maintained, Mexico finally enjoyed a situation of total peace. Díaz not only had been able to ensure security and order, but also to foster national unity, industrialization, and economic development. The Mexican leader, Núñez believed, had brought the regenerationist program to its full realization.[21] Others, like Presbyter Federico C. Aguilar, maintained that Mexico, by the hand of Porfirio Díaz, had succeeded in leaving behind decades of civil, partisan hatred, political instability, and economic stagnation. To Aguilar, Porfirian Mexico provided Latin American nations with a proof that a strong government was the key for securing peace and fostering economic development.[22] Núñez and his people did not succeed in replicating the Porfirian experience in Colombia, especially in economic terms. Yet, they still managed to introduce some important reforms tending to the modernization of Colombia's economy.[23]

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[21] María del Mar Melgarejo, *El lenguaje político de la regeneración en Colombia y México* (Bogotá: Pontificia Universidad Javeriana, 2010), 86. Núñez dedicated at least two essays to praise Díaz and his success as president of Mexico. One of them was "La ley o la libertad en la justicia," published in 1891. Another was "La lección de México," published in 1893.

[22] Adriana M. Suárez Mayorga, "La construcción de la nación colombiana a la luz del modelo porfirista." *Secuencia* 98 (May-August 2017): 105-106.

[23] Opinions about the Porfiriato and its "exemplary" achievements were not uniform in the Colombia of the time, nonetheless. During the 1880s, some contemporaries of Núñez found the Porfiriato "anti-democratic"

Throughout the 1880s, Núñez created a national bank, stimulated with a timid success the growth of national industry, and tried to make the economy less dependent on foreign trade and external loans. Later on, both Núñez and his successor, the Conservative Miguel Antonio Caro, tried to improve state finances by establishing a monetary system of nonredeemable paper money. The economic reforms of the Regeneration took advantage of the spectacular rise in world coffee prices between the late1880s and the mid1890s. The coffee boom benefited Colombian exportations, stimulated the expansion of the coffee economy throughout the country, and sparked processes of internal migration and colonization and expansion of the agrarian frontier that would continue until well into the 20th century. The coffee bonanza, nonetheless, would last only until 1896, when world coffee prices began to fall precipitously.[24] The coffee crisis increased the government's dependence on its own paper money, which in turn caused a serious inflation that would reach its highest peak right after the Thousand Days.

In the political field, regenerationist administrations also faced multiple challenges. After Núñez's third presidential period (1887-1888), the Conservative Party took over the presidency and held it until the end of the Thousand Days. The Conservative regime excluded the Liberal Party from all positions of power, drastically limited its participation in Congress, enacted laws and decrees tending to criminalize its attempts at reorganization,

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and emphasized the fact that in Colombia, unlike Mexico, elections were regular and involved diverse candidates embracing different programs and ideas. Later on, people like Miguel A. Caro would criticize his contemporaries' sympathies with Díaz and his government on the grounds that it had no sense to imitate what others had done "in a land that has no resemblance whatsoever with our national territory." See: Suárez Mayorga, "La construcción," 110 and 118.

[24] Bergquist, *Café y conflicto*, 23, 41-43 and 46-47.

and imprisoned and exiled many of its leaders.[25] The situation of Colombian Liberals forced them to combine their efforts to regain power through electoral ways with multiple parallel attempts to overthrow the government through armed insurrections. In 1893, Liberals plotted a rebellion that should start on August, but the government, already in alert since a massive artisan revolt that had taken place in Bogotá in January that year, discovered the plot on time and was able to dissolve the conspiracy. A second attempt at rebellion, in April 1904, would suffer the same fate. Finally, in January 1895, a fraction of the Party took up arms against the Caro administration and managed to keep its rebellion alive until March that year. The Liberal defeat in the 1895 war would not put an end to the Party's warlike efforts. On the contrary, it forced Liberals to regroup and prepare for a final, massive insurrection that would finally take place in October 1899.[26]

Regenerationist administrations not only were incapable of containing the progressive reorganization of the Liberal Party, but also proved powerless to prevent division within its own ranks. Discrepancies over the regime's authoritarianism and monetary policies would cause, during the 1890s, a division between "Nationalist" and "Historical" conservatives. While Nationalist conservatives backed the rigid policies of presidents Carlos Holguín (1888-1892), Miguel Antonio Caro (1892-1898), and Manuel Antonio Sanclemente (1898-1900), the "Historical" dissidence criticized their extreme

[25] Helen Delpar, *Red Against Blue: The Liberal Party in Colombian Politics, 1863-1899* (Tuscaloosa: The University of Alabama Press, 1981), 142-144, and 155-157.

[26] On the 1893 and 1894 plots, the 1893 artisan revolt, and the civil war of 1895, see: Mario Aguilera Peña, *Insurgencia urbana en Bogotá: motín, conspiración y guerra civil, 1893-1895* (Bogotá: Instituto Colombiano de Cultura, 1997), 156-159, 299, 303-315, and 397-428.

exclusion of the Liberal Party as well as the disastrous financial consequences of the paper currency regime in place. The government's reticence to reform its policies would cause a formal split between the two factions in 1896. From then on, Historical Conservatives would act as an opposition force, pushing not only for financial reforms but also for a more inclusive and less repressive government. During 1897 and 1898, the political platforms of Liberals and Historical Conservatives were almost similar, which made the Liberal Party believe that it was an appropriate moment to launch a final offensive against the Nationalist administration. Liberals tried in several occasions to lure Historical Conservatives into their revolutionary endeavor, but their efforts were in vain.[27] The Liberal Party went to war in October 1899 without the support of the Conservative dissidence and even without the unanimous approval of its directorate.

The Thousand Days War broke out in October 18, 1899 in Santander and finished in November 21, 1902, in Panama. It was the biggest, costliest, and most destructive civil war in nineteenth-century Colombia. It caused the state immense material loses and indebtedness, and left behind a balance of casualties whose estimations range between 60 thousand and 150 thousand people, equivalent to approximately 2% of the country's population at the time. It was also one of the factors that contributed to the loss of Panama in 1903.[28] The first phase of the war involved the confrontation of large regular armies in the Colombian north-east, and concluded in May 1900 with the defeat of the bulk of the

[27] Bergquist, *Café y conflicto*, 48, 66-67, and 85; see also: Jorge Villegas and José Yunis, *La guerra de los mil días* (Bogotá: Carlos Valencia Editores, 1979), 30-32, and 45-46.

[28] Adolfo Meisel Roca and Julio E. Romero Prieto, *La mortalidad de la guerra de los mil días, 1899-1902* (Bogotá: Banco de la República, 2017), 1-3.

Liberal army in the battle of Palonegro. Soon after the end of this phase, Historical Conservatives carried out a successful coup that overthrew the Nationalist president Manuel Antonio Sanclemente on July 31, 1900. The dissident faction replaced Sanclemente with the apparently more moderate José Manuel Marroquín, from whom they expected a conciliatory attitude towards the rebellion and a willingness to reward a potential rebel surrender with political reforms. Marroquín, nevertheless, did not comply with the expectations of the faction that put him in power and, thus, the war continued.[29]

The second phase of the conflict would last until the end of the hostilities. During these years, the maintenance of the rebel movement remained primarily in the hands of multiple guerrilla groups dispersed throughout the country's central regions. Nonetheless, during the last year of the war, the guerrilla warfare in the center of the country went hand in hand with larger regular campaigns in Cauca, to the south, and Panamá, to the west, led by the rebel general Benjamín Herrera, and also in the Caribbean coast, under the direction of Herrera's fellow Rafael Uribe Uribe. The capitulations of Uribe Uribe, in October 1902, and Herrera, a month later, signaled the end of the rebellion. Two treaties gave the war a formal closure: The Neerlandia Treaty, signed by Uribe Uribe on October 24, and the Wisconsin Treaty, signed by Herrera on November 21, 1902. The pacification of the center would take a few more months. Marroquín remained in power until 1904, when he handed the power to the democratically elected Rafael Reyes.[30] Reyes would stay in power until 1909, a period commonly known in Colombian historiography as the *Quinquenio*.

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[29] Bergquist, *Café y conflicto*, 172-174, 176-178, and 180-181; see also: Carlos E. Jaramillo, *Los guerrilleros del novecientos* (Bogotá: CEREC, 1991), 37-39 and 42-43.

[30] Bergquist, *Café y conflicto,* 186-188.

Rafael Reyes, a Conservative veteran of the civil war of 1895, was a more ardent admirer of Porfirio Díaz than Núñez had been. A two-year trip to Mexico had made him familiar with the Porfiriato's work and Díaz's achievements in matters of economic development, industrialization, and political stability. Convinced that Colombia needed to walk the path Mexico had been walking since the late 1870s, Reyes was determined to foster industrialization, build railroads, reorganize the country's fiscal policies, and prevent any possible political disturbance. "The example of Mexico is and should be a model to be copied by those Spanish-American nations which have not succeeded so far in solving in a stable and permanent manner the problem of public peace, which of necessity is linked to the economic and financial problems," Reyes wrote in 1906.[31] Reyes's interest in reproducing Díaz's work in Colombia made him even borrow the "less politics, more administration" motto, turning it into one of his government's banners.[32] In the post-war era, "less politics" meant leaving aside traditional partisan hatred and useless –if not detrimental– ideological and programmatic conflicts. In contrast, "more administration" meant a greater focus on practical priorities linked to economic growth and prosperity. [33] In correspondence with the Mexican model, Reyes would make multiple efforts to promote economic development, foster international trade, restructure the nation's foreign debt, and

[31] Rafael Reyes, "Mexico's Great Finance Minister," *The North American Review* 182, no. 590 (1906), 48; see also: Eduardo Lemaitre, *Rafael Reyes: biografía de un gran colombiano*. Tercera edición (Bogotá: Espiral, 1967), 283.

[32] Carlos Andrés Quinche Castaño, "El Quinquenio de Rafael Reyes y la transformación del mapa político-administrativo Colombiano" *Anuario Colombiano de Historia Social y de la Cultura* 38, no. 1 (2011), 57.

[33] Suárez Mayorga, "La construcción," 112.

protect and stimulate domestic industries. A new rise in international coffee prices set the conditions for a favorable economic growth during most of the *quinquenio*.

In political terms, Reyes arrived to the presidency with a message of national unity, political reconciliation, and attenuation of partisan hatred. Consequent with this message, Reyes granted the Liberal Party a significant participation in the Congress and put several liberal veterans in influential positions both in his government and in the military. This would grant him the almost unconditional support of many members of the Liberal Party, but also the animosity of several Conservative circles.[34] Resentment against Reyes's spirit of reconciliation was particularly high among those conservatives that had fought the liberals during the Thousand Days. Conservative resistance against the President's policies and reform plans manifested soon after the beginning of his period. Resistance in the 1904 Congress to Reyes's project of territorial division forced him to shut down the Legislative, and to replace it the following year with a National Assembly with no members from the Conservative dissidence.[35]

The measure did not deter the opposition, but rather radicalized it. Dissident Conservatives planned a coup that should take place in December 1905 but was ultimately thwarted by the government. Months later, on February 10, 1906, the same faction would carry out a failed attempt against the President's life.[36] The Government's energetic

[34] Bergquist, *Café y conflicto*, 266-267.

[35] Germán Villate Santander, "Las conspiraciones del segundo año del quinquenio de Reyes vistas a través de la prensa de la época," *Apuntes del Cenes* 5, no. 9 (1986), 45-49; see also: Baldomero Sanín Cano, *Administración Reyes (1904-1905): Prólogo de Malcolm Deas* (Bogotá: Universidad del Rosario, 2015), 24-25.

[36] Villate Santander, "Las conspiraciones," 53 and 64.

reaction to both plots disassembled most of the Conservative dissidence, but voices of discontent against the regime's administrative policies and a growing authoritarianism remained. Resistance against Reyes and his government escalated in 1907 after the negotiation of a treaty with the United States concerning the separation of Panama. The imminent approval of the treaty by the National Assembly in March 1909 sparked a wave of violent protests in Bogotá that forced Reyes to temporarily resign the presidency. The treaty finally sank in the Assembly. In June that year, Reyes would call for a congressional election whose results did not favor him. This final drawback forced him to resign once again and leave the presidency in the hands of Jorge Holguín. Soon after his resignation, Reyes would leave the country going into exile.[37] His departure marked the end of the *quinquenio*.

How comparable are the Mexican and Colombian experiences between the late 1870s and the 1910s? As the previous pages show, there are a number of similarities between one country and another. The Porfiriato and the Regeneration emerged and developed in response to analogous interests of securing peace and progress through a strong, centralized government, for instance. This premise materialized in both countries in similar ways: strong political centralism, high levels of presidentialism, political exclusion, and governmental authoritarianism. There were also multiple links connecting both countries during the period. The Porfiriato was, to a certain point, a model for the Regeneration, and Porfirio Díaz represented an important source of inspiration for presidents like Rafael

[37] Bergquist, *Café y conflicto*, 286-287; and Quinche Castaño, "El Quinquenio," 73.

Núñez and Rafael Reyes. Commonalities between both countries went beyond these connections and parallelisms, and even preceded the period in question. As James Sanders explains in *The Vanguard of the Atlantic World*, nineteenth-century Mexico and Colombia had very similar stories. Both countries faced civil warfare in their early stages, developed distinct Liberal and Conservative parties by mid-century, and suffered several civil wars resulting from power struggles between these two factions. Likewise, they both undertook extensive project of liberal reform of colonial institutions, and embraced republicanism and democratic innovation around mid-century. The Porfiriato and the Regeneration, in fact, represent analogous projects of "reorganization" tending to counter the effects and consequences of this early republicanism, as authors such as Sanders, María del M. Melgarejo and a few others maintain.[38]

Besides these political commonalities, Mexico and Colombia shared a common constitutional and legal culture. The constitutional frameworks of the Porfiriato and the Regeneration privileged the maintenance of public order and the concentration of public powers in the hands of the Executive, for instance. They also shared the conviction that society's integrity should prevail over the rights of its individuals. Mexican and Colombian criminal codes also involved common ideas that were part of broader, transnational developments in the field of criminal law. Many of these ideas shaped similar

[38] James Sanders, *The Vanguard of the Atlantic World: Creating Modernity, Nation, and Democracy in Nineteenth-Century Latin America* (Durham: Duke University Press, 2014), 20-21; see also: Melgarejo, *El lenguaje*. See also: Melgarejo, "El lenguaje." Sanders's and Melgarejo's books comprise the few monographs that study Mexico and Colombia in a comparative way. There are, nonetheless, a few additional papers comparing specific moments in Mexican and Colombian history. They include, among others, Suárez Mayorga, "La construcción," and José David Cortés Guerrero, "Lectura comparada de una época de reformas liberales: México y Colombia a mediados del siglo XIX," in *Las leyes de reforma y el estado laico: importancia histórica y validez contemporánea*, ed. Roberto Blancarte (México: El Colegio de México, 2013). This dissertation aims to enrich and strengthen this limited scholarship and foster comparative research between the two countries.

understandings of what political crimes were and how governments should react to them, which in turn inspired relatively analogous ways of reacting to political crimes and criminals, as this dissertation shows.

All these parallelisms, connections, and shared attributes make up a framework of commonalities that invite to comparison and make it methodologically possible. The Mexican Porfiriato and the Colombian Regeneration represent, at least to a certain point, analogous experiences, involving a shared set of common attributes and reasonably close in terms of both time and space. This sort of characteristics, according to Magnus Mörner, provide a basic ground for a proper comparative analysis.[39] Furthermore, as geographical neighbors and historical contemporaries, Porfirian Mexico and Regenerationist Colombia share a common set of "over-all causes," in terms of Marc Bloch's classical work on comparative history.[40] These "common causes" have to do not only with a relatively analogous past as post-independent Latin American nations, but also with a shared legal and constitutional culture combining elements and influences both from the colonial and the modern Atlantic world.

There were, of course, important differences between the Mexican and Colombian contexts. Levels of economic development and insertion into world economy were drastically different between the two cases. Political differences were also substantial. Mexico had a federal organization, while Colombia was a centralized republic from 1886 on. Mexico had only two presidents between 1877 and 1911, and one of them, Porfirio

[39] Magnus Mörner, Julia Fawaz, and John D. French, "Comparative Approaches to Latin American History." *Latin American Research Review* 17, no. 3 (1982): 60-61.

[40] Marc Bloch, Toward a Comparative History of European Societies," in *Enterprise and Secular Change: Readings in Economic History*, ed. Frederic C. Lane (Homewood, IL: Richard D. Irwin, Inc., 1953), 498.

Díaz, ruled for more than three decades. Colombia, on the contrary, had more regular and continuous changes in the Executive –regardless the fact that, from the late 1880s to the end of the *quinquenio*, all presidents belonged to the same political party. There were also important contrasts in terms of rebellion and insurrection. Although both countries suffered several episodes of internal turmoil between the late-nineteenth and the early-twentieth centuries, widespread, long-lasting rebellions were more common in Colombia than in Mexico –at least before the outbreak of the Mexican revolution.

Do these differences affect the comparability of the Porfiriato and the Regeneration as subjects of historical analysis? This dissertation maintains that they do not. These contrasts, in fact, make comparison more rewarding and valuable from an analytical point of view. Historical comparison does not only involve similarities but also differences, as authors such as Magnus Mörner, Marc Bloch, Theda Skocpol, and Philippa Levine argue.[41] Combining similarities and differences, comparison between Mexico and Colombia has the advantage of uncovering and exploring processes that were common to both countries while emphasizing the particularities of each country regarding the problems in question. Furthermore, as these authors claim, this sort of comparative work pushes the study away from the simple description and typification of commonalities and towards the definition

[41] "To compare that which is absolutely equal or different would make no sense," says Mörner. Similarly, bloch maintains: "correctly understood, the primary interest of the comparative method is […] the observation of differences." See: Mörner, "Comparative Approaches," 57, and Bloch, "Towards a Comparative History," 507. See also: Theda Skocpol, "Emerging Agendas and Recurrent Strategies in Historical Sociology," in *Vision and Method in Historical Sociology*, ed. Theda Skocpol (Cambridge: Cambridge University Press, 1985), 376-377, and Philippa Levine, "Is Comparative History Possible?" *History and Theory* 53 (October 2014): 332.

of analytical concepts and the advancement of new, richer hypotheses and interpretations.[42] That is, precisely, what this study attempts to do when comparing the experiences of Mexico and Colombia regarding their governmental responses to political criminality. By studying these responses in two contexts or environments that encompass both similarities and differences, the dissertation aims to do much more than describing how Mexican and Colombian governments dealt with rebellions and rebels in their midst. It intends, also, to further a series of analytical and theoretical reflections concerning the workings of law, legislation, and state power in Mexico and Colombia, as a window into the broader legal and political experiences of modern Latin America.

Accepting now that comparison between the Porfiriato and the Regeneration is possible, what does exactly the dissertation compare? More than comparing two "societies," "structures," or "contexts" that might not seem fully equivalent, the dissertation compares a problem that was both common and relevant for the two countries –the way in which governments in one country and another understood and responded to political crimes and criminality.[43] The study is not interested in comparing neither the rebellions or insurrections that took place in Mexico and Colombia during the period nor the political circumstances in which they occurred. It simply intends to compare –and

[42] See: Mörner, "Comparative Approaches," 66-67, and Scokpol, "Emerging Agendas," 376. See additionally: Eugene Genovese, The Comparative Focus in Latin American History." *Journal of Interamerican Studies and World Affairs* 12, no. 3 (July 1970): 320.

[43] On the centrality of problems in comparative history, see: Raymond Grew, "The Case for Comparing Histories." *American Historical Review* 85, no. 4 (October 1980): 773 and 776. To Grew, "comparison is most enlightening when the choice of what to compare is made in terms of general and significant problems," and the point of comparative history is to encourage historians "to think in terms of problems." See also: Levine, "Is Comparative History," 338.

contrast, of course– the ways in which both countries responded to these episodes.[44] In analytical terms, these responses represent a common ground, a single, coherent unifying principle that brings together the specificities of the Mexican and Colombian historical experiences. It is a way of avoiding artificial comparisons that obscure the social and historical particularities of each case in search of some abstract similarity that only exists in the imagination of the researcher.[45] The dissertation, in fact, conceives these responses neither as empty and abstract categories nor as *a priori* notions existing outside the historical experience of both countries. Rather, it defines and understands them in relationship with the specific contexts in which they emerged and developed. Facing rebellion and internal turmoil, Mexican and Colombian governments had to develop specific understandings and responses to political criminality. These concrete responses, with their socio-historical meanings and specificities, represent thus the central focus of comparison.

Problematizing Political Crimes and Responses to Political Criminality

This is a comparative study on political crimes and political criminality, their historical understandings in two Latin American countries, and the ways in which their respective governments responded to them. What is, precisely, political criminality? How does this

[44] By choosing these responses as the study's basic unit of comparison, the dissertation follows Mörner's suggestion that the units of comparison must be a) related to the objectives of the study, b) representative of "the universe about which generalizations will be made;" and c) equally significant in relation to their respective contexts. See: Mörner, "Comparative Approaches," 59.

[45] On "artificial" and "obscuring" comparisons and how to avoid them, see: Mörner, "Comparative Approaches," 58, and Grew, "The Case," 765. See additionally: Micol Seigel, "Beyond Compare: Comparative Method after the Transnational Turn." *Radical History Review* 91 (Winter 2005): 67 and 73.

monograph understand political crimes? There are multiple ways of defining political offenses. Historical literature on the matter includes a panoply of definitions, some more concrete than others. Some scholars define political crimes as all offenses committed for altruistic or ideological purposes. Other authors conceive them as crimes against the state, the government, and its institutions. Some of these scholars even divide these offenses into several categories or sub-notions depending on their level of violence, their aims and impact, and the kind of political threat they entail –i.e. "violent" and "non-violent" political crimes; "oppositional" or "state" political crimes; "pure" or "mixed" political crimes.[46] This study draws on an "intermediate" definition of political crimes, inspired on the approaches of Barton Ingraham, Austin Turk, and Karl Harter.[47] Political crimes, from this perspective, are actions and/or expressions of political dissidence, violent or non-violent, that state authorities and government officials consider criminal regardless their real nature and the motivation of their perpetrators. To the state, these acts are criminal because they entail more or less severe threats to the established structure of the government, the government institutions and/or representatives, the state authorities, and the public order.

As criminal manifestations of dissent, political crimes usually involve violent offenses such as terrorism, rebellion, sedition, political assassination, and political riot, as well as non-violent crimes such as "illegitimate" resistance or dissidence, disobedience,

[46] This brief overview is based on Jeffrey Ross, *An Introduction to Political Crimes* (Bristol: The Policy Press – The University of Bristol, 2012), 30-31.

[47] Barton Ingraham, *Political Crime in Europe: A Comparative Study of France, Germany, and England* (Berkeley: University of California Press, 1979); Austin Turk, *Political Criminality* (Beverly Hills: Sage Publications, 1982); and Karl Harter, "Legal Responses to Violent Political Crimes in 19th Century Central Europe" in *Vom Majestätsverbrechen zum Terrorismus: Politische Kriminalitat, Recht, Justiz un Polizei zwischen Fruher Neuzeit und 20 Jahrhundert*, ed. Karl Härter and Beatrice de Graaf (Frankfurt: Vittorio Klostermann, 2012).

political and seditious libel, espionage, and treason –considered here as a mere violation of allegiance.[48] Nonetheless, as authors like Jeffrey Ross, Karl Harter, and Thomas Walter point out, the sphere of "political crimes" is commonly imprecise, flexible, and mutable.[49] Governments, judges, and legislators can alter existing definitions of political crimes in order to criminalize political acts that were not originally criminal, or to prosecute political dissidents whose actions are not necessarily criminal according to the current legislation. It is a process of "reinvention" of political criminality that depends on multiple circumstances: local, national, and even international political contexts, existing mechanisms for social and political negotiation, current practices and proceedings of criminal justice, and existing legislation and legal doctrine.[50] In correspondence with these considerations, this monograph understands political crimes and their historical reinventions in two complementary ways. On the one hand, they are legal and political resources for protecting the government, the state, and the public order against actual or potential threats by eventual "internal enemies." On the other hand, they represent a flexible tool for controlling and repressing political opposition and dissidence, as well as for strengthening social policing and control.

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[48] For an abridged description of these violent and non-violent offenses, see Ross, *An Introduction,* 40-46 and 53-57.

[49] See: Ross, *An Introduction*; Harter, "Legal Responses"; Karl Harter, "Images of Dishonoured Rebels and Infamous Revolts: Political Crime, Shaming Punishments and Defamation in the Early Modern Pictorial Media," in *Images of Shame: Infamy, Defamation and the Ethics of Oeconomia*, ed. Carolin Behrmann (Berlin: De Gruyter, 2016); and Thomas Walter, "Punishing Rebels, Ringleaders and Followers. Punitive Responses to the Saxon Peasant Uprising of 1790," in *Revolts and Political Crime from the 12th to the 19th Century: Legal Responses and Juridical-Political Discourses*, ed. Angela De Benedictis and Karl Härter (Frankfurt: Vittorio Klostermann, 2013).

[50] On the "invention" and "reinvention" of political crimes, see: Harter, "Legal Responses"; and Angela De Benedictis and Karl Härter, eds., *Revolts and Political Crime from the 12th to the 19th Century: Legal Responses and Juridical-Political Discourses* (Frankfurt: Vittorio Klostermann, 2013).

Analytical inspirations for this monograph come from American and European scholarship on political crimes and criminality. A combination of approaches from sociology, criminology, and political science characterize American studies on political offenses, as illustrated by the works of Barton Ingraham, Austin Turk, Jeffrey Ross, and Nicholas Kittrie and Eldon Wedlock.[51] This interdisciplinary perspective allows them to delve into the social and historical making of notions of political crime as well as into the evolution of political criminality in the United States. They also pay special attention to the ways in which American and other governments have responded to dissent, resistance, collective violence and, more recently, terrorism. European scholarship involves more historical overtones, merging approaches from legal, social, and political history. This literature includes the works by Angela De Benedictis on revolts, disobedience, and the "right to resistance" in early modern Europe; Karl Harter on the legal responses to political crimes in early modern and modern Europe; and Beatrice De Graaf on political criminality and social policing.[52] The studies by Thomas Walter, Johannes Dillinger, Malte Griesse, and Michael Lobban also add to this scholarship.[53] Together, they shed light on the making

[51] Ingraham, *Political Crime*; Turk, *Political Criminality*; Ross, *An Introduction*; and Nicholas Kittrie and Eldon Wedlock, eds., *The Tree of Liberty: A Documentary History of Rebellion and Political Crime in America* (Baltimore: The John Hopkins University Press, 1998).

[52] Angela De Benedictis, "Rebellion, Resistance, and Revolution between the Old and the New World: Discourses and Political Languages," *Storicamente, Laboratorio di Storia – Dossier* 10 (2014); Karl Harter and Beatice de Graaf, eds., *Vom Majestätsverbrechen zum Terrorismus: Politische Kriminalitat, Recht, Justiz un Polizei zwischen Fruher Neuzeit und 20 Jahrhundert* (Frankfurt: Vittorio Klostermann, 2012); and Karl Harter, "Early Modern Revolts as Political Crimes in the Popular Media of Illustrated Broadsheets," in *From Mutual Observation to Propaganda War: Premodern Revolts in their Transnational Representations*, ed. Malte Griesse (Bielefeld: Transcript Verlag, 2014).

[53] Walter, "Punishing Rebels"; Johannes Dilliger, "Organized Arson as Political Crime. The Construction of a 'Terrorist' Menace in the Early Modern Period," *Crime, History & Societies* 10, no. 2. (2006); Malte Griesse, ed., *From Mutual Observation to Propaganda War: Premodern Revolts in their Transnational Representations* (Bielefeld: Transcript Verlag, 2014); and Michael Lobban, "From Seditious Libel to

and unmaking of penalties for political crimes; the historical reinvention of certain political offenses; and the transnational nature of some legal and political discourses on collective political violence. They also delve into the legal invention of different classes of "illegitimate" and "dangerous" dissidence, as well as into the evolution of state repression and mercy concerning political crimes and violence.

Despite their differences in disciplinary approaches and historical contexts, American and European scholarship on political criminality provides this study with a series of questions that, for the case of modern Latin America, still await response. These questions include, among others, how legal and doctrinal notions of political criminality emerged and evolved, and how and why legislation on and penalties for political offenses changed throughout the period. There is also a question about the relationship between local and national discourses and laws on political violence, on the one hand, and transnational legal discourses on revolt, war, political rights, dissent, and social policing, on the other hand. This monograph attempts to answer some of these questions in the contexts of the Porfiriato and the Regeneration. As such, it is interested in uncovering and analyzing the logics through which Mexican and Colombian authorities criminalized dissent and dealt with criminal –or criminalized– dissenters. It is an analysis that also aims to shed light on the workings of law, politics, authoritarianism, and state power not only in Mexico and Colombia but also in modern Latin America.

Overall, this study maintains that governmental responses to political criminality in Mexico and Colombia were the result of a series of concerns about the maintenance of

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Unlawful Assembly: Peterloo and the Changing Face of Political Crime, c1770-1820," *Oxford Journal of Legal Studies* 10, no. 3 (1990).

public order and the relationship between government and dissidence. They originated in multiple places at the time: in constitutional and criminal law provisions; in legal and doctrinal conversations; in interpretation of current legislation; in the logics of justice administration; and in a series of legislative, judicial, and executive acts and decisions. Similarly, they emerged and evolved in response to changing legal, political, and military conjunctures and interests, as well as in correspondence with changing dynamics of political negotiation between governments and opposition. As a consequence, they were neither uniform nor stable. Fluidity and contingency characterized governmental understandings to political criminality legal definitions of political offenses, and penalties against political criminals alike. Legal definitions of political criminality, as well as governmental responses to political crimes experienced important transformations over time. Between the late 1870s and the 1910s, the repertoire of actions considered political offenses increased and diversified in both countries, while official responses to them became slightly more legalistic and reliant on judicial procedures. It was a subtle process of "legalization" that suggests a progressive change in the ways in which Mexican and Colombian governments addressed and reacted to political conflict and violence in their midst.

The dissertation also argues that legislation on political criminality in Mexico and Colombia never involved single, uniform notions defining what political crimes were. Constitutions and criminal codes involved ambiguous, imprecise notions of political crimes, and did not draw a clear line between "common" and "political" offenses. These ambiguities shaped a series of legal and constitutional grey areas that gave authorities ample wiggle room for deciding which offenses were political and how to proceed against

them. Ultimately, the definition and treatment of political offenders depended less on clear constitutional and criminal law provisions and more on the discretion of those who interpreted, applied, and reinvented the law.

These ambiguities and uncertainties impacted the exercise of armed and unarmed political opposition in at least two ways. On the one hand, they conditioned a changing legal framework according to which authorities could target and prosecute, as criminal, almost any manifestation of dissent, from simple opposition journalism to straightforward insurrection or rebellion. On the other hand, they allowed governments to repress criminal manifestations of dissent that often pushed the limits of what constitutions and codes prescribed for the punishment of political offenses –and crimes in general. That is the case, for instance, of the guarantees of the due process, the principle of no extradition of political offenders, or the constitutional prohibition of the death penalty for political crimes.

Building on these ambiguous and malleable legal frameworks, responses to political crimes in Mexico and Colombia often subjected criminal dissenters to alternative judicial and jurisdictional regimes. They were parallel legalities that involved their own sets of crimes and punishments and remained under the control of administrative and military authorities that operated with certain independence from the formal judicial power. These alternative legalities account for some sort of legal pluralism within the logics of state law, state power, and state repression in the Porfiriato and the Regeneration. They reveal, for instance, that state law concerning the treatment of political criminals was not necessarily uniform or coherent, and in certain circumstances could involve multiple, even conflicting authorities, jurisdictions, and legislations –ordinary and extraordinary, governmental and military, judicial and administrative, state-centered and international, for

instance.[54] These parallelisms impacted governmental understandings of and responses to political crimes in different ways. They allowed the emergence of shifting and clashing definitions of the legal status of criminal(ized) dissenters. Likewise, they sparked legal and legislative conflicts over the existence of separate legal spheres for the prosecution and punishment of political crimes and criminals. Moreover, and in more practical terms, they allowed governments and authorities to put hundreds of dissenters away from the reach and protections of the formal justice system. It was a maneuver that, for many dissidents in both countries, translated into scarce judicial guarantees, limitations to the right to defense, judicial arbitrariness, and lack of proportionality in the administration of punishment.

Governmental endeavors against criminal dissenters involved much more than these legal and jurisdictional maneuvers. With the arguments of fighting revolutionary plots, preventing rebellion, and suppressing insurrections, Mexican and Colombian governments criminalized both armed and unarmed dissidents, repressed combatants and non-combatants alike, and generalized repression throughout their entire societies. This generalization of repression had dramatic manifestations. In Mexico, for instance, it led to massive imprisonments of journalists; extrajudicial assassinations of dissenters by paramilitary forces; and even political kidnappings and "forced" extraditions. In Colombia, it manifested through hundreds of "preventive" imprisonments and confinements; the realization of dozens of extrajudicial executions; and even the pecuniary punishment of entire towns just on the grounds of their political affiliation. These experiences account for

[54] On state law, jurisdictional conflicts, legal pluralism, and parallel/alternative legalities in colonial and modern Latin America, see: Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400-1900* (Cambridge: Cambridge University Press, 2002), especially pp. 8-11, and 210-211.

repertoires of punishment that combined formal and informal, legal and extralegal, judicial and extrajudicial penalties for political crimes and criminals, as well as both retributive and merciful displays of state power. Far from clashing, contradicting, or annulling one another, these multiple penalties and displays reveal complementary strategies of state retribution strategically crafted in response to a variety of legal, political, and military goals. They demonstrate that punishment and retribution did not work in a univocal, straightforward way, and that governmental responses to political crimes were diverse, complex, and fluid.

Dissenters in Mexico and Colombia rarely accepted their criminalization and the legal and judicial treatment that came with it. Just as there was retribution, punishment and repression, there was also resistance, rejection, bargaining, and negotiation. Resistance to governmental responses to political crimes sparked heated debates on the constitutional limits of state power and the interpretation and application of basic constitutional precepts. Bargaining and negotiation fostered a series of mechanisms of political and legal transaction between political criminals and authorities that often benefitted both parts. On the whole, resistance and bargaining had the ambiguous effect of upholding state's power and sovereignty while providing criminal dissidents with some degree of redress from the logics of state punishment.

The dissertation reveals that, despite such commonalities, there were important differences between the Mexican and the Colombian experiences. Although politics in the Porfiriato appeared to be more authoritarian than in the Regeneration, the treatment of political criminals in Mexico involved greater degrees of legal security and judicial protection than in Colombia. It also encompassed more contained displays of state

retribution, as well as a more centralized and straightforward administration of justice. Levels of legal exceptionality underlying the treatment of political offenders were also different between the two cases. Compared to Colombia, Mexico relied less on extraordinary, alternative legalities and more on the provisions of its criminal code and the proceedings and decisions of its ordinary justice system. State law concerning political crimes was, therefore, more coherent and unified in Mexico than it was in Colombia. In this second case, the treatment of political criminals was subject to a complex jurisdictional network of ordinary judges and legislation, military tribunals and laws, and administrative authorities and prescriptions.

While it is tempting to think that the treatment of political criminals was more unpredictable, unregulated, and devoid of basic protections in Mexico than in Colombia, this study shows that the opposite was true. Political criminals in Colombia, unlike their Mexican counterparts, remained for most of the period at the mercy of a series of logics of state retribution that unfolded away from the procedures, limitations, and protections of the ordinary law and the formal justice system. Compared to the Mexican case, procedural guarantees for political offenders in Colombia were scarce, with a justice system that only on extraordinary occasions could intervene on their behalf. As authoritarian as the Porfiriato might have seemed, and as dramatic as its strategies against dissidents were, it still granted dissidents a series of legal and judicial conditions that dissenters in Colombia would never be able to fully enjoy.

Political Crimes and the Scholarship on Mexico, Colombia, and Latin America

Political crimes represent one of the most neglected areas in the historical scholarship on modern Latin America. To be sure, there is a significant body of historical literature that addresses, directly and indirectly, the multiple social, political, and legal questions that were commonly linked to the problems of political criminality and its legal treatment in the region. Yet, this diverse –and certainly extensive– scholarship commonly pays scarce attention, if any, to the ways in which modern Latin American societies understood, defined, debated about, treated, and punished political crimes and criminals. It is a historiographical limitation that affects not only comparative literature on law, state formation and civil warfare in the continent, but also scholarship on the legal and political experiences of nineteenth-century Mexico and Colombia.

Comparative studies on state formation and civil warfare in modern Latin America are particularly rich in social, political, economic, and even legal problematizations. Works like *State Formation and Democracy in Latin America* (2000), by Fernando López-Alves, and *Blood and Debt* (2002), by Miguel Angel Centeno, offer thorough analyses of the role of civil warfare in the processes of state making in the region. Monographs like Brian Loveman's *The Constitution of Tyranny* (1993) shed light on the links among law, constitutionalism, political repression, and authoritarianism in Latin America. Comparative volumes like Rebecca Earle's *Rumours of Wars: Civil Conflict in Nineteenth-Century Latin America* (2000) offer additional insights into the social, political, military, and legal experiences of political conflict and civil warfare in the region. The works by López-Alves, Centeno, and Loveman share the particularity of considering Latin America a whole, relatively coherent unit of analysis. Drawing on this methodological premise, each

author attempts to find regularities and differences among national experiences in the region by paying attention to specific units of comparison –defined in every case as socio-historical problems. López-Alves, for instance, compares processes of state building (civil- or military-led) and patterns of political and military mobilization of subaltern groups, specially within contexts of civil warfare. Centeno contrasts modalities of warfare (internal or external), together with taxation systems. Loveman, finally, compares constitutions and constitutional provisions regarding state power and public order.

Regardless their specific units of comparison, the three books share an interest in comparing ways of waging and regulating internal warfare in Latin America. This comparative preoccupation about civil warfare in the region is also present in this dissertation. There are, nonetheless, important methodological differences between these works and this study. The comparative scope of the dissertation is much more restricted, for instance. Similarly, it does not consider Mexico and Colombia parts of a single, coherent socio-historical entity. Its unit of comparison is also different, as are the major problems linked to it. By comparing governmental responses to political criminality in the Porfiriato and the Regeneration, this study tackles a series of voids that are common to these other comparative works on civil warfare in modern Latin America. Although they all deal with issues of rebellion and political repression, none of them consider political criminality a subject matter on its own, delve into the legal logics of state repression, or problematize civil warfare in legal terms. This dissertation represents, in this light, an effort to stimulate comparative studies on Latin American civil wars on the grounds of legal and political problems that remain poorly explored this far. Studying these conflicts in the region through comparative questions regarding the treatment of political crimes can offer

valuable insights into the functioning of politics and law in the history of modern Latin America.

Literature on rebellion and civil warfare in Colombia and Mexico involves similar limitations regarding the study of political crimes and criminality. Scholarship on civil wars is particularly rich in the case of Colombia. General overviews of the country's many internal conflicts include Alvaro Tirado's *Aspectos sociales de las guerras civiles in Colombia* (1976); Maria T. Uribe's *Las palabras de la guerra* (2006); the volume *Ganarse el cielo defendiendo la religion* (2006), edited by Luis Javier Ortiz; and Fernán González's *Partidos, guerras e Iglesia* (2006). These books cover a variety of political, social, and even cultural aspects, but pay scarce attention to the legal side of these conflicts. That is also the case of the most important works on the Thousand Days' War, a conflict that receives special attention in this monograph. Legal problematizations are practically absent from the classical works by Charles Bergquist, *Coffee and Conflict in Colombia* (1978); Jorge Villegas, *La guerra de los mil días* (1979); and Carlos E. Jaramillo, *Los guerrilleros del novecientos* (1991). Most recent scholarship on the conflict, including the volume *Memoria de un país en guerra* (2001), edited by Gonzalo Sánchez and Mario Aguilera, or the works by Brenda Escobar, have done little to fill these thematic and disciplinary gaps.[55]

Literature on the legal dynamics of punishment and mercy in Colombian civil wars is scarce. Before 2019, only a few works by Mario Aguilera and Joshua Rosenthal paid direct attention to the legal strategies that governments used to repress rebels and restore

[55] The works by Brenda Escobar include the book *De los conflictos locales a la guerra civil: Tolima a finales del siglo XIX* (2013) and the book chapter "La guerra de los mil días o mil conflictos fragmentados" (2017). See the "References" section.

peace during and after civil conflicts.[56] The volume *Paz en la república*, published in January 2019, represents perhaps the most notable contribution in this regard. Edited by Margarita Garrido, the book examines how nineteenth-century governments managed to give formal and legal closure to the many internal conflicts that erupted throughout the period. This monograph engages Aguilera's work by questioning its analysis of the logics of state punishment and leniency underlying governmental responses to rebellion during the period. It also addresses Garrido's volume by offering a more detailed analysis of the legal instruments that governments used to punish and pardon political criminals, and by proposing more complex interpretations of the roles of punishment and mercy in contexts of civil war.

Although less developed than its Colombian counterpart, Mexican scholarship on rebellion and internal warfare in the nineteenth century also focuses on a variety of political and social issues. Works like the volume *Porfirio Díaz frente al descontento popular regional* (1986), edited by Friedrich Katz; Leticia Reina's *Las rebeliones campesinas en México* (1980); John Tutino's *From Insurrection to Revolution* (1986); and Paul Vanderwood's *The Power of God Against the Guns of Government* (1998) are seminal studies combining approaches from both social and political history. That is also the case of Will Fowler's series on Mexican *pronunciamientos*, which include the volumes *Forceful Negotiations* (2011); *Malcontents, Rebels, and Pronunciados* (2012); and *Celebrating Insurrection* (2013). Despite the diversity of their approaches, none of these studies pays considerable attention to the legal dynamics intervening either in the development of these

[56] See Aguilera's article "Canje o fusilamiento: los presos políticos en las guerras del siglo XIX." (2006), as well as Rosenthal's "Constitutional Clemency after the Golpe de Melo of 1854: Constitutionalism and Tradition in Early Republican Colombia" (2017). See the "References" section.

insurrections or in the relationship between authorities and insurrectionists. This relative neglect of the legal logics of rebellion and civil warfare in Mexico is also present in more political approaches like the ones by Allen Wells and Gilbert Joseph in *Summer of Discontent, Seasons of Upheaval* (1996), and Elliot Young in *Catarino Garza's Revolution on the Texas-Mexico Border* (2004). By problematizing Mexican rebellions in the late-nineteenth century through a series of questions that scholars have not explored before in a systematic way, this monograph opens new ways to understand and analyze the experience of insurrection in modern Mexico.

Literature on law, crime, and criminality in modern Latin America also entail analogous limitations concerning the study of political offenses. Comparative volumes like *Reconstructing Criminality in Latin America* (2000) and *Crime and Punishment in Latin America* (2011), both edited by Carlos Aguirre, only offer and indirect and mostly superficial approach to the ways in which governments in the region understood and responded to political crimes. Similar limitations characterize Rosa del Olmo's comparative history of Latin American criminology, *América Latina y su criminología* (1981). Recent scholarship on crime and criminality in modern Mexico pays a great deal of attention to the treatment of common offenses and the evolution of criminal law ideas during the Porfiriato. An example of these works are Pablo Piccato's *City of Suspects* (2001), Elisa Speckman's *Crimen y castigo* (2007), and James A. Garza's *The Imagined Underworld* (2007). Although fundamental for understanding the treatment of certain forms of criminality in the Mexico of Porfirio Díaz, these studies tend to overlook how important responses to political criminality were in the shaping of the legal experience of

the Porfiriato. This monograph represents, in this light, an effort to contribute to a new, more balanced understanding of the functioning of law and politics in Díaz's regime.

The Colombian case offers a slightly different situation regarding the place of political crimes in the scholarship on law, crime, and criminality. Although there are no specific historical studies on the treatment of political crimes in nineteenth-century Colombia, there is a small but significant number of legal works more or less focused on the history of political criminality in the country. The most important book in this regard is Iván Orozco Abad's *Combatientes, rebeldes y terroristas* (1992), a study that provides valuable information regarding the legal treatment of civil warfare in the nineteenth century. Legal literature on political crimes in Colombia also includes Rafael Flores Camacho's *El delito político* and Luis Carlos Pérez's *Los delitos politicos*, two pieces of legal theory from the 1930s and 1940s. More recently, works like *Vivir en Policía* (2007), by Miguel Malagón, and *Governar, reformar y encarcelar* (2010), by Lina Adarve, have elaborated on the ways in which Colombian administrations from the late-nineteenth century used the law to deal with problems of public order. These works, especially those by Orozco Abad and Adarve, trace a line of legal and historical scholarship that this dissertation hopes to enhance.

By studying issues of politics, law, public order, and civil warfare, this monograph also engages more general overviews concerning the political history of Mexico and Colombia in the late-nineteenth century. Although these broader perspectives are rich in details about the workings of politics, law, and state power and repression in both countries, they barely delve into more specific problems concerning political criminality and its legal treatment. In the Colombian case, these historiographical limitations are particularly

common in the political literature on the period. Some examples in this regard are Helen Delphar's *Red Against Blue* (1981) and James Sander's *Contentious Republicans* (2004) – still an exemplary study on popular politics in the nineteenth-century Colombia. Approaches to the Regeneration from the perspective of intellectual history tend to pay more attention to legal questions linked to matters of political repression, public order, and civil warfare. That is the case, for instance, of María Melgarejo's *El lenguaje político de la regeneración* (2010), Antonio Barreto's *Venturas y desventuras de la regeneración* (2012), and the volume *Miguel Antonio Caro y la cultura de su época* (2002), edited by Rubén Sierra Mejía. Studies directly concerned with issues of public order and civil warfare during the Regeneration involve clearer references to issues of legislation and public criminality, offering this monograph a useful bibliographical ground. These works include, among others, Charles Bergquist's *Coffee and Conflict*, Mario Aguilera's *Insurgencia urbana en Bogotá* (1997), and the volume edited by Leopoldo Múnera *La regeneración revisitada* (2011).

General overviews on Porfirian Mexico involve different degrees of interest on issues of political criminality. Questions about the legal workings of Díaz's authoritarianism or the ways in which authorities during the Porfiriato responded to rebellion and insurrection are practically absent from those accounts that privilege social and intellectual approaches. William Beezley's *Judas at the Jockey Club* (1987), together with Charles Hale's *The Transformation of Mexican Liberalism in the Late-Nineteenth Century* (1989) are two illustrative examples. Overviews privileging a political approach tend to pay more attention to these questions. That is the case, for instance, of Elisa Speckman's contributions to the volumes *Nueva Historia Mínima de México* (2008) and

Nueva Historia General de México (2010), or of Romana Falcón's articles on rebellion and repression in the Juárez's and Díaz's eras.[57] Another example in this regard is Paul Garner's profile of Porfirio Díaz in the volume *A Companion to Mexican History and Culture* (2011). Their study of the legal logics of Porfirian authoritarianism, nonetheless, is for the most part superficial. It is possible to find more detailed and in-depth approaches on the matter in literature that deal directly with Díaz's practices of repression and political persecution. This scholarship includes, among others, Paul Vanderwood's *Los Rurales Mexicanos* (1982), Collin McLachlan's *Anarchism and the Mexican Revolution* (1991), and Claudio Lomnitz's *The Return of Comrade Ricardo Flores Magón* (2014). Certainly useful for the purposes of this monographs, these works still lack a proper and consistent legal perspective like the one inspiring this study and its problematizations.

Besides helping fill the mentioned gaps in the legal and political literature on Mexico, Colombia, and Latin America, this monograph also makes intensive use of a series of primary sources that scholars on the Porfiriato and the Regeneration have barely exploited. As most of the literature reviewed above, this study relies on newspapers; memoires; constitutions and criminal codes; collections of laws and decrees; legislative debates; and legal and political essays from the period. Yet, unlike many of these works, this monograph also relies on criminal expedients and judicial reports; rulings from the Mexican and Colombian Supreme Courts; requests for judicial protection before different authorities in both countries; petitions for pardon and other modalities of state leniency; and other documents involving the quotidian negotiation of penalties for political crimes.

[57] See, for instance, Falcón's articles "La desaparición de jefes politicos en Coahuila. Una paradoja porfirista" (1988), and "El Estado liberal ante las rebeliones populares. México, 1867-1876" (2005). See the "References" section.

These "other," commonly untapped sources reveal a whole new facet of the legal and judicial logics of state repression against political crimes and criminals, and provide this study with fresh, original insights about the historical dynamics of law, governance, and civil warfare in Mexico and Colombia.

Chapter Outline

This monograph consists of four major sections and six chapters. Each section focuses on specific problems regarding the governmental treatment of rebellion and political criminality in the Porfiriato and the Regeneration: legislation and lawmaking; prevention; repression; and pardon. Section one explores the treatment of rebels and political crimes in formal constitutional and legal terms. It explores how constitutions as well as criminal and military codes in Colombia and Mexico understood political criminality, and how such understandings materialized in particular criminal categories and specific sets of penalties. It also analyzes how authors of legal doctrine, legal experts, and lawmakers discussed about what political criminality was and what sort of punishments it deserved. Section two focuses on matters of prevention, and studies how Colombian and Mexican governments used in practice both legal and extralegal means in order to prevent episodes of internal conflict and neutralize revolutionary plots and conspiracies. Section three deals with issues of repression, and analyzes the repertoire of retributive practices that governments from both countries had in order to suppress rebellions and punish rebels and other armed dissidents. Finally, Section four looks at the treatment of political criminals from the perspective of state leniency. It studies how presidents and other authorities in Colombia and Mexico combined punishment and mercy in their responses to several modalities of

political criminality, and analyzes the multiple functions that state mercy had in the relationship between state and rebels.

The study of legislation comprises the first three chapters, all in Section one. Chapter one analyzes the conception and treatment of political crimes and criminals in the Mexican Constitution of 1857 and the Colombian Charter of 1886. It argues, among other things, that Constitutional understandings of political criminality were closely linked to a series of concerns regarding the need to maintain public order and institutional stability. Constitutional dispositions on matters of public order contained several provisions regarding political crimes and criminals. The particular nature of these provisions helps explain, to a great extent, the singularities of the legal responses to political crimes that authorities in Mexico and Colombia put into effect during the period.

Chapter two focuses on the Criminal Codes of 1871 in Mexico and 1890 in Colombia, and studies how these codifications helped configure a criminal regime for the definition and punishment of political offenses during the Porfiriato and the Regeneration. It also reflects on the characteristics of the resulting regimes, as well as their impact on the ways in which Mexican and Colombian authorities criminalized and prosecuted internal enemies during the period. The chapter shows that both criminal codes addressed political criminality in relatively similar ways. Yet, there were important differences regarding the classification of political offenses and the repertoires of offenses defined in each case as "political." It also argues that, in both countries, the definition and classification of political crimes gave governments ample wiggle room for legal interpretation and reinvention regarding the treatment of "dangerous" political dissidents.

Chapter three reconstructs and analyzes a series of conversations that accompanied the making and enactment of constitutional and criminal law prescriptions on political criminality. These conversations encompassed a wide variety of positions and perspectives about what political crimes were, what made them criminal, and what made them political. While some jurists and lawmakers conceived political criminals as enemies of society, others merely perceived them as political fanatics led by misunderstood notions of "justice" or "patriotism." The lack of clarity and consensus on these matters had serious political and legal consequences both in Mexico and Colombia, playing a substantial role in the particular ways in which the Porfiriato and the Regeneration responded to political criminality respectively.

The study of prevention, repression, and mercy corresponds to chapters four, five, and six, respectively. Chapter four studies how both countries used their respective legal and constitutional frameworks to prevent civil war, contain revolutionary waves, and neutralize potentially subversive political dissidents. Focusing on the preventive treatment of both political crimes and press offenses, it delves into the legal and judicial logics of political repression *vis-à-vis* actual or potential threats against public order in the Regeneration and the Porfiriato. It also sheds lights on the multiple ways in which governments in both countries understood "prevention" and defined what a "threat against public order" was. Overall, the chapter argues that governmental efforts aimed at preventing rebellion and internal turmoil were grounded in a series of laws and decrees that shaped, in both countries, alternative regimes of legality. Revolving around issues of press freedom and maintenance of public order, these "parallel legalities" put the prosecution and judgement of threats against the government and public peace outside the reach of the

formal laws and ordinary justice. Another effect of these alternative legalities had to do with the shaping of a practical equivalence between political crimes and press offenses against public order, which put dissident journalists, rebellion suspects, and political agitators in a similar criminal category as enemies of the state.

Chapter five reconstructs and analyzes the different responses that Mexican and Colombian authorities gave to rebellion and revolutionary movements during the period under study. How did governments use the law and the justice system as mechanisms to punish rebels and revolutionaries? How "legal" and "judicial" were these responses, and to what extent did they combine both legal and extra-legal punitive practices? Those are some of the questions that the chapter tackles. It claims that governmental responses to rebellion in Colombia and Mexico encompassed a variety of legal, political, and military purposes that demanded a combination of both "legal" and "non-legal" measures. State repression, in consequence, was as formal and legalistic as it was informal and extralegal. In times of internal turmoil, it unfolded simultaneously in the legislation, the courts of justice, and both within and outside battlefields, involving not only actual rebels and active combatants but also dissidents of all sorts. Responses to rebellion in both countries turned political offenses into a flexible criminal category in which crimes and punishments were mutable and subject to constant redefinition.

Chapter six studies the logics of state mercy by uncovering the multiple ways in which political criminals in Mexico and Colombia could obtain leniency from their governments. It reconstructs the multiple forms in which authorities in both counties administered mercy, and analyzes the functioning of some of the most recurrent mechanisms for pardoning political offenders in the period –namely, amnesty laws and

pardon decrees. Besides exploring the workings of these official, legalistic manifestations of state mercy, the chapter delves into the different ways Mexican and Colombian political criminals used to negotiate their penalties and claim mercy. State leniency not only consisted of acts of governmental magnanimity that authorities decided to perform at certain points during or after an internal conflict across the board or for collective benefit. It was also something that criminals could obtain in their individual interactions with the state. The chapter shows that, one way or another, state mercy always came at a price. Pardons, amnesties, and even individual bargains for mercy, demanded from criminals their legal and symbolic submission to the state's authority, as well as the reinvention of their role as political dissidents. State mercy, in this light, was not only a mechanism for granting criminals some redress from the logics of state repression, but also a tool to reinforce state legitimacy, bolster governmental authority, and ensure political submission and obedience.

II. CHAPTER 1. THE CONSTITUTIONAL FRAMEWORK OF PUBLIC ORDER AND POLITICAL CRIMINALITY IN THE PORFIRIATO AND THE REGENERATION

The story of Ricardo Flores Magón, and by extension the experiences of dozens of fellow political dissidents in Mexico and Colombia during the period, raises a first series of questions regarding the rules that regulated their actions as citizens. What were the rules that organized the interactions between citizens and state, established the limits of what citizens could do as political actors, and limited what the state could and could not do in its relationship with them? What was the basic normative framework that allowed people like Flores Magón to carry out their activities as political dissenters while setting the conditions that made them legal? What were the rules that determined what governments could do and how far they could go in their responses against the threats posed by political dissenters? The answers to these questions lie in the constitutional frameworks of both the Porfiriato and the Regeneration.

Constitutions set up the most basic framework for the legal definition and treatment of political crimes and criminals in Mexico and Colombia. Prescriptions from criminal codes, legislative and administrative decrees, executive orders, and every other legal act that criminalized and punished political offenses in the Porfiriato and the Regeneration drew to a certain point on constitutional provisions on the matter. This chapter explores how the Constitutions that were in order during the period conceived and understood political crimes. It also reconstructs and analyzes how these Charters laid down the foundations for

the further crafting of legal responses to political criminality during the Porfiriato and the Regeneration. How much attention did these Constitutions pay to issues of political criminality? What kind of definitions and treatments of political crimes did they involve or make possible? What were the major concerns that, in these Constitutions, were linked to matters of political criminality? And, ultimately, how did these constitutional frameworks help understand the particular ways in which authorities in the Porfiriato and the Regeneration responded to political crimes and criminals? These are the major questions guiding this chapter.

The Chapter focuses on the 1857 Mexican Constitution and the 1886 Colombian Charter. Part one reconstructs the history and trajectories of the constitutional regimes that were in place during the Porfiriato and the Regeneration. It pays special attention to the ways in which these regimes addressed concerns about public order and state power. Part two offers a comparative exam of the ways in which both Charters addressed issues of public order, internal conflict and turmoil, "dangerous" dissidence, and political criminality. Focusing on four sets of constitutional prescriptions, this section explores how the search for order, peace, and stability shaped in both nations similar provisions regarding rights and guarantees, limitations of state power, and even administration of punishment and mercy. Part three offers, by way of conclusion, an analysis of the legal frameworks stemming from these prescriptions, and of the ways in which they helped shape the authorities' treatment of political crimes in Colombia and Mexico throughout the period.

On the whole, the chapter develops four major arguments. The first claim is that, despite their different origins, both Charters coincided on their insistence on the need for maintaining public order and institutional stability. The second argument contends that this

premise materialized in a relatively common set of prescriptions limiting liberties, suspending guarantees, and providing extraordinary powers in cases of emergency. A third contention is that concerns about political criminality were present, directly and indirectly, in almost all of these prescriptions. A final argument, linked to the previous one, affirms that most of these provisions concerning political crimes had a vague nature that provided authorities with a great window for legal interpretation and reinvention. It is this vagueness what helps explain, to a great extent, the particularities of the legal responses to political crimes that authorities in Mexico and Colombia put into effect during the Porfiriato and the Regeneration.

Constitutions in Context: From 1857 to 1886

The Mexican 1857 Constitution: from Atuyla to the Porfiriato

The 1857 Mexican Constitution was born out of the triumphant Revolution of Ayutla, the civil war that overthrew dictator Antonio Lopez de Santa Anna in 1855. It was the product of a coalition of liberal and conservative forces that had rebelled against a highly centralized, authoritarian, and personalistic regime.[58] In correspondence with this revolutionary spirit, the charter leaned towards liberalism and thus heavily emphasized the protection of individual rights, the separation and independence of public powers, and the federative nature of the Mexican Nation. It also created a popular, representative, and

[58] Brian Hammet, "The Comonfort Presidency, 1855-1857," *Bulletin of Latin American Research*, 15, no. 1 (1996), 87; see also: Ricardo Forte, "Los acuerdos de Ayutla (1854) y de San Nicolás (1852) y las constituciones liberales. Orígenes del poder coactivo del Estado en México y Argentina," *Historia Mexicana* 53, no. 4 (2004), 877.

federal republic, and established a political regime in which Congress concentrated most of the public power at the expense of the Executive. Against a past of despotism, the new Constitution attempted to reduce the President's powers almost to its minimal expression, granting the Executive only the authority necessary to be respected both within the nation and abroad.[59] Additionally, and for the first time in Mexican history, the Constitution included a comprehensive bill of rights and set up the Federal Government as its guarantor. These rights granted Mexicans complete equality under the law, freedom of press and speech, freedom of assembly, and freedom of education, among other individual rights.[60] The novelty of this bill of rights allowed Mexican constitution makers to proclaim that they had enacted the "most democratic" constitution that the nation had ever seen.[61]

The inclusion of a bill of rights at the very beginning of the Charter not only represented to Mexican constitution makers a major step towards the liberal and enlightened ideal of a citizenry with full individual rights. It represented, as well, a crucial mechanism of defense against despotism and state authoritarianism. Constitutional rights set the limits of state power and authority in the daily routine of politics and public administration. The establishment of the mechanism of judicial *amparo*, another novelty of the 1857 Constitution, reinforced these limits and provided Mexicans with a means to defend themselves against eventual abuses from judicial authorities. The amparo

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[59] Forte, "Los acuerdos," 885; see also: David Pantoja Morán, "La Constitución de 1857 y su interludio parlamentario," *Historia Mexicana* 57, no. 4 (2008), 1067 and 1068.

[60] Richard Sinkin, "The Mexican Constitutional Congress, 1856-1857," *The Hispanic American Historical Review* 43, no. 1 (1973), 1; see also: Erika Pani, "Republicans and Monarchists, 1848-1867," in *A Companion to Mexican History and Culture*, ed. William Beezley (Sussex: Blackwell Publishing, 2011), 274.

[61] "El Congreso Constityente a la Nación" (February 5, 1857), in *Derecho político de los Estados Unidos Mexicanos: Colección que comprende la Constitución General de la República y las Constituciones especiales, Tomo I* (México: Imprenta del Gobierno, 1884), 10.

mechanism allowed individuals to request, before the nation's Supreme Court of Justice, the revision and eventual suspension of judicial sentences that, in their opinion, violated their constitutional rights.[62] Through the constitutional amparos, the 1857 Charter ensured the existence of a judicial system regulated by the law and guarantor of people's rights.[63]

By the time Porfirio Díaz came to power, the 1857 Constitution had experienced important challenges and reforms. In 1858, right after its enactment, president Ignacio Comonfort suspended it with the argument that it was impossible to govern with it. It would not be the first time a Mexican president would disown the new Constitution under such pretenses.[64] Additionally, the progressive dissolution of the revolutionary alliance between liberals and conservatives brought civil war back. The Reform War shook Mexico between 1858 and 1860. Its outcome gave way to the French Intervention and the creation of Mexico's Second Empire between 1862 and 1867. Almost a decade of civil warfare left behind important constitutional changes and a complete redefinition of the priorities regarding law and order. Reforms included the enactment in 1859 and 1860 of the "*Leyes de reforma,*" a series of provisions separating State and Church and secularizing the nation's political life. Further modifications throughout the 1870s altered the structure and functioning of the legislative power. More importantly, during the 1860s and 1870s, the social and political turmoil caused by civil warfare and foreign intervention gradually

[62] Erika Pani, "Constitución, ciudadanía y guerra civil: México y Estados Unidos en la década de 1860," in *El poder y la sangre*, ed. Guillermo Palacios and Erika Pani (México: El Colegio de México, 2014), 70.

[63] Elisa Speckman Guerra, "La justicia penal en el siglo XIX y las primeras décadas del XX (Los legisladores y sus propuestas)," in *Los abogados y la formación del estado mexicano*, ed. Óscar Cruz Barney, Héctor Fix-Fierro, and Elisa Speckman Guerra (México: UNAM – Instituto de Investigaciones Jurídicas, 2013), 426.

[64] Pani, "Republicans and Monarchists," 274-275. Comonfort's sucesor, General Felix Zuloaga, would also suspend the constitution after considering it impracticable.

turned "order" into a more important premise than "law." Overall, the Constitution responded to the changing priorities and veered towards the right.

Growing concerns about public order and peace characterized the post-Intervention administrations of Benito Juarez (1868-1872) and Sebastian Lerdo de Tejada (1872-1876). Such concerns materialized in a progressive concentration of public powers in the hands of the President. The restoration of the republic after the Intervention hastened a gravitation toward a strong executive at the expense of the Congress.[65] The decade preceding the arrival of Porfirio Díaz witnessed increasing levels of centralism and presidentialism, as well as continuous suspensions of constitutional rights as a means to fight banditry and political insurgency.[66] The late years of Juarez's administration left in their wake a personalistic style of governance, a strengthening of the Executive, a legacy of electoral manipulation and co-optation, and an authoritarian and repressive trend concerning the maintenance of public order and peace.[67] By the time Díaz came to power, little remained of the foundational spirit of the 1857 Constitution. To a certain point, Díaz's constitutional authoritarianism was the result of two decades of political and legal transformations fostered by Juarez and Lerdo.

Diaz gave continuity to the trend of concentrating power initiated by Juarez and Lerdo. After the Tuxtepec revolution that brought him to power, "peace," "order," and

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[65] Frank Knapp Jr., "Parliamentary Government and the Mexican Constitution of 1857: A Forgotten Phase of Mexican Political History," *The Hispanic American Historical Review* 33, no. 1 (1953), 87; see also: Sinkin, "The Mexican," 13.

[66] See, for instance: Paul Vanderwood, *Los Rurales mexicanos* (México: Fondo de Cultura Económica, 1982), 37-44; and Rafael Herrera, *Estudio sobre la suspensión de las garantías individuales por causa de la comisión de delitos atroces cuando esta aumenta algo más de lo ordinario* (Orizaba: Imprenta popular de J. C. Aguilar, 1880), 3-4.

[67] Garner, "The Civilian," 293.

"progress" became the government's top priorities. After decades of civil warfare, and facing a long legacy of internal conflict and division, peace seemed to be Mexico's utmost desire. Peace, in terms of the prominent Porfirista Justo Sierra, was meant to become Mexico's political religion. It demanded the sacrifice of everything, even the Constitution itself.[68] Such goal required a powerful Executive, capable of ruling without interferences from other public powers. Overtime, Diaz would succeed in concentrating the sum of all powers without threatening or altering –at least not significantly- the constitutional model of Ayutla. Respectful of the division of public powers, he managed to control both the Congress and the courts via cooptation, eroding the independence of both powers and turning them into mere appendixes of the Executive.[69]

In general terms, the Constitutional framework of the Porfiriato remained relatively loyal to the original forms and precepts of the 1857 Charter: separation of powers –at least formally–, respect for individual rights, and subjection of public powers to the rule of law. The interpretation and application of these precepts during the age of Díaz, nonetheless, would differ significantly from the original goals of the Constituents of Ayutla. This would prove particularly true in matters concerning the managing of public order and the protection of individual guarantees for political dissidents, rebels, and other internal enemies of the government, as we will see in the next sections.

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[68] Justo Sierra, *Evolución política del pueblo mexicano* (México: La casa de España en México, 1940). My quotes and page numbers from this work are based on the book's digital version available at the "Biblioteca Virtual Universal." This particular citation corresponds to the page 239 of the digital copy.

[69] Kuntz Ficker and Speckman Guerra, "El Porfiriato," 495-496; see also: José López-Portillo y Rojas, *Elevación y Caída de Porfirio Díaz* (México: Librería Española, 1921), 30 and 130.

A Charter for Colombia's Regeneration: The 1886 Constitution

The Colombian 1886 Constitution was the result of a story relatively different from the Mexican one. In contrast to its Mexican counterpart, it emerged out of a failed rebellion: the Liberal uprising of 1885. The government's victory in the war marked the demise of the radical, libertarian, and federalist regime in place in the nation since the early 1860s. Soon after the conflict's end, president Rafael Nuñez, a moderate liberal that throughout the decade had managed to win the support of both conservatives and liberals alike, organized a Constituent Assembly. Its goal was to reform the Constitution enacted in 1863, considered by many as the main cause of the political instability facing the nation since the mid 1860s. The resulting charter was very different from the Mexican case. The new Colombian Constitution replaced the federative model adopted in 1863 with a centralized political and administrative regime, and established limits to the unrestricted liberties that the previous Constitution had granted. Along the same lines, the 1886 charter created a weak Legislative power in benefit of the Executive, and recognized the Catholic Church as a vital institution in matters of public education, social order, and national identity. It was, in short, a deeply conservative constitution, meant to bring order and stability through a strong central government, a narrowing of constitutional guarantees, and a concentration of public powers in the hands of the Executive.

Like the Mexican charter, the Colombian Constitution of 1886 pursued a radical rupture with the past. In this case, the constitution makers aimed to break up with a past of disorder, administrative chaos, and civil warfare engendered –at least in the Constituents' opinion– by the federative system and the unrestricted liberties that the 1863 Constitution had granted. The long series of regional uprisings experienced between late 1860s and mid-

1880s, together with the eruption of two national civil wars in 1876 and 1885, seemed to support their calls for a radical normative change. Delegates to the 1885 Constitutional Assembly focused on two major problems that, to moderate Liberals and Conservatives, had turned Colombia into an "organized anarchy" –an anarchy that could only lead to the perpetuation of civil warfare and the nation's defragmentation.[70] The first problem had to do with the federative model adopted in the previous Constitution. To Nuñez and his people, mid-century federalism had been nothing but "a desire for disorganization" that had been carried out to the point of "dividing what is indivisible by nature."[71] The "exaggerated" decentralization introduced by the 1863 Charter was and had been, in their opinion, a major source of chaos, disorder, and internal strife.

The second problem had to do with the generous bill of rights that the previous Constitution had established. To the 1885 delegates, the 1863 charter had granted too many rights but not a single actual guarantee.[72] The unrestricted nature of such liberties implicitly invalidated the duties that should counter-balance those rights.[73] Furthermore, the overly generous liberties had annulled another crucial right: the government's right to repress any

[70] "Carta décimatercera," in Carlos Holguín, *Cartas políticas: Publicadas en "El Correo Nacional" de Bogotá* (Madrid: Establecimiento Tipográfico de Fortanet, 1894), 210.

[71] "Exposición del Presidente de la República al Consejo de Delegados" (November 11, 1885), in *Antecedentes de la Constitución Nacional de Colombia y debates del proyecto en el Consejo Nacional Constituyente* (Bogotá: Librería Americana, 1913), 8.

[72] Manuel Pombo and José J. Guerra, *Constituciones de Colombia, recopiladas y precedidas de una breve reseña histórica, Tomo IV* (Bogotá: Biblioteca Popular de Cultura Colombiana, 1951), 122.

[73] José María Samper, *Comentario científico a la Constitución de 1886, Tomo II* (Bogotá: Biblioteca Popular de Cultura Colombiana, 1951), 99.

abuse of other liberties.[74] All these liberties, in their account, had proven harmful to social order. The unlimited right of association had fostered the emergence of revolutionary groups. The absolute immunity of the freedoms of speech and press had made legitimate the appeal to all sorts of crime, especially crimes against the government and the public order. The incorporation of the International Law in cases of civil warfare –a mechanism that the 1863 Constitution had adopted in order to regularize and humanize internal conflicts– had legitimized rebellion and guaranteed the total impunity of political criminals.[75] The 1863 Constitution, in short, had consecrated a series of "new, contradictory, and inapplicable" principles that had proven incapable of creating a stable social order.[76]

The 1885 delegates conceived order and stability as the outcomes of two premises: strong government and limited liberties. Nuñez believed that young nations like Colombia required a great degree of state intervention and control. In correspondence, he advocated for a strong, centralized, and efficient state, able to inspire respect for authority, secure political stability, and limit individual rights for the benefit of society.[77] He also believed that society's needs should set the limits for individual freedom, and that the goal of politics

[74] "Relación de los debates sobre el proyecto de Constitución en el Consejo Nacional Constituyente," in *Antecedentes de la Constitución,* 285.

[75] Samper, *Comentario científico,* 104; "Exposición del Presidente," 12; and "El pueblo Colombiano," in Rafael Núñez, *La Reforma Política en Colombia, Tomo I (I)* (Bogotá: Biblioteca Popular de Cultura Colombiana, 1945), 319.

[76] Pombo and Guerra. *Constituciones de Colombia*, 122.

[77] Jaime Jaramillo Uribe, *El pensamiento colombiano en el siglo XIX* (Bogotá: Editorial Temis, 1964), 291 and 299; see also: Bergquist, *Café y conflicto*, 17.

was to promote the general well-being over the particular needs and interests of individuals.[78] These beliefs were in tune with the ones of the Conservative Miguel Antonio Caro, who drafted the bulk of the project for the new Constitution. Caro conceived society as an organic whole that was superior than the sum of individuals composing it. To him, the state was supposed to protect society's rights, instead of securing individual freedoms. Society was a community in which every single individual had to give up some of their rights in order to benefit the collectivity, and the state was meant to protect the existence of that community.[79]

Guided by such premises and conceptions, the 1885 delegates aimed to create a Constitution able to guarantee national unity, social order, and political stability over and above the protection of individual rights. Colombia's regeneration required a realistic and protective Charter, not a "chimerical" and "prejudicial" work like its predecessor. Its central goals should be the prevention of any further subversions of public order and the achievement of peace, as the first and foremost condition for social, economic, and political progress.[80] To Núñez and his people, the achievements of such goals depended on the materialization of three central principles: political centralization, presidentialism, and authoritarian control of public liberties.[81] In correspondence with these premises, the new Constitution turned the Executive into the strongest public power, while respecting the

[78] Bergquist, *Café y conflicto,* 17.

[79] Jaramillo Uribe, *El pensamiento,* 314 and 347.

[80] "Los principios," in Núñez, *La Reforma*, 21.

[81] Alejandro Valencia Villa, *El pensamiento constitucional de Miguel Antonio Caro* (Bogotá: Instituto Caro y Cuervo, 1992), 84.

basic premise of division of powers. The Delegates extended the presidential period from two to six years; gave the president wide administrative and judicial powers; allowed him to intervene in legislative matters; and gave him almost unrestricted extraordinary powers in cases of emergency.[82] This concentration of power would prove decisive in issues regarding public order and internal warfare throughout the next decades. As we will see later, the legal management of rebellion, insurrection, and "dangerous" political opposition would become almost exclusively a matter of emergency legislation by the Executive.

Mexico and Colombia: Between Differences and Commonalities

As legal productions and artifacts, the 1857 Mexican Charter and its 1886 Colombian counterpart emerged from different processes, circumstances, and needs. Born out of different historical moments, both Constitutions originally established dissimilar political and administrative regimes, and even entailed different perspectives regarding public liberties, individual guarantees, and public order. Nonetheless, by the end of the nineteenth century, the constitutional trajectories of both countries would share a common ground of strong presidentialism, political centralization, and management by the Executive power of issues pertaining to public order.

The need for preventing political disorder and internal strife would become a major priority for Mexican and Colombian governments alike, shaping over time relatively similar political and constitutional transformations. In both cases, the search for order, peace, and political instability ended up transforming the mid-century idea that

[82] Valencia Villa, *El pensamiento*, 89-90.

Constitutions and public powers had to protect the individual against the state's power –or against state's abuses. As a result, by the end of the century, the prevailing idea was that charters and governments had to protect society against individuals abusing their own liberties. This transition from the individual to society as subject of constitutional protection was not exclusive of the Mexican and Colombian cases, and in fact characterized many Latin American nations by the end of the century. It was yet another manifestation of the parable of modern republicanism in nineteenth-century Latin America.[83]

These similarities regarding individual rights, state power, and maintenance of public order help explain the multiple coincidences between the ways in which the Porfirian and the Regenerationist governments conceived political criminality and responded to rebellion, insurrection, and "dangerous" political dissidence. It is time now to take a closer look at those Constitutions, in order to see with detail their prescriptions and understandings in matters of public order, individual liberty, civil conflict, and internal enmity.

Liberties, Order, and Internal Enmity in the Mexican and Colombian Constitutions

Mexico's and Colombia's respective Constitutions tackled issues of public order, internal conflict and turmoil, "dangerous" dissidence, and political criminality through a relatively similar set of mandates and prescriptions.[84] Overall, these common mandates had to do

[83] On Latin America's modern republicanism and its transformations throughout the nineteenth century, see: Sanders, *The Vanguard*.

[84] References to both Constitutions taken from: *Constitución Federal de los Estados Mexicanos, con las reformas y adiciones que constitucionalmente se le han hecho* (México: Imprenta de J. M. Aguilar Ortiz, 1879), and *Constitución de la República de Colombia: Edición oficial* (Bogotá: Imprenta de Vapor de Zalamea Hermanos, 1886).

with the application of the death penalty and other punishments, the delimitation and restriction of certain individual liberties, and the granting of extraordinary powers to the Executive in cases of public emergency. Although only a few of these provisions included specific references to political crimes, they all revolved around issues directly and indirectly linked to matters of political criminality. "Disruptions of and conspiracies against public order," "alterations of public peace," and even "press crimes against the government" represented some of the most recurrent examples in this regard.

Death Penalty, Political Crimes, and Constitutional Exceptions

One of the few literal references to "political crimes" included in both Constitutions concerned the ban on the application of penalties of death and extradition for political crimes. Article 23 of the Mexican Charter explicitly declared the abolition of capital punishment for political criminals, but left it in place for a series of crimes including treason during foreign war; road banditry (*salteadores de caminos*); arson; parricide; and homicide with premeditation. Serious military offenses, as well as some "piracy crimes defined by the law," also fell into this category. Additionally, Article 15 of the same Constitution established that political crimes were also exempt from the penalty of extradition –a prescription not included in the 1886 Colombian charter but later include in its Criminal Code (Art. 18). Mexican constitution makers of the 1850s celebrated the abolition of capital punishment for political criminals considering it a first and significant step towards the complete abolition of a "barbaric," "ineffective," and "sterile" punishment.[85]

[85] Francisco Zarco, *Historia del Congreso Extraordinario Constituyente de 1856 y 1857 – Tomo III* (México: Talleres de la Ciencia Jurídica, 1899), 579.

Colombian constitution makers did not have abolition in mind when they crafted the charter's prescriptions on death penalty. The 1886 Constitution, in fact, reestablished capital punishment in Colombia after more than two decades of its initial abolition. Delegates based its reestablishment on the grounds that the current situation of the country and its problems of "instability" and "insecurity" demanded its reestablishment, mainly as an additional guarantee for the "conservation of order" and the "consolidation of the new institutions."[86] Colombian constitutional mandates on death penalty were relatively similar to the Mexican case. Articles 29 and 30 prohibited the application of death penalty to political crimes, but brought it back as a punishment for the most serious expressions of a series of crimes. Such offenses included treason during foreign war, parricide, murder, arson, piracy, some military offenses in correspondence with military law, and *asalto en cuadrilla de malhechores* –an offense more or less analogous to the crime of banditry in Mexico. It is noteworthy that, despite the significant legal and political implications of such prohibitions, neither of these Constitutions clearly established what political crimes were. These offenses would remain in both charters as part of an abstract criminal typology, devoid of precise content, that judges and legislators could define –and redefine– at their will.

Of Freedom and Order: Drawing the Limits of Individual Liberties

Out of the different individual liberties that both Constitutions granted to Mexican and Colombian citizens, freedoms of speech and press involved the clearest and most direct

[86] Demetrio Porras, *Proyecto de Código Penal presentado al Consejo de Estado* (Bogotá: Imprenta de Vapor de Zalamea Hermanos, 1889), xcvi-xcvii; see also: *Antecedentes de la Constitución*, 121.

links with constitutional concerns on public order, political turmoil, and internal enmity. Articles 6 and 7 of the Mexican charter set the conditions for and limits of both freedoms. Article 6 established that the manifestation of ideas was free from any judicial or administrative inquiry as long as it did not attack morals, affect other people's rights, encourage the commission of a particular crime, or disturbed public order. Article 7 proclaimed the inviolability of the freedom of writing and publishing pieces on any subject. No law or authority could establish previous censorship to publications or repress the freedom or press. Three basic criteria, nonetheless, established basic limits to this liberty: respect for people's private lives, respect for morality, and respect for public peace. The transgression of such limits constituted what the Article defined as "press offenses." The Constitution also created two separated tribunals for judging this kind of crimes: one that decided on the criminal nature of the text in question, and another that imposed the corresponding penalty.

Freedom of the press in the Colombian charter was subject of a simpler but less precise definition. Article 42 merely established that the press was free in times of peace, although accountable before the law when it attacked people's honor, social order, or public peace. Additionally, a transitory "Article K" prescribed that, while the authorities enacted a printing act (*ley de prensa*), the government had all the power to prevent and repress "print abuses." Unlike the Mexican charter, the Colombian Constitution did not specify what those "abuses" were. Throughout the rest of the century, governments would issue a series of laws and decrees, mostly during moments of high political tension, defining and redefining time and again these "abuses" and their corresponding penalties. None of these further decrees had the character of a formal, stable, and definitive Printing Act, though.

Legal developments on matters of freedom of the press involved several attempts to limit this liberty under the pretext of protecting public order and peace. A first decree, enacted on November 1886, established for the first time a definite set of press crimes against social order and public peace.[87] Crimes against public peace (*tranquilidad pública*) involved publications encouraging people to disobey the law or exert violence against public authorities. It also included publications that encouraged resistance to the authorities' orders, that "fired up passions," or that incited people to riot or rebel. Penalties in these cases ranked from short arrests and fines to the shutdown of the correspondent printing press. New developments on the matter came with the enactment of Decree 151 of 1888.[88] It prescribed that from then on it was the Executive, instead of the Judicial power, the one in charge of adjudicating cases of press offenses against social order and public peace. The 1888 Decree also created a new category of press crimes that fell under the Executive's jurisdiction: "press offenses against society," comprising about a dozen different crimes. Offenses included "attacking the mandatory force of laws;" "trying to justify acts conceived by law as crimes;" "disregarding or insulting the prerogatives of any civil or ecclesiastical authority;" and disseminating "fake news" that could lead to alteration of public order. A law from August 1897 would make this list of crimes even longer, by creating a category of "subversive press crimes" involving up to 17 different offenses.[89]

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[87] Decreto 635 de 1886 (Noviembre 5): "Sobre libertad de imprenta, y juicios que se siguen por los abusos de la misma," *Diario Oficial* 6857, November 11, 1886.

[88] Decreto 151 de 1888 (Febrero 17): "Sobre prensa," *Diario Oficial* 7299, February 17, 1888.

[89] Ley 157 de 1896 (Diciembre 12): "Sobre Prensa," *Diario Oficial* 10233, August 12, 1897.

In the Mexican case, prescriptions on freedom of press also experienced important developments. In February 1868, president Juárez enacted a Press Act that complemented the prescriptions of Articles 6 and 7 of the Mexican charter.[90] The Act defined with greater detail than before the acts that represented press offenses against private life, public morality, and public order. Article 5 defined as press crimes against public order those texts that encouraged citizens to disobey the law or the legitimate authorities, or that incited them to use force against authorities. The law also established a series of penalties for offenses against public order (Article 8), consisting primarily of small periods of confinement. A second major development in this regard took place in 1883, after the first presidential period of Porfirio Díaz. This time, president Manuel González, considering the tribunals for press offenses inefficient and troublesome, opted for suppressing them. A reform ordered in May that year established that, from then on, all press crimes had to be judged by ordinary tribunals like any other offense.[91] The demise of press tribunals would give federal and provincial authorities a better and more direct control over the prosecution and punishment of press offenses and offenders, especially in relationship with crimes against public order. By the late 1880s legislation on the press in both countries ended up converging not only in terms of their classification of press crimes, but also in their decision yo give governments a more direct control over press offenses against public order.

Compared to freedom of press, freedom of association was subject of a less detailed elaboration. Its conditions and limitations, nonetheless, also reflected constitutional

[90] For this law, see: "Ley orgánica de la libertad de imprenta, reglamentaria de los artículos 6 y 7 de la constitución federal", in *Constitución Federal*.

[91] *Derecho político*, 78.

concerns about the maintenance of public order and peace, especially in the Colombian case. Article 9 of the Mexican Charter established that all Mexicans had the right of creating or being part of any association as long as it had a peaceful character and a lawful goal. Only Mexican citizens could be part of political associations or establish collectivities with the aim of taking part in the nation's political affairs. Finally, no armed collectivity – i.e. the military– had the right to engage in political deliberation. Restrictions were greater in the Colombian case. Article 46 of the 1886 Constitution prescribed that people were free to reunite or associate in a pacific way, and gave authorities the power to dissolve every meeting or congregation that took a tumultuous or riotous nature. Article 47 allowed Colombians to create and make part of public and private associations as long as they were not contrary to public morality or legal order. The article also banned permanent popular political associations. It was a prohibition tending to contain the emergence and functioning of masonic lodges, "democratic" and "popular" societies, and other similar popular political associations.[92] Many of the constituents of 1885 considered that the boom of these associations during the 1860s and 1870s had significantly contributed to the political instability and turmoil prevailing during the Federative period.[93]

Colombian regulations on the right of association also experienced important developments throughout the period, especially on matters of public order and

[92] On these associations and their role in the Colombian nineteenth century, see: Gilberto Loaiza Cano, *Sociabilidad, religión y política en la definición de la nación* (Bogotá. Universidad Externado, 2011); David Sowell, *The Early Colombian Labor Movement* (Philadelphia. Temple University Press, 1992); and James Sanders, James. *Contentious Republicans: Popular Politics, Race, and Class in Nineteenth-Century Colombia* (Durham. Duke University Press, 2004).

[93] See the debates on the Constitutional Assembly of 1885 on the matter: *Antecedentes de la Constitución,* 189-213.

"subversive" agitation. A law from May 1888 granted the president the right to suspend or shut down every society of institution that, under scientific or academic pretenses, were a "focus of subversive ideas or revolutionary propaganda."[94] More than a decade later, a decree from October 1904 established that authorities had the responsibility of policing all meetings and reunions in order to identify their "true tendencies" and intentions.[95] The Decree authorized national police to inspect every current or future association and make sure they did not involve activities or purposes tending to endanger national security or promote crimes, riots, or other alterations of public peace. Additionally, the Decree prohibited the formation of any political society or association with political goals, and established a series of fines and penalties of arrest for people promoting these sort of gatherings of taking part in them. Finally, the order established that political rallies and meetings had to request a previous authorization from the local police chief to take place.

Public Order and Emergency Powers: Redrawing the Limits of State Power in times of War

Separation and independence of public power represented one of the foundational premises of modern Constitutionalism in Mexico and Colombia, and both the 1857 Constitution and the 1886 charter aligned with this principle respectively. Constitutional provisions in this regard not only aimed to prevent extreme presidentialism, but also were meant to avoid, at

[94] Ley 61 de 1888 (Mayo 25): "Por la cual se conceden al presidente de la república algunas facultades extraordinarias," *Diario Oficial* 7399, May 29, 1888.

[95] Decreto 845 de 1904 (18 de Octubre): "Por el cual se reglamenta la inspección de ciertas juntas y sociedades," in: *Actos oficiales de la Actual Administración Ejecutiva durante las sesiones ordinarias del congreso de 1904* (Bogotá: Imprenta Nacional, 1904).

least theoretically, the politicization of the legislative and judicial functions. Article 50 of the Mexican Constitution and 75 of its Colombian counterpart implicitly or explicitly prohibited the fusion or reunion of two or more powers into a single individual or corporation. In addition, the Mexican Charter forbade that a single individual concentrated the nation's legislative power.

The separation and limitation of public powers, nonetheless, were conditional. As constitutional principles, their existence remained limited to times of peace and normality. Disorder, war, and internal turmoil represented conditions of exception that, according to both charters, made possible their redefinition. In times of severe disruption of public peace, these Constitutions authorized their respective governments to grant the Executive "extraordinary faculties" or "emergency powers," a measure that allowed presidents to legislate without the intervention of the Congress. The concession of extraordinary powers implied a temporal and partial interruption of the constitutional regime, allowing not only an appropriation of legislative functions by the Executive, but also eventual suspensions of constitutional guarantees.

Constitutional states of emergency in Mexico and Colombia did not necessarily coincide. The Mexican Charter, in Article 29, established that during moments of foreign invasion, severe disturbance of public peace, or any other situation that "put society in great danger or conflict," the president could suspend the individual liberties and guarantees granted in the Constitution. The suspension, which also granted the Executive legislative powers in matters of constitutional liberties, did not include those guarantees that protected people's lives. In the Colombian case, two articles established complementary dispositions on disorder and emergency powers. Article 61 of the 1886 Charter established that, in

times of peace, no person or corporation could simultaneously exercise civic, military, or judicial authority. This implied that, in cases of a major disruption of public peace, the seizure of judicial functions by non-judicial authorities emerged as a possible and legitimate option. Additionally, Article 121 prescribed that, in cases of "disruption of public order," this is, in circumstances of "external or internal commotion," the president could establish the state of siege all over the republic or in parts of it. According to the article, the declaration of the state of siege invested the Executive will all the powers "granted by the national law and the law of nations" to "defend the nation's prerogatives or to prevent the uprising." As in the Mexican case, these powers included the faculty to legislate without the interference of the Congress.

Provisions on states of emergency in Mexico and Colombia had at least three major points in common. First, they made the Executive the central figure in the management of public order, strengthening its faculties to the point of granting it true legislative powers. States of emergency were, therefore, junctures of strong presidentialism. Second, an urgent sense of "social danger" legitimized this extraordinary concentration of public powers. Society was "in great danger" when public order was disrupted and public peace ceased to exist. The source could be an external threat, but also, and predominantly, a plausible internal menace: an "internal conflict," like the Mexican Charter implied, or an "internal commotion" or an "uprising," as stated in the Colombian Constitution. Third, these situations of danger, conflict, or commotion were rather abstract and imprecise. Besides a "foreign invasion" or an "uprising," there were no major indications in the Constitutions regarding which circumstances in particular made a state of emergency possible or demanded a state of siege. In both cases, the vagueness of these dispositions shaped a sort

of "constitutional grey area" that governments during the Porfiriato and the Regeneration used to their advantage on more than one occasion.

In Mexico, the administrations of Juárez, Lerdo, and Díaz constantly resorted to these prerogatives in order to enact special laws against bandits and *salteadores*, and even against insurrectional and rebellious groups.[96] By the turn of the century, the constitutional suspension of individual rights allowed president Díaz to strengthen his legal responses to the emerging forces of anarchism, socialism, and labor unionism.[97] Similarly, between 1857 and the final days of the Porfiriato, the Mexican Congress granted the federal Executive extraordinary powers on a number of occasions.[98] During the last two decades of the nineteenth century, President Díaz used these powers to create special military units and extend the power and jurisdiction of military tribunals in the prosecution of "dangerous" civilians. A law from December 12, 1884, for instance, gave Díaz special power (*"las facultades necesarias*") to reorganize the national army and navy, as well as to reform the administration of military justice.[99] Although the law established that these powers were valid only until November 1885, Díaz managed to invoke this law in order to legitimize "special" legislation even by the turn of the century. That was, for instance, the

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[96] See for instance the Decreto 209 de 1895 (June 8), suspending constitutional guarantees for *salteadores de caminos*. Available in: *Recopilación de leyes, decretos y providencias de los poderes legislativo y ejecutivo de la unión, formada por la redacción del Diario Oficial*, Tomo LXIV (México: Imprenta del Gobierno, 1895); see also: Paul Vanderwood, *Los rurales*. For a primary source including current debates on the matter, see: Rafael Herrera, *Estudio sobre la suspensión de las garantías individuales por causa de la comisión de delitos atroces cuando esta aumenta algo más de lo ordinario* (Orizaba: Imprenta popular de J. C. Aguilar, 1880)

[97] Brian Loveman, *The Constitution of Tyranny: Regimes of Exception in Spanish America*. (Pittsburgh: University of Pittsburgh Press, 1993), 87.

[98] Loveman, *The Constitution*, 84.

[99] Ley de 12 de Diciembre de 1884, in Francisco Serralde, *La 2ª Reserva no tiene los caracteres jurídicos de una institución militar* (México: Imprenta de Eduardo Dublán, 1902), 8-9.

case of the law that created, on October 1900, the infamous *Segunda Reserva*,[100] an army unit commonly used for political purposes during the early 20th century. A decree from May 1901 would grant Díaz similar legislative powers that he would use for erecting new military tribunals and reforming the current penal and procedural laws concerning military justice and its jurisdiction.[101]

In the Colombian case, these "grey areas" gave Regenerationist authorities plenty of room for legal reinvention in matters of public order and political repression. A law from May 1888 that partially regulated the exercise of extraordinary powers, for instance, authorized the president to administratively prevent and repress all crimes and offenses against the State that impacted public order.[102] Offenses included "conspiracies against public order," as well as attacks against private or public property that involved, to the president's eyes, threats of perturbation of public peace. Penalties for such offenses included temporal loss of political rights, confinement, and even expatriation. Colombian authorities declared the state of siege at least twice before the turn of the century, and in both cases used the state of constitutional emergency as a vehicle for passing laws and decrees against political opponents. A riot in Bogotá in early 1893 led President Caro to establish the state of siege in the city for 40 days. During that period, authorities shut down several liberal newspapers and ordered the confinement of several rioters, many of them

[100] Serralde, *La 2ª Reserva*, 7.

[101] Franciso Serralde, *Ilegitimidad de los tribunales militares y de las leyes procesal y penal en el fuero de guerra* (México: Imprenta de Eduardo Dublán, 1902), 7-8.

[102] Ley 61 de 1888 (Mayo 25).

members of the Liberal party and journalists from the opposition.[103] In 1899, four months before the outbreak of the War of the Thousand Days, President Sanclemente established the state of siege in a portion of the country fearing an internal uprising sparked by a recent revolution in Venezuela.[104] Again, the state of siege allowed conservative authorities to arrest and imprison several members of and journalists from the liberal party, accused of conspiring against public peace.[105]

The constitutional experiences of Colombia and Mexico regarding states of emergency and extraordinary powers did not represent an anomaly or a rarity in the Latin American context of the time. Nineteenth-century Latin American nations enacted about a hundred different constitutions, and only a couple of them –curiously, the Colombian constitutions of 1853 and 1863- did not include provisions for regimes of emergency.[106] Provisions of emergency included, sometimes individually, sometimes together, suspension of individual rights, voiding of specific rights and liberties, as well as significant expansion of the government's authority through extraordinary powers.[107] On the whole, constitutional regimes of exception in Latin America stemmed from the combination of a variety of factors including militaristic tendencies within the ruling

[103] Aguilera Peña, *Insurgencia Urbana*, 172-177; see also: Decreto 416 de 1893 (Enero 20): "Por el cual se dispone el confinamiento de varios sediciosos," *Diario Oficial* 7399, May 29, 1888

[104] Decreto 333 de 1899 (Julio 28): "Por el cual se declara turbado el orden público en los departamentos de Santander y Cundinamarca, y en estado de sitio sus respectivos territories," in: José Manuiel Guzmán, comp., *Decretos legislativos expedidos durante la guerra de 1899 a 1902* (Bogotá: Imprenta de Vapor, 1902).

[105] Villegas and Yunis. *La Guerra*, 45; see also: Bergquist, *Café y conflicto*.

[106] Loveman, *The Constitution*, 377.

[107] Loveman, *The Constitution*, 6. For a more detailed account on the different regimes of exceptionality established in nineteenth-century Latin American constitutions, see page 378.

parties; contexts of entrenched internal strife or civil warfare; deep-rooted legacies of authoritarianism; and even conversations with constitutional developments from the United States and, specially, Europe. Problems of order, internal conflict, and state making were not exclusive to Latin American nations in the nineteenth century. In Europe, Spain, France, Prussia and others were also dealing with extremely high levels of political upheaval, and experimenting with different constitutional solutions merging remnants of traditional absolutism with modern constitutionalism.[108] Emergency powers became, in such context, a recurrent resource for European constitution makers. The French Constitution of 1814, as well as the Spanish Charters of 1837, 1845, and 1848, for instance, played a major role in shaping Latin American constitutional regimes of exception.[109]

The inclination of Latin America's nineteenth-century constitutionalism towards states of emergency and extraordinary powers was not simply the result of automatic authoritarian trends, desires for a "constitutional dictatorship," mimicry of foreign constitutional developments, or mere fears of political opposition. Neither was it a "natural solution" to counter-balance the generally wide individual liberties and guarantees established in the Constitutions of the time, as Loveman seems to suggest in his book on states of emergency in Latin American constitutionalism. Constitutional exceptions were, above all, preventive provisions aiming to provide governments with additional legal resources to protect and restore public order and peace in nations plagued by conflict and division. Nineteenth-century Latin American governments had to deal with racially and culturally heterogeneous societies, political divisions, conflicting political cultures,

[108] Loveman, *The Constitution*, 368-369.

[109] Loveman, *The Constitution*, 83 and 374.

regional rivalries of all sorts, significant degrees of political exclusion, commonly violent partisan rivalries, territorial conflicts with neighboring nations, and even threats of foreign invasion. Order, in such convoluted contexts, was a complex and difficult to achieve goal; one that required significant degrees of legal intervention and political meddling. Mexico and Colombia were not exceptions to that trend.

A Demanding Regeneration: Other Constitutional Prescriptions on Public Order in Colombia

The Colombian Delegates of 1885 did not reduce their search for order to the previous set of common constitutional provisions. Besides its restriction to press and associationism, and its mandates on states of siege, the 1886 charter contained a few other dispositions on matters of public order, internal threats to public peace, and political criminality. They included limitations to procedural guarantees against potential subversives, selective suspensions of the right to property, and dispositions on state leniency vis-à-vis political crimes.

Procedural guarantees in the 1886 Charter did not greatly differ from other Latin American constitutions of the period. Both this constitution and its Mexican counterpart, for instance, recognized the principles of due process, *nullum crime sine lege* –no crime exists without a previous formal law–, and no retroactivity of law.[110] Articles 27 and 28 of the Colombian Constitution, nonetheless, established important limits to these guarantees. Article 27 prescribed that they did not prevent, at any point, public authorities from

[110] Regarding procedural guarantees in the Mexican and Colombian Constitutions, see Articles 14, 16, and 19 of Mexico's Charter, and Articles 23 and 26 of Colombia's.

arresting or fining people that "slandered" or "offended them" in matters concerning their job and functions. In such cases, a quick, efficient punishment seemed to be more important than any legal or judicial formality. This prescription would have a significant effect on the way in which Colombian authorities attempted to control the exercise of political opposition, and particularly the actions of dissident journalists. As for article 28, it established a second and more serious exception. It stated that in times of tranquility, if the government had serious reasons for fearing a sudden alteration of public peace, state authorities were able to arrest and detain people suspected of infringing or conspiring against public order and peace. These arrests had a preventive nature and did not have to follow usual legal or judicial formalities. Neither did they have they to correspond to a specific or pre-established crime. To the Regenerationist constitution makers, the need for protecting order was above the need of protecting Colombians against eventual acts of state arbitrariness.

The suspension of constitutional protections also affected the right to property. Although the Colombian charter did not prescribe the suspension of individual rights in times of emergency, it still contained a subtle but important exception: in times of turmoil, property rights of internal enemies partially ceased to exist. Article 32 dictated that, in times of peace, nobody could be deprived of their property unless there were formal and previously established judicial reasons. Article 33, nonetheless, established that in times of war, and only for the purpose of "helping the reestablishment of order," authorities outside the Judicial power were allowed to decree expropriations with no previous compensation. It also allowed authorities to temporarily occupy properties as a selective pecuniary penalty. In the context of an internal conflict, this penalty would logically fall on the

government's adversaries. The prescription, as arbitrary as it sounds, was nonetheless a less drastic version of what some of the 1885 constitution makers originally wanted. At the Constituent Assembly, several delegates had proposed that the charter allowed legislators to impose penalties of confiscation –otherwise banned by the Constitution– against rebel ringleaders. Such confiscations were meant to cover war expenses with the enemy's property and money. Delegates backed up the idea with the argument that, during a war, the adversary was always accountable for the conflict's costs.[111] Although their proposition did not succeed, this argument would loom large in the minds of Regenerationist authorities, especially in the context of the Thousand Days War.[112]

The third additional feature in these matters, one that unlike the others mentioned above Colombia's Constitution did not share with Mexico's, was its explicit reference to political crimes in the definition of the faculties of both the President and Congress to grant *indultos* and amnesties. Both charters determined that the administration of state mercy corresponded to the Executive and the Legislative at different levels. While the Congress was in charge of declaring general amnesties, the President could grant individual *indultos*.[113] Up to that point, there was no difference at all between the two Constitutions. Yet, the scope of these official acts of mercy differed between one Charter and another: in Mexico, amnesties and *indultos* had a general, comprehensive nature; in Colombia, on the

[111] *Antecedentes de la Constitución*, 127. See especially the intervention of Delegate Ospina Camacho.

[112] See for instance: Aguilera Peña, Mario. "Canje o fusilamiento: los presos políticos en las guerras del siglo XIX," *Análisis Político* 58 (2006), 41.

[113] For the Mexican case, see Articles 72 (XXV) and 85 (XV) of the 1857 Constitution.

contrary, they were mostly limited to political crimes.[114] Article 119 of the 1886 Constitution prescribed that the president could commute death sentences, concede reductions of sentence for common offenses, and grant *indultos* for political crimes. In the same light, Article 76 dictated that the Congress could issue amnesties for political offenses, but only in response to "serious motives of public convenience." Specific references to political crimes in these prescriptions can be interpreted as yet another sign of the fact that, to a great extent, the 1885 delegates crafted a Constitution that foresaw more moments of internal conflict than of actual peace.

Conclusions: Constitutions, Order, and Political Crimes

The 1857 Mexican Constitution and the 1886 Colombian charter set up the basic legal framework for the development of conceptions of and responses to political crimes during the Porfiriato and the Regeneration. Such framework essentially consisted of a series of provisions that, without generally talking about political criminality in explicit terms, referred in different indirect ways to questions concerning political crimes and offenders. Prescriptions on individual liberties, procedural guarantees, punishment and pardon, and even the division and limitation of public powers, shaped constitutional references to political criminality in both Constitutions.

Most of these provisions had to do with the maintenance of public order and the protection of public peace. These were not only major premises in the two Charters, but also had represented part of the principal aims of the people that, during the 1850s and

[114] The Mexican Criminal Code of 1871, nonetheless, did involve some prescriptions authorizing the government to grant *indultos* to political offenders. See in particular Articles 288 and 289.

1880s, crafted new constitutional regimes for Mexico and Colombia. In both cases, the conservation of order through the Constitution played, as a premise and a goal, a dual role. On the one hand, it represented a reaction against a past of anarchy and internal conflict, represented in Mexico by the Santa Anna era and in Colombia by the federative period and the 1863 Constitution. The Ayutla generation and the first Regenerationists conceived constitutional reform as the ultimate tool for breaking away from a legacy of arbitrariness and personalism, in Mexico, and from the devastating effects of "chimerical" and ill-designed political institutions, in Colombia. On the other hand, the premise of order involved a pledge for the future: a future in which strong governments, respectful of the rule of law and the Constitution, were able to maintain national unity and peace. Here, maintaining peace meant keeping it safe not only from external enemies, but also, and more importantly, from internal threats.

It is in relation with these "internal threats" that constitutional references to political criminality emerge. Always imprecise, vaguely defined, and scarcely mentioned, political offenses were nonetheless everywhere, implicitly so. They were present, of course, in the prescriptions banning death penalty and extradition to political offenders, and in the provisions establishing conditions for the administration of state leniency. But they were also present in other places: in the abuses that required the limitation of freedoms of speech, press, and association, for instance, and in the multiple sorts of "press crimes" against society. They also appear in the actions against the government and public peace that demanded the suspension of guarantees and rights, and in the "uprisings," "commotions," and other attacks against order that legitimized the reorganization and concentration of public powers.

Considering this subtle but somehow constant presence, what were exactly political crimes to these Constitutions? More than specific, well-determined offenses, they were a relatively abstract and generic set of crimes that shared a few common features. They were attacks against order and peace, and against the government, the authorities, and the nation's institutions. Here, "respect for public order" and "respect for the government" tended to become equivalent premises. On the one hand, attacks against public order were at the same time attacks against the authorities that were supposed to protect and maintain it. On the other hand, challenges against the government implied, in themselves, challenges to public peace. These simultaneous challenges and offenses against order and the government had another important feature: they were attacks from within. They were always linked to internal conflicts; local turmoil, uprisings, and rebellions; and even "abusive," "offensive" or "subversive" manifestations of political dissidence.

Both the Mexican and the Colombian constitutions framed political crimes as "special offenses" that required extraordinary legal responses. A first signal of this lays in the distinction between "common" and "political" offenses present in some of the provisions reviewed throughout the chapter. The establishment of differentiated penalties for political offenders reinforced this separation. It created a regime of criminal exceptionality in which penalties, procedural rules, and other constitutional precepts no longer applied in their original form. It was a regime that exempted political offenders from some penalties but at the same time punished them with a series of constitutional exceptions. There was no death penalty and no extradition for political crimes. Yet, simultaneously, their control, repression, and prosecution did not depend anymore on the regular course of ordinary justice: the government, and more precisely the Executive

power, was the one in charge of legally dealing with them. This was not the only exceptionality in this regard. The legal treatment of political crimes according to these Constitutions also implied the suspension of certain rights, the dodging of procedural guarantees, and the use of indeterminate emergency powers. These exceptionalities were in tune with the larger constitutional aim of protecting society against the abuses of the individual, something clearly manifested in the 1886 Colombian Constitution –an aim that, in the mind of Mexican and Colombian constitution makers, demanded the prevalence of society's rights over those of individuals.

The vagueness in the constitutional definition of political crimes would left its imprint on the framework of exceptionality in which responses to political criminality emerged and operated. Neither of the two charters clearly defined what political crimes were. Additionally, neither of them established which concrete faculties comprised the sphere of extraordinary powers, or what the government could or could not do during states of emergency. This gave authorities in Mexico and Colombia a great discretion over legal and constitutional interpretation, which in turn allowed them to invent and reinvent political offenses, as well as to draw and redraw the line between common and political crimes. Such reinventions would be especially recurrent in times of high political and partisan conflict, as the following chapters will demonstrate. Furthermore, the fact that governments could deal with these offenses in an administrative fashion –at least in Colombia after 1888– gave authorities even more room and freedom to respond to political criminality. The administrative alternative allowed governments to manage the repression of political offenders without depending on laws passed by the Congress or on the formalities of the Judicial power and the ordinary justice system. Even without this

"administrative turn," the obscure nature of these constitutional prescriptions ended up shaping, in both countries, a series of "grey areas" in which authorities could dodge or avoid constitutional prescriptions without violating the Constitution.[115]

Constitutional "grey areas" concerning the management of public order and peace in Mexico and Colombia would play a critical role in the ways in which governments in both countries reacted to political crimes during the period. Periods of commotion and states of siege would become spaces for the reinvention of crimes and penalties against rebels, "dangerous" dissidents and other internal enemies. Many of these reinventions would end up contravening constitutional mandates and prohibitions –i.e. the application of death penalty for political crimes. Yet, such contraventions would still maintain a constitutional nature and thus legitimacy: after all, they all stemmed from constitutional precepts. Uses and abuses of these "grey areas" would allow authorities in the Porfiriato and the Regeneration to treat political crimes with a combination of harsh, borderline unconstitutional authoritarianism, and formal adherence to constitutional rule.

Constitutional precepts on matters of public order in Mexico and Colombia shared a relatively common ground. Despite their different origins, both charters drew heavily on the premise of maintaining and protecting order and peace, as well as governmental and institutional stability. These Constitutions coincided in the outlining of three different yet complementary mechanisms for ensuring order: protections against eventual abuses of individual liberties; selective suspensions of constitutional guarantees; and extraordinary Executive powers in cases of emergency. Direct and indirect concerns about political

[115] On "grey areas" and criminal justice systems, see: Luigi Lacche and Monica Stronatti, "Beyond the Statute Law: An Introduction," in *Beyond the Statute Law: The "Grey" Government of Criminal Justice Systems. History and Theory in the Modern Age*, ed. Luigi Lacce and Monica Stronatti (Macerata: EUM, 2011).

crimes and criminality were present in almost all the constitutional provisions that turned such mechanisms into reality. Most of these prescriptions maintained a vague nature that allowed authorities to take the legal treatment of political crimes beyond the reach of the Legislative and Judicial powers, and even to the frontier between the constitutional and the unconstitutional. In both cases, criminal codification was supposed to bring clarity, precision, and some degree of predictability to these abstract prescriptions. The next chapter examines how and in which terms Criminal Codes in Colombia and Mexico managed to establish more precise definitions and penalties for political crimes.

III. CHAPTER 2. POLITICAL CRIMINALITY AND CRIMINAL LAW IN MEXICO AND COLOMBIA: TOWARDS THE CONSTRUCTION OF A CRIMINAL REGIME FOR THE PROSECUTION OF POLITICAL CRIMES

Constitutional provisions on matters of public order and individual liberties do not completely explain why people like Ricardo Flores Magón or Rafael Uribe Uribe faced such hard times as political dissenters. Why did they experience prison and exile? How did Mexican and Colombian authorities manage to label their actions criminal, and what were the legal grounds for this criminalization? What were the rules that both in Mexico and Colombia established how governments could punish "troublesome" dissidents like them, and even dissidents that posed more serious threats? Did the way in which governments treated Flores Magón and many other rebels and agitators in Mexico and Colombia correspond to what these rules dictated? Tackling these sort of questions requires delving into matters of criminal law and paying close attention to what criminal codes in both countries said regarding the criminalization and punishment of political offenses. The spirit and content of these codes had a crucial influence on the experiences of rebels and political dissenters in both countries, defining much of their fate as targets of state repression.

Criminal Codes complemented Constitutions in shaping the overall standard framework for the legal definition and treatment of political crimes and criminals in Mexico and Colombia during the late 19th century and beyond. While Constitutions only outlined the basic foundations for this treatment, criminal codifications set up the parameters for the

definition, criminalization, and punishment of political offenses. This chapter reconstructs these parameters, and analyzes their impact on the configuration of a criminal regime for the definition and punishment of political offenses during the Porfiriato and the Regeneration. It also reflects on the characteristics of the resulting regime, as well as on its impact on the ways in which Mexican and Colombian authorities criminalized and prosecuted internal enemies during the period. What were political crimes, according to these Codes? How many modalities of political criminality and internal enmity did these Codes recognize? Which actions of internal enmity were formally recognized as political offenses? These are some of the central questions that this chapter addresses.

The Chapter focuses on the Criminal Codes of 1871 in Mexico and 1890 in Colombia. Part one offers a general and introductory approach to the doctrinal and philosophical foundations of criminal law in nineteenth-century Latin America, and pays special attention to the influences shaping criminal legislation in Mexico and Colombia. Part two briefly reconstructs the history of the Criminal Codes of the Porfiriato and the Regeneration, and places both codifications in their corresponding doctrinal and intellectual frameworks. Part three studies the multiple prescriptions through which both Codes defined, classified, and penalized political crimes and other acts of internal enmity. It offers a comparative exploration of criminal categories, typologies of offenders, and sets of penalties for political crimes. The section includes a supplementary portion about the way in which Military Codes understood and penalized some of these offenses. Part four, finally, reflects on the criminal regimes for political criminality and internal enmity that emerged out of these various criminal law provisions.

The chapter develops three main arguments. First, it claims that the Criminal Codes of the Porfiriato and the Regeneration, despite being enacted during the last decade of the nineteenth century, still shared the basic philosophical and doctrinal bases of Latin America's criminal law from the post-independence period and the mid-century. In Mexico, this was due to a slow process of modernization of national criminal legislation. In Colombia, it had to do with failed attempts at reform, and to the urgency of updating criminal codification after the constitutional reform of 1886. Second, the chapter argues that Mexico's and Colombia's criminal codes addressed political criminality and internal enmity in relatively similar ways. They relied on analogous criminal definitions and equivalent sets of penalties. There were some important differences, though. Both codes classified political offenders and other internal enemies using different criminal typologies. Moreover, the repertoire of criminal manifestations of internal enmity tended to be larger and more complex in one case than in the other. A third argument maintains that these codifications produced a double regime of crimes and penalties for actions of internal enmity, in which political crimes and offenses such as rebellion and sedition existed separately. The resulting ambiguity would give governments of the Porfiriato and the Regeneration a wide room for legal interpretation and reinvention regarding the treatment of "dangerous" political dissidents.

Codes and Criminal Law in Nineteenth-Century Latin America

Enacted between the 1870s and the 1890s, Mexico's and Colombia's Criminal Codes still shared the spirit that prevailed in Latin American criminal law for most of the nineteenth century. After independence, legal thinkers and lawmakers in the region infused their

nations' criminal law with a combination of principles from enlightened natural law, utilitarianism, and political liberalism. They would complement this set of inspirations by mid-century, with the introduction of the premises of the European classical school of criminal law.[116] Up until the turn of the century, all these influences remained prevalent in the continent, at least in its criminal codes. Criminology, criminal anthropology and other currents of positivistic criminal law found during the late-nineteenth century a relatively good reception among Latin American legal thinkers. The embrace of these new trends was nonetheless disparate among nations –it was very wide in Mexico, but almost nonexistent in Colombia– and did not have enough force to pervade the fields of legislation and lawmaking. Actual positivistic Criminal Codes will not appear in Latin America until well into the twentieth century.[117]

Enlightened discourses of natural law offered Latin American post-independent elites a means to "modernize" their legislation in a way that fitted their purposes of building rational and efficient states. Inspired by the rationalist iusnaturalism of Locke and Rousseau, these elites believed that social life should be subject to laws that were inherent to human nature, and that legislation should identify and reflect those principles.[118] The

[116] Elisa Speckman Guerra, "Derecho penal en el Porfiriato: un acercamiento a la legislación, los discursos y las practices," in *Proyectos legislativos y otros temas penales: segundas jornadas sore justicia penal,* ed. Sergio García Ramírez and Leticia Vargas Casillas (México: UNAM – Instituto de Estudios Jurídicos, 2003), 202; see also: Francisco Bernate Ochoa, "El Código Penal colombiano de 1890," *Estudios Socio-Jurídicos* 6, no. 12 (2004), 541-543.

[117] Speckman Guerra, "Derecho penal," 205-207. For an example of the cold, skeptical reception that criminal anthropology had in Colombia, see: Francisco Ochoa, "La escuela penal antropológica," *Revista de legislación y jurisprudencia*, serie 1, nos. 11 and 12 (1894); and Enrique Sánchez Pastor, "Teoría positiva penal italiana," *Anales de Jurisprudencia: Órgano de la Sociedad Colombiana de Jurisprudencia*, tomo VI, serie VI, entrega 57 (1903). For a general survey of the reception of positivistic criminal law in Latin America, see: Rosa Del Olmo, *América Latina y su Criminología* (Mexico: Siglo XXI Editores, 1981).

[118] 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, 2007), 26-27.

reflections on the Mexican legal thinker José M. Lozano illustrate this belief, still in place in Mexico during the 1870s. Lozano maintained, among other things, that "the elementary principles of [modern] criminal law are all the same for all peoples and nations, for reason and morals are the same for them all." To him, Basic notions of criminal law were inscribed in the nature of human societies, and linked to humankind's fate.[119] Notions of "right" and "justice" were therefore universal, and should represent the main subject of law and legislation. Bentham's utilitarianism added to these conceptions the ideas that laws should be simple, and that legislation should depend on the organization of a rational, straightforward system of laws.[120] Latin American lawmakers also borrowed the Benthamist notion that criminal laws should find "the absolute minimum level of punishment that would deter criminal behavior."[121]

Liberal perspectives on criminal law were somewhat in tune with these notions of natural law. Laws were inscribed in society and they emanated from it, not from the simple will of a sovereign or a ruler. Legislation, therefore, reflected –or should reflect– people's will. As an interpretation of society's nature and will, laws had the primary goal of defending and maintaining the social contract, in correspondence to universal feelings of social conservation. Crimes and penalties had a social nature: crimes were actions that broke this contract up, while penalties were defensive social responses tending to restore

[119] José María Lozano, *Derecho penal comparado, o el Código Penal del Distrito Federal y territorio de la Baja California concordado y comentado* (México: Imprenta del Comercio, 1874), 6.

[120] Jaramillo Uribe, *El Pensamiento*, 153-154.

[121] Kathryn Sloan, "The Penal Code of 1871: From Religious to Civil Control of Everyday Life," *A Companion to Mexican History and Culture*, ed. William H. Beezley (Sussex: Blackwell Publishing, 2011), 304.

it. This implied a departure from more traditional ways of conceiving crime and punishment: in Colonial times, for instance, crimes represented direct attacks against the sovereign, while penalties were acts of royal vengeance as well as displays of state sovereignty.[122] The liberal perspective also infused criminal law with the same principles shaping constitutions like the Mexican 1857 charter, including separation of powers, legal equality, and protection of individual rights. Such principles would shape a criminal legislation revolving around at least five major principles: a) the independence of the judicial power; b) the idea that all citizens should be judged by the same tribunals and the same laws; c) the notion that judgments should be based on the crimes themselves and not on the criminals; d) the premise that penalties should be proportional to their correspondent crimes; and, e) the protection of the procedural guarantees of suspects, defendants, and convicts alike.[123]

Influences from the classical school of criminal law combined multiple authors from different parts of Europe, and specially from Italy and Spain. The theories of the Italian Cesare Beccaria played a major role in shaping Mexico's and Colombia's criminal legislation, for instance. Beccaria's vision of crimes and penalties matched the above mentioned liberal and contractualist principles, and was in tune with the enlightened goal of crafting a more lenient and humanitarian criminal law. His ideas on the "preventive" and "deterrent" nature of penalties would shape in both nations criminal codes that made more emphasis on issues of "prevention" than on matters of "retribution" or

[122] Lozano, *Derecho penal*, 8-9; Sloan, "The Penal Code," 304; Speckman Guerra, *Crimen y Castigo*, 26-27.

[123] Speckman Guerra, *Crimen y Castigo*,14 and 28.

"vengeance."[124] Other influences behind criminal legislation in Mexico and Colombia include include the works by the Spanish Joaquín F. Pacheco and Pedro Gómez de la Serna, by the French Joseph L. Ortolan, and by the Italians Francesco Carrara, Giovanni Carmignani, and Pellegrino Rossi –these three of special importance in the Colombian case.[125] Most of these works emphasized on matters regarding the social nature and purpose of punishment, the preventive character of penalties, the ways of defending society against criminality, and the rational nature of both crime and punishment.

The classical school influenced Latin American criminal law in multiple ways, but its most important legacy had to do with its understandings of "crime." Partially inspired on the ideas of natural law, classical legal thinkers perceived criminality through the perspective of free will: as part of a universal society, all men shared the same ideas of good and evil, and could rationally and willingly choose between one and another. Therefore, they had the possibility, the freedom, and the capacity for deciding about their actions. Crimes, in this light, were free and voluntary infractions of a penal law; rational actions willingly committed by a free individual conscious of the criminal nature of such act. Criminals, then, were those individuals that, in a voluntary, free, and conscious fashion, acted against society's order, morals, and rights.[126] It was this action against society's rights

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[124] On the application of these principles in the Colombian Criminal Code of 1890, see: Lina Adarve Calle, "Gobernar, reformar encarcelar: la construcción del orden en Colombia, 1888-1910." (PhD diss., Universidad Nacional de Colombia at Medellin, 2010), 193-194, and 201-203; see also: Carlos Gabriel Salazar-Cáceres, "Breve historia del derecho penal colombiano," *Revista Principia Juris*, 13, no. 26 (2007), 41; and Bernate Ochoa, "El Código Penal," 541-544.

[125] Antonio Ramos Pedrueza, *La Ley penal en México de 1810 a 1910* (México: Tipografía de F. Díaz de León, 1911), p. 9; also: Porras, *Proyecto de Código Penal*, xcviii, xcix, and ciii. See additionally: Salazar-Cáceres, "Breve historia," 44.

[126] Speckman Guerra, *Crimen y Castigo*, 28, and 34-35.

–whether individual or collective– what gave crimes their criminal nature. Since laws and norms protected such rights, crimes represented, at their most basic level, infractions to these norms –hence the principle that no action could be considered criminal unless a legal act had previously typified it as such.[127] These notions differed significantly from previous, more traditional understandings of crime as "sin," typical of colonial times. They would also differ from those interpretations of crime that would become popular by the turn of the century, including the perspective of criminal anthropology according to which crimes were symptoms of physical and mental dysfunctionality.[128]

Definitions of "crime" in the 1871 Mexican Code and its 1890 Colombia counterpart condensed the basic precepts of the classical school. Article 1 of Mexico's Code defined crime as "the voluntary infraction of a criminal law, by doing what it forbids or not doing what it orders." The Colombian version was no different. Article 1 of the 1890 Code established that crime was the "voluntary and malicious violation of the law, for which a penalty is incurred." Both definitions were in tune with other contemporary codes across the Atlantic. For instance, in his comments to the Mexican Code, José M. Lozano noted that its opening article paralleled the 1850 Spanish Code in the idea that crime was a voluntary action or omission penalized by law; the most recent 1870 Spanish Code, in the notion that crimes were voluntary actions or omissions; and, their Bavarian counterpart in the statement that crimes were voluntary infractions of the law.[129]

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[127] Porras, *Proyecto de Código Penal*, ix, x, xi, and xxi.

[128] Speckman Guerra, *Crimen y Castigo*, 95-97; and Del Olmo. *América Latina*, 31.

[129] Lozano, *Derecho penal*, 31-33.

Understandings of "penalty" and "punishment" in Colombia and Mexico were also in tune with liberal and classical ideas. Punishment was not a simple automatic retribution or vengeance on society's part. It was, above all, a tool for correction, regeneration, and deterrence in the name of society.[130] In correspondence with the classical perspective, criminal legislations in both countries gave penalties a double purpose. On the one hand, they had to be exemplary and discourage society from criminal impulses. On the other hand, they had to be afflictive and correctional, in order to prevent recidivism. That deterrence and correction, nonetheless, had to be "reasonable and proportioned," as well as in benefit of prisoners, tending always to their "moral reformation," as the Colombian jurist Demetrio Porras wrote in 1889. Unnecessary severities, he pointed out, not only were prejudicial to prisoners and defendants, but also led to discontent and rebellion against the law.[131]

These were, in general terms, the basic doctrinal and philosophical foundations of the Criminal Codes in force in Mexico and Colombia during the Porfiriato and the Regeneration. The next section offers a brief summary of the history of these codes, as a way to contextualize their prescriptions and penalties on matters of public order and political criminality.

[130] Speckman Guerra, *Crimen y Castigo*, 28, and 34-35.

[131] Porras, *Proyecto de Código Penal*, xcii-xcviii, and clxviii. For a suplementary perspective on the Colombian case, see: Antonio José Iregui, *Ensayo sobre Ciencia Constitucional: Lecciones dictadas en la Universidad Republicana de Colombia* (Bogotá: Imprenta de Vapor de Zalamea Hermanos, 1897), 26-27.

The Criminal Codes of the Porfiriato and the Regeneration

The Mexican 1871 Code: A Belated First Attempt at Modernization of Criminal Law

In the context of Latin American modern criminal codifications, Mexico's first national Criminal Code came to life somewhat belatedly. While countries like Bolivia, Colombia, and Ecuador enacted their first national codes before the 1840s, and Venezuela decreed theirs in the 1860s, Mexico had to wait until 1871.[132] A protracted independence war (1810-1821), together with Santa Anna's dictatorship (1858-1861), the Reform War (1858-1861), and the French intervention (1862-1867), severely hampered efforts to design modern codifications of a national scope, not only in criminal matters but also in civil affairs. It was only until the early 1870s that Mexico could count with actual national Civil and Criminal codes.[133] This does not mean that up until the 1870s Mexico lacked modern criminal codes. The State of Mexico, for instance, drafted a code in 1831, and the State of Veracruz counted with one since 1835.[134] Modern criminal legislation at the federal level, nonetheless, remained undeveloped under well into the century.

Prior to the 1870s, national criminal legislation combined laws both from the colonial period and the post-independence era –mainly sporadic laws on criminal matters and constitutional mandates on criminal law. This legislation did not exist as a unified and

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[132] Victor Uribe-Urán, "The Great Transformation of Law and Legal Culture: The 'Public' and the 'Private' in the Transition from Empire to Nation in Mexico, Colombia, and Brazil, 1750-1850," in *Empire to Nation: Historical Perspectives on the Making of the Modern World*, ed. Joseph W. Esherick, Hasan Kayali, and Eric Van Young (Oxford: Rowan & Littlefield, 2006), 91. Bolivia's Criminal code was enacted in 1826. Colombia and Ecuador decreed theirs in 1837, while Venezuela did it in 1863. Put in perspective, Mexico's national Criminal Code was a latecomer, but it was not the latest in the región. Argentina, for instance, enacted its first code in 1887.

[133] Sloan, "The Penal Code," 302.

[134] Uribe-Urán, "The Great Transformation," 91. Technically speaking, the Criminal Code of the State of Veracruz was the nation's first modern Criminal Code.

systematic body of laws, but as disperse sets of rules and prescriptions. Colonial legal sources, including the *Novisima Recopilación* (1805), the *Real Ordenanza de Intendentes* (1786), the *Recopilación de Leyes de Indias* (1680), and even the *Siete Partidas*, remained relatively in place until the late 1860s. A decree from 1838 declared them valid for the Mexican nation as long as they were compatible with the new system of government, its institutions, and their legislation. A first effort to create a proper national codification took place in 1862, but it was hampered by the French Intervention. A second, more successful effort followed in 1868. Led by Antonio Martínez de Castro, José María Lafragua, Manuel O. de Montellano y Manuel M. de Zamacona, it would become the basis for the 1871 Code.[135]

At least two major goals inspired the efforts towards crafting and enacting a modern national Criminal Code in Mexico. There was a need for replacing an "outdated" legislation that had little to do with the current forms of government, in first place. To some contemporary legal thinkers, surviving colonial laws and sources were not only disused, but also rejected by public sentiment, by the customs and ideas of the time, and even by the spirit of the nation's new institutions. These laws were also a major source of arbitrariness: arbitrariness of the legislators, who monopolized "the terrible right to punish and repress offenses," and arbitrariness of the judges, who imposed penalties obeying to nothing but their own discretion.[136]

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[135] *Código Penal Mexicano: Sus motivos, concordancias y leyes complementarias, obra dispuesta por el Licenciado Antonio A. De Medina y Ormaechea, Tomo I* (México: Imprenta del Gobierno, 1880), iv-v; see also: Speckman Guerra, *Crimen y Castigo*, 23.

[136] Lozano, *Derecho penal*, 5 and 8.

There also was an urgency to "modernize" national legislation, in second place. This implied not only crafting new laws, but also –and primarily– creating a legal system in which law corresponded to the principles of "reason" and "science." Inspired by liberal and classical ideas on criminal law, Mexican lawmakers believed that criminal laws should no longer emanate from the arbitrary will of a monarch or any other authority. On the contrary, they should correspond to "principles stemming from reason, morals, [and] men's nature," as José M. Lozano pointed out in 1874.[137] Likewise, national criminal laws should not exist anymore as a disperse and unsystematic collection of mandates enacted by different authorities at different times. Legal modernization also meant systematization, predictability, and, above all, codification. It was thus necessary to produce an actual, all-encompassing code; homogeneous codification that, as a single and definitive legislative act, organized in a logical, methodical, and articulate fashion all aspects and possibilities of a particular legal field.[138]

These principles and influences, combined with the same liberal spirit that inspired the Ayutla revolution and the 1857 Constitution, shaped the overall goals of the 1871 Code. Like the Charter, the Criminal Code and its subsidiary codifications –like the Code of Criminal Procedures, enacted in 1880– aimed to develop the principles of separation of powers, independence of the judiciary, legal equality, and defense of individual guarantees.[139] The Code conceived of individual guarantees as the manifestation of natural rights whose respect and protection should represent the primary goal of social institutions.

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[137] Lozano, *Derecho penal*, 6.

[138] Speckman Guerra, *Crimen y Castigo*, 27-28.

[139] Speckman Guerra, "Derecho penal," 202.

In consequence, it established that criminals were subject of juridical protection and their judgement should follow standard and homogeneous procedural rules. It also stated that individual rights limited the reach of state's retribution, and provided a series of prescriptions for preventing unfair or arbitrary arrests and imprisonments. Arrests, for example, should not extend for more than three days without a formal judicial order following the verification of an actual crime. Likewise, in correspondence with the Constitution, the Code reinforced the suppression of the plurality of legal subjects and special tribunals that characterized Mexico's colonial and early republican law –remaining only the *fuero militar* and related tribunals of military justice. All criminals, regardless their condition, should be subject to the same tribunals and prosecuted by the same laws.[140] Similar principles would inspire the crafting of the 1890 Colombian Criminal Code, although its story was far less lineal and straightforward than that of its Mexican counterpart.

The 1890 Colombian Code: Between Attempts at Reform and Continuities

The criminal code of the Regeneration has a very different story than its Porfirian counterpart. The 1890 Colombian Criminal Code, unlike the 1871 Mexican Code, did not entail a significant rupture with previous forms of and sources of criminal legislation. The 1837 Code had marked for Colombians the departure from colonial criminal legislation and the first major step towards the modernization of national criminal law. Further reforms to this initial codification, including the Criminal Codes of 1873 and 1890, basically

[140] Speckman Guerra, *Crimen y Castigo*, 28, 47, and 51; see also: Speckman Guerra, "La justicia penal," 424.

reproduced its central principles and prescriptions, while introducing slight changes in the definition and classification of some crimes and the duration of some penalties. The trajectory of Colombian criminal codification between the statutes of 1837 and 1890 was not straightforward, though. Regime changes, failed attempts at reform, and disagreements among contemporary codifiers and lawmakers marked the evolution of this legislation, particularly the making of the 1890 Code.

The creation of a modern criminal codification in Colombia responded to similar needs than in the Mexican case. There was a need for replacing dispersed, unsystematic and outdated colonial legislation with unified, comprehensive, and methodical codes. Likewise, there was a need for new legislation in tune with the political institutions and forms of government that emerged after independence. First attempts at modernization of Colombian legislation date back to the late 1820s and were inspired, like in Mexico, by the works of Bentham. The goal, at that moment, was substituting the "barbarity," "disorder," and "obscurity" of Spanish legislation with a uniform and simple system of rules and norms –a rational system of legislation able to foster state's efficiency. "Well written Codes that make the chaos of the Laws of Indies disappear," claimed the Conservative writer Juan García del Río, "are the most beautiful present that we could give Colombia."[141]

The 1837 Code was the model for the subsequent Codes of 1873 and 1890, as well as the basis for all Colombian criminal legislation throughout the rest of the century. Between this first codification and the 1873 Code there were no major transformations. The establishment of a federative regime between 1863 and 1886 brought a multiplication

[141] Jaramillo Uribe, *El Pensamiento*, 153-154.

of criminal codes at the regional level that did not differ too much from one another. The most important changes between the 1837 statute and the criminal codes of the federative period had to do with the incorporation of the constitutional abolition of the death penalty, the reduction and humanization of penalties, and the suppression of infamy-driven punishments.[142] The enactment of the 1886 Constitution would demand further changes, mostly in terms of re-unification and centralization of both civil and criminal law. The 1885 Constitutional Assembly established that, until the enactment of a new codification, the nation would adopt as its criminal code the 1858 Criminal Code of the State of Cundinamarca, also a "readapted copy" of the 1837 codification. Later on, the early Regenerationist administrations ordered the drafting of a new criminal code and appointed a commission for this purpose. The task fell on four members of the Council of State: Demetrio Porras, Clodomiro Tejada, Luis Carlos Rico, and Juan Pablo Restrepo.[143]

The Commission had the task to prepare a project of criminal code that, instead of reproducing former codifications, corrected their errors, filled their gaps, and incorporated contemporary developments in legal doctrine. Porras drafted the bulk of the project, which drew heavily on foreign codification. Two recent projects of criminal codification concentrated Porras's attention: the one presented by Francisco Silvela to the Spanish Courts in 1884, and the one presented around the same time by Giuseppe Zardanelli to the Italian parliament.[144] These were not the only codifications that inspired the project. Codes

[142] Adarve Calle, "Gobernar, reformar y encarcelar," 193-194.

[143] Adarve Calle, "Gobernar, reformar y encarcelar," 195.

[144] Porras, *Proyecto de Código Penal*, viii.

from Germany, Belgium, the Netherlands, Portugal, and Hungary also served as major sources on inspiration. Even Latin American codifications from Chile, Brazil, and Mexico helped shape Porras's work.[145] Unlike previous criminal codes in Colombia, Porras's draft gave wide legal and doctrinal development to procedural matters including the regulation of preventive imprisonments, judicial cautions, and penalties of "subjection to the authorities' surveillance." Such developments were also internationally inspired, and drew upon the works of Ortolan and Gómez de la Serna.[146] Another mayor novelty had to do with the incorporation of the figure of "preparatory liberty," a type of probation or conditional release previously adopted in the 1871 Mexican Criminal Code and also present in European contemporary codifications such as Portugal's.[147] As the same Porras declared, the project's prescriptions of preparatory liberty were almost literally copied from the Mexican code.[148]

Porras's project never came to fruition. Porras died before finishing the second part of his work, and soon after his death the rest of the commission members discarded his draft. To the Council of State, the project was extremely long, complex and detailed, and relied exaggeratedly on foreign models. The draft proposed an overall extension of the nation's criminal laws, and that, to the Commission, was "the best means to make them

[145] Bernate Ochoa, "El Código Penal," 540.

[146] Porras, *Proyecto de Código Penal*, xcviii, xcix, and ciii.

[147] Lozano, *Derecho penal*, 400 and 462.

[148] Porras, *Proyecto de Código Penal*, clv and clxiv. See in particular Articles 83, 84, and 90 of Porra's project. Additional borrowings from the Mexican legislation included a series of articles regarding the imposition of fines for certain minor crimes. See Articles 106, 107, and 108.

ineffective."[149] The Council, then, commissioned Juan Pablo Restrepo to design a simpler draft. Restrepo would present a new draft compiling dispositions from Cundinamarca's 1858 Code and the 1837 Criminal Code. The idea, in Restrepo's words, was to "quickly review what already exists and reunite it in a single code, harmonizing their different parts, filling the resulting gaps, and making partial or secondary adjustments […] without altering the general plan of what today exists." Once that compilation was in place, it could be possible then to study foreign codifications and see whether or not their reforms could be progressively applied to the local circumstances.[150] Restrepo's project, which finally became the 1890 Criminal Code, did not involve significant changes in comparison with the original 1837 codification. It was basically a reproduction of it without the penalties that, throughout the century, had been progressively suppressed –penalties of infamy, forced labor, and public infamy, for instance.[151]

Enacted during the last third of the century, Mexico's and Colombia's criminal codes still maintained the spirit of the first modern codifications in post-independent Latin America. It was something natural, considering that the Mexican Code was Mexico's first modern national criminal code, and that its 1890 Colombian counterpart was a readapted reproduction of the first modern code enacted in the nation. It is time now to see if the

[149] Adarve Calle, "Gobernar, reformar y encarcelar," 196-197.

[150] Salazar-Cáceres, "Breve historia," 45; and Bernate Ochoa, "El Código Penal," 541.

[151] Altought it was finally approved and enacted as the nation's criminal code, Restrepo's project was subject of criticism by its contemporaries. José Vicente Concha, for instance, claimed that the Code "lacked harmony" and had several "incongruences and even serious contradictions that, in the judicial practice, lead to authentic injustices." These incongruences, to Concha, were not surprising at all, for Restrepo's code was only a legislative recopilation and not a scientific work. See: Salazar-Cáceres, "Breve historia," 45.

common foundations of both Codes shaped similar definitions of and penalties for political crimes in the two nations.

Political Crimes in Mexican and Colombian Codes

How did Criminal Codes in Colombia and Mexico addressed political criminality? Did they define a precise set of offenses clearly typified as "political"? Did they reproduce the abstract and vague notions of their correspondent Constitutions? This section shows that the 1871 Mexican Code and its 1890 Counterpart did little towards advancing more precise definitions of what political crimes were. Their multiple criminal typologies included different sorts of offenses against public order, public peace, and the government, but no a specific and well-defined category of "political crimes."

Political crimes, nonetheless, were present everywhere in these Criminal Codes, as they were in the Constitutions. They materialized in the different criminal categories that defined and penalized treason, rebellion, sedition, and other offenses against public order and peace. They also surfaced in additional prescriptions concerning the classification of crimes and criminals, the administration of certain penalties, the dispensation of state leniency, and other procedural matters. These categories, definitions, penalties, and supplementary prescriptions made up the standard legal framework for the governmental responses to political criminality during the Porfiriato and the Regeneration.

Defining Criminal Categories

The definition and differentiation of criminal categories offer a first clue about how these Codes understood and addressed political crimes. Both the 1871 Mexican Criminal Code

and its 1890 Colombian counterpart defined these crimes in a relatively similar way, but arranged them as part of different criminal categories (see Table 1). While the Mexican Code organized the bulk of these offenses in two major categories, the Colombian codification distinguished among three different typologies. The Mexican Code only distinguished between crimes "against the nation's external security," which basically included treason, and offenses "against nation's internal security," comprising the crimes of rebellion and sedition. The Colombian Code distinguished among crimes "against the nation," including treason; offenses "against internal peace, the current government, and the Constitution," comprising different modalities and degrees of rebellion; and "crimes against peace and public order," including sedition, riot (*motín o tumulto*), and uprising (*asonada*). In the Mexican case, riot and uprising were part of a different category and involved definitions that, as we will see, differentiated them completely from sedition and rebellion.

Table 1.
Criminal Categories and their Corresponding Crimes

Mexican Criminal Code (1871)		**Colombian Criminal Code (1890)**	
Crimes against the nation's external security	-Treason	Crimes against the nation	-Treason
Crimes against the nation's internal security	-Rebellion -Sedition	Crimes against internal peace, the current government, and the Constitution	-Rebellion
Crimes against public order	-Riot -Uprising	Crimes against peace and public order	-Sedition -Riot -Uprising

Despite such differences in terms of classification, both codes conceived treason, rebellion, and sedition in analogous ways. They were crimes against the nation, against peace and order, and against the government and its constitutional foundations. Taken together, these categories signaled different expressions and gradations of a same phenomenon: a series of actions that not only disturbed "public peace" but also compromised the existence of the government and even, in the worst cases, of the nation itself. The political character of these criminal categories lay, primarily, in the nature of what was at stake: the legitimate government, the Constitution, and the existence of society as a political community.

One of the major differences regarding these categories has to do with the way in which both codes understood and classified crimes against "public order." In the Mexican case, these offenses comprised about a dozen crimes including vagrancy and mendicancy; raffles, lotteries and other "prohibited games;" tombs desecration; disobedience and resistance to the authorities; riot and uprising (*motín* and *asonada*); and recurrent inebriation (*embriaguez habitual*).[152] It was thus a wide category that combined individual and collective offenses against "public tranquility," "public morality," or "public civility," with certain non-political modalities of "illegal" collective action, as well as some form of "civil resistance" or disobedience. These forms of resistance, nevertheless, did not seem to involve a major political nature, judging from the way in which the Code defined such crimes. Article 919 of the Mexican Code, for instance, defined riot and uprising as a "tumultuous meeting for the commission of a crime other than treason, rebellion, or

[152] See: *Código Penal Mexicano*, Libro tercero, Título octavo: "Delitos contra el orden público," 559-613.

sedition." Crimes of disobedience and resistance, according to Article 904, basically referred to acts in which people refused to obey an order or a mandate by any public authority. None of these acts involved a questioning of these authorities' legitimacy, let alone endangered their existence.

Crimes against "peace and public order" in Colombia had a clearer political content and involved a more direct challenge to public authorities.[153] Besides sedition, riot, and uprising, these offenses also included illegal raising of troops, resistance to law enforcement and disobedience to the authorities' orders, and *cuadrillas de malhechores* – groups of people collectively organized to commit crimes against people and properties.[154] This last offense also existed in the Mexican code (Art. 951), but as a crime against "public safety.[155] Riot and uprising had more complex definitions in the Colombian Code. Article 217 defined riot (*motín o tumulto*) as "the insubordinate movement and the illegal and turbulent meeting of a portion of people… joined together in order to demand, by force, cries, insults, or threats, that authorities perform or stop performing a fair or unfair act." Article 219 conceived of uprising (*asonada*) as "the illegal movement and reunion of people… organized with the goals of disturbing a public act or celebration; taking justice into their own hands; abusing or intimidating other people, or forcing them to make a fair or unfair thing; or provoking in any way a public scandal or disturbance…" Unlike its

[153] Unlike its Mexican counterpart, the Colombian Code did not include a category encompassing crimes such as vagrancy, "prohibited games," inhebriation, and other conducts considered crimes against public order in Mexico. Tomb desecration existed as an offense, but the Colombian Code classified it as a crime against individuals, not as a matter of public order (Arts. 709-711).

[154] *Código Penal de la República de Colombia, edición oficial* (Bogotá: Imprenta de La Nación, 1890). See especially: Libro segundo, Título tercero: "Delitos contra la tranquilidad y el orden público," pages 36-41.

[155] According to the Mexican Code, crimes against public safety (*delitos contra la seguridad pública*) also included jailbreaks (*evasión de presos*) and possession and carying of forbidden weapons.

Mexican counterpart, which grouped both crimes as part of the same offense, the Colombian Code conceived them as different modalities of illegal collective action, with diverse levels of political engagement and political consequences. While the Mexican codification conceived "public order" in terms of public tranquility and civility, the Colombian Code interpreted it, at least partially, as a matter of political obedience and compliance.

Defining and Penalizing Crimes

The way in which both Codes defined, ranked, and penalized the major crimes of treason, rebellion, and sedition offers even more clues about their conceptions of political criminality. Which action represented the most serious political offense and why? Which criteria defined and separated the levels of "dangerousness" of these crimes? The different criminal categories through which both codes organized these offenses offer a first answer. Treason was the most severe offense, for it involved a harm against the nation itself and its existence as a community. Rebellion was the most serious crime against the government and the constitution in Colombia and against internal security in Mexico. Sedition, in both cases, represented a less drastic expression of rebellion (see Table 2). These typologies, nevertheless, conceal significant differences between one crime and another, and even important differences in the ways in which the two codes defined and penalized these offenses. It is necessary, then, to pay closer attention to the precise definitions and penalties that these crimes had in the referred codifications.

Table 2.
Key Definitions of Treason, Rebellion, and Sedition

Treason	To take up arms against the nation. Collaborating with external enemies or foreign invaders. Commonly applicable in cases of international war.
Rebellion	To attack the nation's form of government, its political organization, and its public powers and their functions. Also includes offenses against the Constitution.
Sedition	To engage public authorities in violent ways. Includes minor insurrections and other episodes of collective violence that do not escalate to the levels of a rebellion.

Treason, according to the Mexican Code (Art. 1017) was an attack "against the independence of the Mexican republic, its sovereignty, its freedom and its territorial integrity […] in case of a foreign war." This attack could manifest in different ways, ones more serious than others: it could be an actual, direct attack, by taking up arms against the nation and joining active enemy troops (Art. 1080). It could also be a formal, serious and direct invitation to commit it; a conspiracy among multiple people to do it; or even an "indirect" treason consisting of "deliberately concealing or helping enemy scouts or spies." (Arts. 1072-1075). Other modalities of treason, according to the Mexican code, included espionage for the enemy, collaboration with the enemy in the execution of invasion plans, and even the recruitment of troops for the enemy side (Art. 1081). All these acts represented, to the Code, parts of the same crime. The Colombian code, on the contrary, distinguished between two modalities of treason. Acts of treason could be either "serious" or "minor," both of them referring to circumstances of external or international war. Serious cases of treason included taking up arms against the nation, changing sides during military actions, working as a spy for the enemy or helping enemy spies, helping the enemy with resources and other aids, and even facilitating a foreign invasion (Art. 151). Minor acts of treason involved exciting a foreign nation to invade Colombian territory, changing

sides outside military operations, and sharing classified information with the enemy, among other actions (Art. 153).

Death was an usual punishment for cases of treason, although not the only possible one. Mexico prescribed capital punishment to nationals that worked as spies, helped the enemy carry out an invasion, or helped it with troops (Art. 1081). People changing sides and taking up arms against the nation received a differentiated treatment depending on their ranks and roles. Generals of regular troops, as well as leaders of irregular bands were punished with death. Colonels and other lower officers were exempt from death and faced twelve years of prison (Art. 1080). Past experiences regarding international war and loss of territory to its northern neighbor, as well as invasion by and partial submission to a foreign power could have influenced the severity of these penalties against traitors in Mexico. The Colombian code was slightly more lenient, or at least prescribed the death penalty for a more reduced number of offenders. In cases of "severe" treason, capital punishment was reserved only to public officers and employees, because their quality of public servants aggravated their treason. Other nationals, instead, faced between ten and twenty years of prison (Art. 152). "Minor" cases of treason received between three and five years of prison, with three additional years in the case of public servants (Art. 155) (see Table 3).

Table 3.
Crimes, Criminal Gradations, and Punishments

Crime	Mexico	Colombia
Treason	-Generals and Ringleaders: Death. -Other officers: Up to 12 years of prison.	-Public officers and employees: Death. -For "Severe or High Treason:" Between 10 and 20 years of prison. -For "Minor Treason:" Between 3 and 5 years of prison.
Rebellion	-Directors, Chiefs, and Ringleaders: 6 years of prison. -Other High-Rank Officers: 5 years of prison. -Low-Rank Officers, up to captains: 4 years of prison. -Corporals and Sergeants: 3 years of prison. -Rank-and-File Soldiers: 1 year of prison. -Indirect supporters: Up to 2 years of prison. -For encouraging rebellion: Up to 2 year of prison.	-Promoters and Ringleaders: Between 8 and 10 years of prison. -Other Leaders: Between 6 and 8 years of prison. -Other Participants: Between 4 and 6 years of prison. -Rank-and-File Soldiers: No penalty, unless they were responsible for common crimes. -People charged with other attacks against the Constitution and the government: Between 6 months and 4 years of prison. -Minor attacks against the Constitution and the government: A fine.
Sedition	-Involving consummated acts of violence: 5 years of prison. -With arms, but no consummated acts of violence: 3 years of prison. -Conspiring to commit sedition: Between 6 months and 1 year of prison.	-Chiefs od armed seditions: Between 7 and 9 years of prison. -Other leaders: Between 5 and 7 years of prison. -Other participants: Between 2 and 4 years of prison. -For encouraging sedition: Up to 8 months of prison. *Plus additional economic penalties against the inhabitants of insurrectionist towns.

Rebellion comprised a more diverse series of acts. Article 1095 of the Mexican code defined it as a "public and overtly hostile" uprising pursuing at least one of six different goals. Goals included changing the nation's form of government; abolishing or reforming its Constitution; blocking the election of any of the nation's supreme powers, the reunion of any of these corporations, or their liberty to deliberate; removing the president or his ministers from office; raising a portion or the totality of either the nation or the army against the government; and usurping the faculties and attributions of any of

the nation's supreme powers. Acts of rebellion included not only leading or being directly involved in the uprising. They also comprised planning and plotting it, inviting people to rebel, conspiring with others with the same aim, and voluntarily providing rebels or conspirators with men, weapons, ammunition, or money. Giving rebels provisions, food or means of transportation also fell under this category of offenses (Arts. 1066-1101). A final type of rebel referred to people that directly excited or promoted rebellion through telegrams, messengers, printed media, and others. The Code treated them as "authors" in case that the rebellion erupted, and as *reos de conato* (culprits of an attempt) if that was not the case (Art. 1110). To the Mexican code, rebels were not only those who directly organized, promoted, and participated in the uprising, but also all those who, directly or indirectly, and always willingly, had taken part of or collaborated with the movement.

The Colombian Code also comprised different actions under the notion of rebellion. Article 169 defined rebels in terms of a series of offenses that had in common the goal of "changing substantially the nation's overall organization." These offenses included taking up arms against the government, whether to overthrow it or to change the Constitution; attempting to alter, by force, the constitutional separation of public powers, or the people or corporations in charge of them; blocking or impeding the reunion of the Congress or one of its chambers; or trying to dissolve it by force. Additionally, the Code included a series of actions that, without being formal and direct acts of rebellion, also counted as crimes against internal peace, the government, and the Constitution. These supplementary prescriptions (Arts. 187-190) criminalized acts such as attempting to persuade others to neglect or disobey the Constitution; propagating "maxims or doctrines directly tending to destroy or disturb the Constitution;" giving "seditious speeches" against the Charter; and

"provoking, through satires, jokes, or invectives, the breach of the Constitution." All these "subversive" acts could take the form of speeches or written pieces, involving from a simple remark in public to a leaflet or a newspaper article. Although these offenses were certainly distant from the crime of rebellion, they were still linked to it. To the Code, they were also acts of hostility towards the government, as well as dangerous manifestations of discontent that could spark major offenses against the institutions.

In addition to these prescriptions delimiting and defining the crime of rebellion, both Codes included supplementary articles specifying which actions should –and should not– be considered as a "natural" accessory to events of rebellion. The consummation of a rebellion implied necessarily the commission of other offenses –related crimes or *delitos conexos*. It was necessary, then, to distinguish between those "related" actions that were "logical" and "inevitable" parts or ingredients of a rebellion, and those that were not and, in consequence, represented additional crimes. Article 1113 of the Mexican Code, for instance, established that rebels were not responsible for any death or injury caused in combat. Nonetheless, homicides or injuries caused outside the battlefield were still considered crimes and made their authors accountable for them. The same applied to common crimes committed during the rebel movement, according to Article 1114. The Colombian code was more detailed in its differentiation between what could be included and what could not. Seizing of weapons, recruitment, removal of public servants, replacement of public authorities and appropriation of public functions, resistance to public and military authorities, deaths in combat, and even the collection of contributions and "war taxes" made up the offenses that the Code considered "innate" to rebellion. Actions against people's lives and properties were still criminal and penalized, as were pillage,

arson, homicides outside the battlefield, the freeing of common prisoners, and assaults to rural properties without a formal order of a rebel leader (Article 177).

Punishments for rebellion in Mexico and Colombia were as diverse as the modalities of the crime, and followed a scale of penalties corresponding to a parallel hierarchy of offenders (see Table 3). The Colombian Code distinguished among four levels of involvement in a consummated rebellion: promoters and ringleaders; participants with some degree of power, leadership, or jurisdiction in the movement; "other" participants; and mere soldiers (Arts. 170 and 171). The first category of rebels faced between eight and ten years of prison. The second, between six and eight years of the same penalty. The third, between four and six years. Soldiers, as long as they had not received any sort of promotion and had not committed any common offense, were exempt from any penalty.

Outside this classification, the Code also distinguished among different levels of responsibility concerning people that, in times of peace, attacked the Constitution and the government by written word of speech. People encouraging the neglecting of the constitution, and therefore its partial or total suspension, faced between one and four years of prison. People propagating "subversive maxims" received between six months and two years of the same penalty. Finally, people "insulting" the Constitution through satires and similar ways, received only a fine. Additionally, they all lost their political rights (Arts. 187-190). This supplementary classification of crimes and criminals traced a link between "actual" rebels, who waged war against the government, and "subversive" dissidents, whose attacks were perhaps subtler but no less hostile. Such link set them apart in terms of the nature of their crime –attacks in the battlefield and attacks in the arena of public

opinion–, but at the same time made them all responsible for a similar set of offenses. They were, after all, offenses against internal peace, the government, and the Constitution.

The Mexican Code, in its administration of penalties for rebellion, involved a more complex grouping of criminals. Rather than establishing a single, straightforward classification of offenders, it delimited two main criteria of categorization. A first criterion had to do with matters of responsibility and authorship. Article 111 distinguished between "leading authors" and "accomplices." The first term included people who promoted, led, or conducted a consummated rebellion. It also comprised people who collaborated in the conception, planning, and execution of the movement; individuals that while having the power to prevent or stop it let it occur; and people who publicly excited the rebellion whether by speeches or by printed publications. In the case of a failed rebellion, and according to Article 112, the Code penalized as "leading authors" all those who had claimed the voice of the movement and appeared as writers of publications inciting the uprising. All participants whose involvement in the rebellion did not match these criteria were considered simple "accomplices." This differentiation between "authors" and "accomplices" did not have effects in itself, but rather functioned as a guiding principle for the gradation of the penalties corresponding to the different typologies of rebels established by the second criterion.

The second criterion paralleled the way in which the Colombian Code classified rebels, but included a larger number of categories. Article 1102 of the Mexican codification arranged offenders according to their degree of involvement in the movement. Directors, chiefs, and ringleaders were at the top of this criminal hierarchy. Superior or high-rank officials followed. A third level corresponded to low-rank officials up to Captains. A fourth

level was composed of corporal and sergeants, while the lowest rank corresponded to soldiers. Offenders at the highest level received six years of prison, that became five for second-level criminals, four for the next category, and three for the four levels. Unlike the Colombian case, the Mexican Code did punish soldiers, and gave them up to a year of prison. The Code authorized judges to raise these penalties up to a third of the corresponding punishments in case that the rebellion became an armed movement waging actual acts of war (Art. 1103).

A supplementary categorization put together two different types of "indirect" rebels (Arts. 1096-1101). The first type included people who, without taking part in a rebellion, supported rebels directly and willingly. This support could take the form of men, weapons, ammunition and money, or of provisions and means of transportation. The Code considered this support an indirect involvement with the movement, and therefore penalized it with prison up to two years. The second category comprised people who helped prepare a rebel movement independently of its outcomes, whether conspiring with aims of rebellion or inviting other people to rebel. These other criminals faced up to one year of prison. A comparison between the penalties established for both types of rebels shows that, for the Mexican code, supporting a rebellion after it started was a more serious offense that attempting to start one.

The potential commission of common crimes opened another front for the criminalization and punishment of rebels. The Mexican Code established additional penalties for rebels any time they executed war prisoners; incorporated bandits and filibusters to their ranks; committed attacks against private property; and kidnapped people for economic purposes (Arts. 1104-1109). The first aggravating condition turned charges

of rebellion into charges of homicide; and, it authorized judges to impose the death penalty. The second condition added to the rebel's punishment up to ten additional years of prison, if it was followed by the perpetration of acts of violence. The third circumstance turned rebellion into "robbery with violence," and the last one turned rebels into mere *plagiarios* or kidnappers. These two final conversions also allowed judges, in correspondence with the Constitution and the Criminal Code, to punish rebels with death. A final condition established the time of involvement of the rebel in the movement as an additional aggravating circumstance.

The Colombian Code was less specific than its Mexican counterpart in this point, but it also established that rebels should face any additional charges and penalties for common crimes that they had committed during their insurrection (Article 179). The most important provision in this regard had to do with the conversion of rebels into bandits or *reos en cuadrilla de malhechores*. According to Article 178, anytime rebels collectively performed acts of "ferocity and barbarism" condemned by the Law of Nations, such as cruelty towards war prisoners, tactics of torture and starvation, or violence against women, children and other harmless people, they became a *cuadrilla de malhechores.* The Colombian Military Code of 1881, still effective during the Regeneration, prescribed an analogous treatment in cases of internal conflict. Article 1099 of this codification established that rebel or insurrectionist armies that committed crimes against people or properties, and whose acts of hostility remained outside the dynamics of formal and permanent armies, should be punished as thieves or bandits. Like the legal conversions allowed in the Mexican case, these conversions had major legal implications, for they made

rebels subject to the death penalty, as established in the Constitution and in Article 252 of the Criminal Code.[156]

Sedition, according to both codes, was a minor insurrection that challenged public authorities without the goals of attacking, overthrowing, or replacing them. As an event of violent collective action, it was politically oriented and motivated. At the most basic level, it supposed a collective effort to hinder, on purpose, the actions of public authorities. Under a more elaborated perspective, it represented an excessive collective demand against a given authority in order to request something of common interest. The criminal nature of sedition did not stem from the demands at stake, but from the act of engaging authorities in violent and tumultuous fashion. The Mexican Code understood sedition in its most simpler connotation. Its Article 1123 defined the crime as the reunion of at least 10 people that resisted or attacked authorities with either of two goals: impeding the promulgation or execution of a law, or the celebration of a popular election; or hindering the exercise of the functions of a given authority. The Colombian codification, instead, leaned towards the second, more complex interpretation of the offense. Article 210 defined sedition as "the tumultuous uprising of people with the aim, not of disobeying the nation's government, but of opposing, with or without weapons, the execution of any law, any constitutional, legal, or judicial act, or any legitimate service […] by the authorities." Violent collective acts of

[156] Article 248 of the Colombian Criminal Code defined as *cuadrilla de malhechores* "all meeting or association of four or more people, gathered together with the purpose of committing, together or separately, but in concert, any crime or crimes against people or properties, whether they are public or private." Article 252 prescribed that "the most serious case of *asalto en cuadrilla de malhechores* takes place when it involves voluntary manslaughter, raping of a woman, or deliberated injury or mutilation that leave the victim blind or disabled. This crime will be punished with death penalty."

resistance against authorities also counted as sedition, as long as they involved more than 40 people.

Penalties for sedition usually were less drastic than those corresponding to the crime of rebellion (see Table 3). The Mexican Code prescribed three years of prison if the sedition included the use of arms, and five if the movement actually performed acts of violence or achieved their goal (Art. 1125). People conspiring with seditious purposes faced between six months and one year of the same penalty (1124). Like in the case of rebellion, judges could strengthen the corresponding penalties in the case that the sedition involved the commission of common crimes, and especially of offenses against individuals, their lives, and their properties (Arts. 1124 and 1126). The Colombian codification included a more diverse and harsher set of penalties. Chiefs of armed seditions faced between seven and nine years of prison, while other leaders received between five and seven years of the same penalty. The rest of participants in the movement were punished with prison between two and four years (Arts. 211 and 212). People charged with promoting a sedition or inviting others to that end, regardless their success, faced prison up to eight months, and remained subject to the authorities' surveillance for up to two years (Art. 215). Individuals that publicly promoted a sedition through speeches or printed publications also fell into the category of sedition and would be prosecuted as *fautores* or helpers of the crime. (Art. 230).

The Colombian codification took penalties for sedition even further. Given the political nature of the crime, and the caliber of the challenges to authorities that it involved, it was natural that the Code prescribed for it more drastic penalties. Articles 231, 232, and 233 extended the responsibility in events of seditions from the actual seditious to the rest

of the population in which the movement had taken place. To the Code, anytime a sedition or a riot required the mobilization of armed forces to repress it, it was necessary to charge the offenders for the expenses of the operation. These expenses, nonetheless, did not exclusively fall on the movement's leaders and participants, but also on "all the inhabitants of the district or districts in which the insurrection occurred, who could have opposed it" (Article 231). The monetary penalty should take the form of "forced contributions" whose amounts depended on each one's economic capacity. The only people that were exempt from the contribution were those who had actively resisted the movement once it started.

Additional Provisions and the Notion of Political Crimes

Whether directly or indirectly, all of the aforementioned crimes had a political nature, evident in most cases in the very definition of the offenses and the offenders. Nevertheless, neither of the two Codes defined or classified them explicitly as "political crimes." This does not mean that this notion was completely absent from the codifications. Both in Mexico and Colombia, Criminal Codes involved additional provisions directly concerned with the concept of political crimes –as a general criminal category, not as a concrete set of offenses. The Colombian Code, for instance, prohibited extradition for political crimes in its Article 18. Provisions in this regard were much wider in the Mexican case. Article 93 delimited the number of possible penalties for political crimes: a series of 13 options including, among many others, fines; light penalties of incarceration or *reclusión simple*; suspension of civil and political rights; confinement; and different levels of exile –ranging

from estrangement from a city or a state to expatriation. This list of penalties excluded others such as minor and major arrests, ordinary prison, and judicial cautions.[157]

Other provisions from the Mexican code regulated the imposition of some of these specific penalties. Article 139, for instance, dictated that confinement was an exclusive penalty for political offenders. The government was in charge of deciding the defendant's destination taking into consideration "both the exigencies of public peace and the prisoner's needs." Article 141 clarified the difference between *reclusion simple* and ordinary prison. *Reclusión simple* only existed for political crimes, and consisted of detention in an establishment where no other types of criminals were allowed. This penalty corresponded to the ideas that common and political prisoners should remain separated, and that the prison regime for the latter should be "highly humanitarian."[158] Article 142 established that expatriation could replace detention or *reclusion simple* for treason or other political crimes, but only in two circumstances: in the case that the permanence of the defendant in the nation put public tranquility and risk, or in the case that the defendant in question was a chief or ringleader. Finally, Article 172 dictated that political offenders, once they had finished their respective sentences, had to remain subject to the authorities' surveillance for an additional period. None of these supplementary articles specified, beyond the offense of treason, which crimes classified as political.

[157] See Libro Primero, Título 4 of the 1871 Mexican Code: "Exposición de las penas y de las medidas preventivas."

[158] Antonio de Medina y Ormaechea, *Proyecto para el establecimiento del régimen penitenciario en la República Mexicana* (México: Imprenta del gobierno, 1881). See especially Article 8 and page 80.

Political Crimes and the Military Jurisdiction

The previous rulings on matters of treason, rebellion, sedition, and others were not the only prescriptions that formally delimited the legal definition and punishment of political crimes in Colombia and Mexico at the time. Outside the jurisdiction of the regular Criminal Codes and ordinary justice, there was the legal and jurisdictional domain of the military. Both Constitutions recognized the independence and autonomy of military tribunals, as long as their jurisdiction remained exclusively focused on military matters –this is, those involving military personnel and crimes.[159] Civilians were subject to the military tribunals only as long as they were involved as accomplices and co-authors in military crimes. Even in these cases, their prosecution followed the proceedings and prescriptions of the ordinary justice.[160] Military justice and tribunals commonly functioned in times of war, whether during an international conflict or in the context of an internal confrontation like a civil war or a major rebellion. The 1881 Colombian Military Code and its 1892 Mexican counterpart contained the basic principles for the application and function of military justice in both countries during the Regeneration and the Porfiriato.

Like ordinary Criminal Codes, these Military Codes also contained their own criminal categories, with their own definitions of crime and criminality and the corresponding penalties for each case. Criminal typologies and definitions in Military Codes did not necessarily paralleled those in the ordinary codifications, for both kinds of

[159] See Article 170 of the 1886 Colombian Constitution, as well as Article 13 of the 1857 Mexican Charter.

[160] See additionally: *Código Militar Expedido por el Congreso de los Estados Unidos de Colombia de 1881* (Bogotá: Imprenta de T. Uribe Zapata, 1881), especially its "Libro Quinto: Justicia Militar." For Mexico, see: *Código de Justicia Militar de los Estados Unidos Mexicanos, expedido el 16 de Septiembre de 1892* (México: Miguel Macedo, 1893), in particular Articles 1-5 and 114-118.

codes dealt with different actors, actions, and circumstances. Such differences are particularly evident in the ways in which Military Codes in Mexico and Colombia defined and classified the crimes of treason, rebellion, and sedition. Out of these three offenses, only treason was subject to a definition relatively similar than in the ordinary codes. Rebellion and sedition, on the contrary, involved a marked military tone that, in most cases, had little to do with the political offenses reviewed above.

The Mexican Military Code understood treason exclusively under the perspective of a foreign or international war. Article 1048 defined as traitors all members of the military that supported in any way the nation's external enemy. This support could consist on changing sides; surrendering fortresses, military posts, ships, and weapons to the enemy; destroying roads and telegraphic lines in order to favor the invader; spying; and guiding foreign expeditions in national territory; releasing war prisoners; and even inviting others to commit the crime. Death was the penalty for all cases of military treason, with no exceptions or mitigating conditions of rank and degree of involvement.

Colombia's military justice, on the contrary, conceived military treason under two different yet complementary perspectives. To the Code, treason could take place whether in an international war or during an internal rebellion against the nation's government. In either of these cases, according to Article 1645, traitors were all members of the military that switched allegiance, maintained correspondence with the enemy –external or internal–, helped their military operations, and protected them during actions of war. Additionally, Article 25 defined a supplementary series of acts of "high treason," all of them referring to circumstances of internal conflict. Such actions included attempting to overthrow the legitimate government; trying to dissolve the Congress or block their meetings; attacking

public officers and employees, and even hindering the performance of their constitutional functions. To the Colombian Criminal Code, these offenses represented, basically, acts of rebellion. Nevertheless, under the perspective of military justice, they had more serious implications –they were acts of treason. Although the Code, enacted in 1881, prescribed for traitors up to ten years of prison or exile, the later Constitution of 1886 established the death penalty as a possible punishment for serious cases of treason during foreign war (Art. 29).

Both in Mexico and Colombia, military definitions of rebellion and sedition tended to be less political than in the ordinary Criminal Codes. This de-politicization was particularly marked in the Colombian case, where treason already represented the ultimate political crime for members of the military. Rebellion and sedition made part of a same criminal category, and only described different degrees of a same offense: military insubordination. To the Code, sedition was a military uprising with the aim of demanding anything or rejecting an order by using threats and manifestations of resistance (Article 1638). Rebellion merely implied not following orders, or taking up arms without authorization, or executing acts of violence against a superior's command (Art. 1639). As acts of insubordination, both crimes received penalties of ten years of prison for chiefs and leaders, and up to five years of the same penalty for their main accomplices (Art. 1640).

The Mexican case was slightly different. While the definition of sedition in Mexico's Military Code (Art. 879) pretty much paralleled Colombian prescriptions on the matter, the notion of military rebellion still entailed some degree of political content. Article 1040 of the Code defined it as a subtraction from obedience to the government and a hostile uprising with the aim of opposing a Constitutional precept or mandate, punishing

it with the death penalty. The code prescribed less drastic penalties, which were harsh nonetheless, for rebel rank-and-file soldiers, as well as for servicemen that merely invited others to rebel. In these cases, defendants could face up to ten years of prison (Arts. 1041 and 1042).

These prescriptions delimited the legal framework for the definition and punishment of treason, rebellion, and sedition as military crimes –or as crimes subject to the military jurisdiction. This does not mean, however, that they were the only definitions available in the military legislation for cases of international war, internal conflict, or military insurrection. At least in the Colombian case, the Military Code contained an additional series of articles elaborating on the notions of rebellion, insurrection, and civil war. These articles did not have the purpose of adding extra punishments to the penalties already reviewed. They only offered wider definitions of these concepts based on notions from the Law of Nations, with the intention of clarifying in which precise circumstances this extraordinary law could and should apply. The definitions were, to a certain extent, a legal development of the polemical Article 91 of the 1863 Constitution, under whose regime the 1881 Military Code came to life.

Drawing on the definition of the Law of Nations, Article 1335 of the Colombian Code understood "civil war" as the war that two or more parties, within the same nation, fought for the control of "supreme" (state) power. Each one of these parties, additionally, claimed for itself the exclusive right to rule the nation. It was, in short, an internal war between at least two enemies claiming sovereignty for themselves and denying it to the other. Rebellion, according to Article 1334, was another form of internal war, but one that did not imply a conflict for sovereignty. It was, instead, an insurrection that broke out in a

large portion of the nation and became a declared war against the legitimate government with the aim of subtracting from its authority and establishing an independent government. This notion of rebellion combined a war against governmental institutions with a secessionist conflict, and presupposed a major rupture in terms of territory and sense of nationality. The Article also ordered military officers in a war of rebellion to differentiate, in the rebel territories of the nation, between "loyal" and "disloyal" citizens. "Disloyal" citizens should be divided, at the same time, between citizens that, despite being "notoriously addicted to the rebellion," did not actively supported it, and citizens that, without taking up arms, voluntarily supported and helped rebels (Art. 1344). Rebellions, in this light, were also a matter of loyalty, not simply a matter of political or partisan rivalries or disagreements.

Insurrection, finally, was a less serious political movement that, nonetheless, involved the risk of becoming a more serious movement. Article 1333 defined the notion as "the uprising or armed people against the established government, a part of it, one or several laws, or one or several of its employees." The Article also specified that insurrections could be limited to mere episodes or armed resistance, or could lead to more threatening manifestations of collective political violence such as revolution. One way or another, they represented actions that were not only criminal in military terms, but also primordially political.

Conclusions: Criminal Regimes of Internal Enmity in Mexico and Colombia

The Criminal Codes of the Porfiriato and the Regeneration had several common points. They both responded to similar doctrinal and philosophical influences, understood crimes and penalties in a parallel fashion, and classified offenses in different but still relatively analogous ways. They also addressed political criminality and internal enmity through a common perspective. Crimes of a political nature represented serious attacks against society as a whole. Here, the nation, the state, the government, the Constitution, and the public order took the place of the "society" that these crimes put at risk. Offenses against it ranked from simple episodes of collective violence directed against public authorities to major acts of rebellion against the constitutional government, and even included attempts at cooperation with a foreign power to harm the nation's very existence. According to the principle of free will, political offenders and other internal enemies were rational subjects that freely and voluntarily acted against their own society. Their voluntariness, and therefore their attributes of criminality, could be measured and graded in correspondence with their degree of involvement in such attacks.

Penalties against internal enemies followed a similar gradation, corresponding not only to degrees of involvement and voluntariness, but also to levels of political threat associated to the attacks in question. It was a double hierarchy involving crimes and criminals alike. Penalties for treason (an attack against the nation) were harsher than penalties for rebellion (an offense against the government and the constitution); and these in turn were harsher than penalties for sedition, riot, or *asonada* (attacks against public authorities). Chiefs, ringleaders, plotters, and even conspirators were also at the top of this criminal hierarchy and, in consequence, faced the most severe penalties. High- and

medium-rank leaders or officers followed, conceived more as accomplices than actual authors. Supporters or collaborators were also penalized as active and voluntary enemies. Finally, at the bottom of this hierarchy, rank-and-file soldiers embodied the lowest degree of involvement and compromise, and therefore the minimum possible level of political threat. This is why, at least in the Colombian Code, simple soldiers were not considered accountable for purely political crimes. In all these cases, penalties served at least two different yet complementary purposes. On the one hand, they involved an element of vengeance and retribution, manifested in the imposition of death penalty or in the establishment of pecuniary penalties in cases of sedition. On the other hand, they encompassed a component of prevention and deterrence, evident in the penalty of prison as well as in the supplementary penalties of confinement, expatriation, or subjection to the authorities' surveillance.

Beyond these basic conceptions, the Mexican and the Colombian Codes defined and understood political crimes in a way that paralleled their respective constitutional prescriptions on the matter. Both Codes and Constitutions in Mexico and Colombia defined political offenses as actions that simultaneously attacked the government and the public order, performed and committed by enemies of the nation and the authorities. They also conceived them as actions that required an exceptional, if not extraordinary, legal treatment. Exceptionalities, according to the Codes, included the establishment of exclusive penalties and the prohibition of others, the notion that political crimes, even if designated otherwise, existed separately from ordinary offenses, and the premise that political offenders required their own carceral spaces.

The legal treatment of political criminals according to these codifications went beyond these commonalities. Both in Mexico and Colombia, criminal codes reflected a universe of crimes and criminals much richer than the one described in the previous chapter. Episodes of "internal commotion" and other alterations of internal order and peace materialized in concrete offenses clearly differentiated and hierarchized: treason, rebellion, sedition, riot, and *asonada*. Additionally, each of these crimes encompassed a wide variety of possibilities that accounted for the myriad of ways in which criminal law in Colombia and Mexico conceived internal enmity. To the Codes, internal enemies were not "rebels" or "seditious" in abstract. Modalities of internal enmity were much larger and full of small divisions and differentiations. An internal enemy could be a rebel ringleader, an officer in a rebel army, an insurrectional leader, or the head of a riot. Authors and instigators of consummated rebellions were also internal enemies, in the same way that plotters, conspirators, and supporters of failed or dissolved movements were. Somebody that, without being an actual or active rebel or insurrectionist, showed some degree of sympathy for "more active" internal enemies became an internal enemy too. Helping rebels with men, weapons, money, supplies or means of transportation represented therefore acts of internal enmity as well. The same applied to those that, independently of their involvement with other political enemies, propagated "subversive maxims," gave seditious speeches, or attacked through written publications the government and the Constitution.

There was a subtle but important difference in the ways in which the two codes conceived internal enmity, nonetheless. The repertoire of possible actions defining internal enemies tended to be more diverse in Colombia than in Mexico. While crimes against "public order" in Mexico did not properly entail acts of internal enmity, in Colombia these

offenses involved a first –yet minimal– degree of challenge to public authorities. Sedition and military treason also comprised clearer and more evident acts of internal enmity than in the Mexican case. In addition, the Colombian code indirectly extended the crime of rebellion to a series of subsidiary offenses penalizing seditious speeches, "subversive" publications, and even pieces of political satire. This particular extension of the notion of political enmity involved major legal and political implications in the Colombian case, for it drew a very tenuous line between dissident journalists and rebels. The treatment of liberal writers and newspapers during the 1880s and the 1890s would offer a myriad of examples about the consequences of such parallelism. All in all, Colombia's 1890 Criminal Code, like its 1886 Constitution, seemed much more concerned than their Mexican counterparts with possible future scenarios of political conflict and internal turmoil.

Both Codes, finally, provided governments with a wide array of options for responding to episodes and manifestations of political enmity. Although at first glance these possible responses seemed clear, systematic, and carefully graded, they were actually marked by ambiguity, overlaps, and grey areas. Much of this ambiguity stemmed from the existence of two simultaneous regimes for the definition and punishment of internal enmity. Like their respective Constitutions, Colombia's and Mexico's criminal codes referred to conducts –conceptually– equivalent to political crimes in an abstract way, with no precise reference to a specific series of well-determined offenses. The parallelism between dispositions on political crimes and prescriptions on offenses such as treason, rebellion, and sedition, led to the configuration of two separate regimes of crimes and penalties for the prosecution and punishment of internal enemies. On the one hand, there was the special regime that both Codes outlined for political crimes, containing penalties

and proceedings but no specific offenses –or formal, explicit criminal categories. On the other hand, there was the ordinary regime of those concrete crimes like rebellion, sedition, and others that, despite their evident political nature, did not formally represent political offenses. Connections, differences, and boundaries between one regime and another were unclear, and the Codes established nothing in this regard. What mediated between these two regimes was yet another grey area for legal interpretation. It was an obscure sphere in which internal enemies could be either common or political criminals depending on the circumstances, and where the application of the extraordinary regime of political offenses depended exclusively on discretion.

Additional sources of ambiguity had to do with the criminalization of non-violent acts of political dissent, like in the Colombian case, and with the often tenuous differentiation among "purely political crimes," "related" crimes or *delitos conexos*, and "purely common offenses." While the distinction seemed clear on paper, in practice it was almost impossible to trace a formal line between political and non-political crimes, as the next chapters will show. With no precise indications for solving this confusion, the Colombian and Mexican Codes ended up charging governments and other political, judicial, and administrative authorities with the responsibility of deciding which crimes were political and which not. During the Porfiriato and the Regeneration, these uncertainties would work as a gray area that allowed authorities to shape and reshape the sphere of political crimes at their convenience, without contradicting legal or constitutional prescriptions on the matter. The practice of processing and punishing rebels as common criminals, bandits, and *malhechores*, common in both countries during the period, would be one of the most striking outcomes of such reshaping.

Drawing on similar philosophical and doctrinal influences, the Criminal Codes of the Porfiriato and the Regeneration understood political criminality and internal enmity in a relatively similar manner. There were differences, of course, especially in the ways in which they classified and criminalized actions of internal enmity and other offenses of a political nature. Beyond these basic similarities and differences, both codifications ended up producing a common outcome of great importance for this study: the production of simultaneous regimes for the definition and treatment of political enmity. These regimes coexisted in a parallel fashion, but their connections and boundaries were never clear. This unclear parallelism shaped a framework of legal responses to political criminality in which governments and public authorities, not criminal codes, had the last word regarding what political offenses were and what kind of punishments they deserved. When it came to acts of internal enmity, the theoretical consistency and predictability of these codes gave way to the uncertainty of discretion. As the next chapter illustrates, these ambiguities, as well as their legal effects, were the center of multiple debates and doctrinal developments during the period.

IV. CHAPTER 3. DEFINING AND PUNISHING POLITICAL CRIMES: LEGAL, DOCTRINAL, AND LEGISLATIVE CONVERSATIONS

The legal experiences of rebels and other political dissidents in Mexico and Colombia were not exclusively the result of constitutional and criminal law prescriptions. They were also indirect, remote products of a series of legal conversations concerning the nature of political crimes and the most appropriate ways to treat them. These conversations were much more than simple theoretical or doctrinal elaborations disconnected from the legal and political lives of individual and governments. Many of them influenced legislation and legal change, and therefore played a role in the shaping of the relationships between citizens and state as well as in people's experiences as legal and political actors. Broadly speaking, the stories of Flores Magón and many others, their interactions with Mexican and Colombian authorities, and their fate as political criminals also carried the imprint of these conversations and their impact on legislation.

Constitutional and criminal law prescriptions on political criminality illustrate only a fraction of the overall framework for the definition and treatment of political offenses in Mexico and Colombia during the period under study. The conversations that accompanied the making and enactment of such prescriptions are equally important for understanding how governments during the Porfiriato and the Regeneration responded to political crimes and why they reacted the way they did. This chapter reconstructs and analyzes some of these conversations, with the aim of illustrating the panoply of legal and doctrinal arguments, positions, and perspectives that helped shape, in both countries, the framework

in question. It shows that many of the norms reviewed in previous chapters were the product of multiple reflections about the criminal nature of these offenses, the distinction between political and ordinary crimes, and the best ways of punishing political offenders. What were the major legal and political concerns behind these reflections? What sorts of legal and doctrinal inspirations or influences did they involve? What do these conversations reveal about the ways in which Mexican and Colombian jurists and lawmakers understood the limits of state power, the boundaries of "legal" political dissidence, and the legitimacy of specific modalities of political dissent? These are some of the main questions that this chapter aims to answer.

A series of legal essays, studies of legislation, and constitutional and legislative debates between the 1850s and the 1910s comprise the main sources of this chapter. Section one explores how these reflections and discussions understood political criminality, defined political crimes, and differentiated them from common offenses. Section two analyzes how jurists and lawmakers argued about the need for defining a special, separate regime of penalties for political crimes and criminals. Section three analyzes how constitutional debates on extraordinary powers in Mexico and Colombia addressed and perceived the nature, criminality, and punishment of political offenses. Section four offers, by way of conclusion, a general perspective of the multiple ways in which these debates and conversations assessed the nature of political crimes and its legal treatment throughout the period.

Overall, the chapter argues that conversations and reflections about the legal and constitutional treatment of political offenses encompassed in Colombia and Mexico a wide variety of positions and perspectives about what political crimes were, what made them

criminal, and what made them political. Not all these understandings agreed on the attribute of criminality attached to these offenses, or on the sort of legal responses they demanded from governments, constitutions, and criminal laws. While some jurists and lawmakers conceived of rebels, revolutionaries and other "dangerous" dissidents as enemies of society and the nation as a whole, others merely perceived them as political fanatics led by misguided notions of "justice" or "patriotism." There were also all sorts of alternative interpretations in between both extremes. Many of these discussions revolved around the differences between common and political crimes and the distinctions between "harmless" and "dangerous" political dissidence. The lack of clarity –and consensus– about the limits between these categories would give way to a lack of certainty with serious political and legal consequences during the Porfiriato and the Regeneration.

Defining and Differentiating Political Criminality: Assessing the Nature of Political Offenses

The vague nature of political crimes in Mexican and Colombian legislation did not go unnoticed among legislators and other legal experts throughout the period. Aware of the legal and political consequences of an imprecise definition of political criminality, some experts and lawmakers would make the effort to propose clearer answers to the question about what political crimes were. Similarly, the outbreak and proliferation of internal conflict in both nations would force legislators and others to reflect more thoroughly about the limits between common and political offenses, as well as about the conditions under which political crimes remained strictly political. Legal essays and journals, studies of current legislation, and even congressional initiatives became spaces of reflection and

debate about these matters. Such reflections shed light on the different ways in which legal experts tried to solve the ambiguities explored in the previous chapters. More importantly, they illustrate the ways in which these legal actors conceived and understood political crimes, not only as criminal constructs but also as political acts. They show as well the doctrinal and intellectual foundations of their conceptions.

The Mexican Experience: From 1874 to 1912

Three basic preoccupations stimulated these reflections in the Mexican case. The first one had to do with the penalties that the Constitution and the Criminal Code prohibited for political crimes. The second referred to the separation between common and political offenses. The third one, finally, linked itself to a question about the criminal nature and punishment of *delitos conexos*. A first position in this regard comes from a study on the 1871 Criminal Code by the jurist José María Lozano, published in 1874. Reflecting about the article that forbade capital punishment for political crimes, Lozano pointed out that, since the Code did not clarify which crimes were properly political, the precise definition of these offenses should be subject to further legislation. This future legislation had to be very cautious at excluding those common offenses committed "under the shadow of a political plan or idea." Neither robbery, assassination, kidnapping, arson, or rape had to do "with a political plan aiming to change either current institutions or the prevailing legal order," Lozano maintained.[161]

[161] Lozano, *Derecho penal*, 445.

The distinction between political and "other" crimes was complicated, especially in times of turmoil and war, the author acknowledged. In such moments, he explained, people resorted without discernment to all elements that could further the victory of their cause. In a revolution, for instance, the necessity of maintaining such elements forced chiefs and ringleaders to tolerate all sorts of crimes and abuses. In such circumstances, it was also common that "lost people," following "their criminal instincts," plunged franticly into all classes of disorders and crime, considering the revolution "a license of impunity for all their excesses." Using revolution as an excuse for crime was inadmissible, Lozano argued. Any political banner, he concluded, "could not conceal under its cover such debauchery," and justice had always the faculty to make those responsible accountable for such criminal conducts.[162] To the author, the distinction between common and political crimes was basically a differentiation between illegitimate and legitimate acts of internal war. Political crimes were violent acts of internal enmity directed against the government or the legal order. They always entailed a clear political purpose, and were in tune with the purposes of the conflagration. Common crimes, on the contrary, were simple acts of violence that, despite taking place during the conflict, at no point entailed a legitimate political end or a goal actually linked with what was a stake in war.

A second, somewhat different position dates from 1880. In his study of the same Code, the jurist Antonio De Medina y Ormaechea justified the application of more lenient penalties to political offenders on the grounds that political crimes were, somehow, "less criminal." Certainly, he acknowledged, sometimes political criminals acted out of "greed

[162] Lozano, *Derecho penal*, 445-446.

for power," "personal hatred," "humiliated self-love," "a desire for prosperity," or "any other debased opinion." Nonetheless, there were other times in which they sacrificed themselves "for their convictions, a blind political fanaticism [or] mere fidelity to the principles in which they believe." They could also act on the grounds of "a misunderstood notion of public wellbeing or a misconception on matters in which public opinion hesitates."[163] Such considerations were reasons enough for separating political criminals from the rest of offenders, and for penalizing them with more "humanitarian" penalties than in other cases, the author affirmed. Unlike Lozano, who understood political criminality from a war-centered perspective, Medina y Ormaechea conceived these offenses mostly as "crimes of opinion." Political crimes were different –or "less criminal"– not because they represented legitimate acts of internal warfare, but because they represented extreme, ill-fated manifestations of political beliefs and convictions.

The "nobility" of political crimes, nonetheless, did not cover the bulk of the actions that political offenders could commit. Like Lozano, Medina y Ormaechea believed that acts of robbery, plundering, arson, and other common crimes perpetrated by political criminals still deserved punishment as common offenses. An episode of rebellion or a sedition could involve both political and common crimes, but this did not mean that they belonged to a similar sphere of criminality, the author claimed. Paraphrasing renown French jurist and legal historian Joseph Ortolan, Medina y Ormaechea argued that although common crimes were natural outcomes in a political struggle, they were different from it. Their nature, in consequence, remained unaltered, and they were still subject to prosecution

[163] *Código Penal Mexicano: Sus motivos*, 731.

like any other common crime. They were, no matter what, separate crimes ("*delitos aparte"*), ordinary offenses whose perpetration in political conflicts should be condemned by all political parties. There was no other possibility, the Mexican jurist explained: leaving unpunished common crimes associated to political offenses would encourage *fascinerosos* (rogues, bandits) to proclaim a political principle anytime they wanted to get reduced sentences or lenient penalties for their crimes.[164]

The revision of the 1871 Criminal Code after the fall of the Porfiriato gave Mexican lawmakers another chance of discussing the question. It was 1912, Díaz had fled to exile, and Mexico was in the early stages of a decade-long civil war. Within such a context, it was natural that questions about the criminalization of rebellion and civil warfare resurfaced and called the attention of revolutionary legislators. Revising the 1871 prescriptions on rebellion and its *delitos conexos*, Roberto Esteva Ruiz offered an interpretation of the relationship between common and political crimes that somehow differed from earlier understandings. Esteva Ruiz, unlike Lozano and Medina y Ormaechea, did not insist on a clear-cut separation between the two types of criminality. To him, the problem did not lie in the criminalization of all non-political offenses, but in the identification of specific ordinary crimes that were actually inadmissible as part of a rebellion. To him, it was impossible to establish, in practice, a precise and comprehensive separation between political and non-political actions. Rebellions were similar to episodes

[164] *Código Penal Mexicano: Sus motivos,* 732.

of international war: they always implied an element of violence. Violence was, in fact, essential to the purposes of a rebellion, and therefore could not be separated from it.[165]

There were other acts inseparable from rebellion, in Esteva Ruiz's perspective. Besides interpersonal violence, a rebellion almost always involved actions commonly considered as political offenses: looting, arson, murder, and other "extreme" acts. To him, it seemed that there had been, for years, an agreement about what to do with these "other" actions: they were offenses that increased penalties for rebellion and counted as cumulative offenses. The problem with this traditional perspective, Esteva Ruiz pointed out, was that there was no rebellion in which these "other" actions were merely optional. In such circumstance, what was the point of re-criminalizing rebels for acts that were innate to a rebellion? The only solution in this regard, he maintained, was to make the same distinction that International Law made in cases of international war: one between violent acts demanded by the very needs of the war, and simple actions of vandalism.[166] The core problem, then, was identifying in which circumstances these acts could and could not be considered as "aggravating situations."

How to trace a line, then, between "connatural" and "aggravating" acts of rebellion? To Esteva Ruiz, the solution was, again, in the adoption of prescriptions from International Law. Mexican legislation should treat rebellions like international wars and, in consequence, submit rebels to the laws of war, adopting its distinctions between

[165] Secretaría de Justicia, Comisión revisora del Código Penal, *Trabajos de Revisión del Código Penal: Proyecto de reformas y exposición de motivos. Tomo II* (México: Oficina Impresora de Estampillas, 1912), 360.

[166] Secretaría de Justicia, *Trabajos*, 361. Esteva Ruiz's invocation of International Law was based on Article 23 of the 1899 Hague Declaration.

"legitimate" and "illegitimate" acts of warfare. The works of the Italian jurist Pascual Fiore offered useful clues about what international legislation permitted and forbade in those circumstances, Esteva Ruiz argued. Fiore proposed, simply, to criminalize all acts of violence "that increased for no reason the enemy's suffering," including the use of weapons forbidden by the Law of Nations and war tactics that needlessly aggravated the suffering of non-combatants.[167] Like Lozano in 1874, Esteva Ruiz problematized political criminality from a war-focused perspective and underscored the problem of distinguishing between legitimate and illegitimate acts of war. This distinction, nonetheless, did not point to an overall criminalization of all "non-political" acts of warfare, but to a more selective illegalization of "extreme" war actions. The return of the war-focused perspective can be interpreted as a natural outcome of the generalized civil war raging in Mexico since November 1910.

The Colombian Case: Between 1885 and the Post-Thousand Days Era.

Reflections in the Colombian case were less concerned with the limits between common and political crimes, and more linked to questions regarding the legal existence of political offenses and the entities in charge of defining them. Colombian jurist Demetrio Porras's essay *De la Extradición y los Delitos Políticos*, published in 1885, illustrates some of the questions and arguments surrounding these matters during the early years of the Regeneration. Writing about what "political crimes" meant for extradition purposes, Porras claimed that it was impossible to define political offenses through legislation. Laws were

[167] Secretaría de Justicia. *Trabajos*, 361-362.

meant to be fixed and stable, while political crimes were mutable by nature –their nature was always variable, depending on time and place. Certainly, it was possible to say what they were and represented as a criminal category, he explained. European legal thinking provided several examples of these definitions. To J. Stuart Mill, for instance, political crimes were the ones committed during an internal or external war, or during an insurrection or political commotion. To the Belgian Jacques J. Haus, they represented attacks against public order. Likewise, to the Spanish Joaquín Escriche, they entailed crimes against the Constitution, conspiracies against the nation's institutions, and rebellions against its legitimate powers.[168] The problem, thus, was not in the definition of the criminal category, but in its translation to concrete legislation and specific sets of crimes and penalties.

To Porras, the major difficulty for defining political crimes through legislation – especially in cases of extradition– lays on the question about who should determine the "political" nature of these offenses. It could not be the Executive power, for it was not in a position of deciding if rebels acted in accordance with an alleged "right" or, on the contrary, were simple disturbers of public peace. The Legislative was similarly unable to decide on the nature of these crimes, given their mutable nature. The Judicial power was, then, the one in charge of deciding on the matter, not through general rulings but deciding case by case, as suggested by the Italian jurist R. Fiori.[169] Judicial decisions in this regard still had to take into account the principle that common crimes did not represent political offenses

[168] Demetrio Porras, *De la Extradición y los Delitos Políticos* (Bogotá: Imprenta de Vapor de Zalamea Hermanos, 1885), 9 and 11.

[169] Porras, *De la Extradición*, 10.

despite their connections with political actions, warned Porras. No political principle could excuse or legitimate the commission of common offenses. "The influence of a political passion," the author pointed out, "cannot modify the nature of the punishable act, because this political passion does not exclude it from the overall rule: the [criminal] fact will always remain the same."[170] This notion was in tune with the most recent doctrinal developments in England, France, Belgium, and Switzerland, Porras pointed out, and had the support of jurists such as the Italian Emilio Brusa.[171]

The distinction between common and political crimes in a rebellion, an insurrection or a similar movement was not always easy to establish, recognized Porras. Political criminality was, in its pure state, a reflection of the "hallucinations of a sincere and ardent patriotism," a manifestation of an "outraged public consciousness" turned against tyrannical governments. Yet, in practice, it was almost impossible to find these "pure" expressions of political crimes. Frequently, the author wrote, "we see [rebels] carried away by unbridled ambitions […] or feelings of hate and revenge." This was particularly true in the Colombian case, where most revolts were the making of a few ambitious rogues and a number of "wayward, malcontent, and unruly" individuals, exclusively interested in exploiting working and peaceful people.[172] In such circumstances, a distinction with legal effects between common crimes and political offenses was more than necessary.

Further reflections and debates on the nature and definition of political crimes took place right after the end of the Thousand Days. The legal dilemmas brought about by the

[170] Porras, *De la Extradición*, 13.

[171] Porras, *De la Extradición*, 10 and 13-14.

[172] Porras, *De la Extradición*. 12 and 13.

reactions of President Sanclemente and Vice-President Marroquín to the Liberal rebellion encouraged not only discussions on the matter, but also attempts at reforms of the Criminal Code. A first example of these post-civil war discussions comes precisely from these attempts. In October 1903, former President and now Senator, Conservative Miguel A. Caro, presented a draft bill reforming the 1890 Criminal Code. His proposal focused on a specific point: the lack of clarity regarding the definition of political crimes, and the alleged "voids" existing in both Constitutional and Criminal prescriptions concerning these offenses. To Caro, the idea that these voids actually existed, as well as their acceptance as a natural element in Colombian legislation, had proven wrong and dangerous. It was on the grounds of such voids that the Executive, during the war, had seized the power to decide about the criminal nature of the rebellion and opted for treating rebels as common criminals. To the Senator, the Executive had acted on the basis of a false assumption, for political crimes did actually exist in the legislation. The fact that there were no special law defining what political crimes were did not mean that the government had the faculty to arbitrarily define them or to treat them as common offenses.[173]

To Caro, it was indeed false that Colombian legislation had not defined political crimes. The Constitution mentioned political offenses at least three times: in the prohibition of death penalty for political criminals, and in the two articles regulating the administration of *indultos* and amnesties for –and exclusively for– these crimes. That was also the case of the Criminal Code, particularly in its prescriptions about the granting of state mercy for "offenses against public order" (Arts 110-116). In consequence, Caro concluded "political

[173] Miguel Antonio Caro, *Discursos y otras intervenciones en el Senado de la República, 1903-1904* (Bogotá: Instituto Caro y Cuervo, 1979), 751 and 752.

crimes" and "offenses against public order" were synonyms. The 1890 Code, thus, did define political crimes.[174] The problem, to the Senator, was not one of definition, but of lack of clarity in the legislation. His draft bill, partially based on the works of Ortolan, proposed that the Criminal Code formally established as political offenses the crimes of rebellion and sedition, as well as the "minor" acts of treason established in Articles 153 and 156. Along the same lines, the Code also should consider "political" any other crime that directly harmed the state's rights regarding its social and political organization.[175]

Caro's proposal went even further, in a clear response to the government's legal maneuvers during the Thousand Days. The bill also established that the Executive, even in use of extraordinary powers, did not have the faculty to reform the existing criminal legislation, define crimes, or decide on the criminality of offenders. Finally, it proposed that, in cases of rebellion, sedition, or civil war, the law should treat *delitos conexos* as political crimes as well, as long as they did not represented violations to the "civilized practices" of war. Violations included execution of parliamentarians and war prisoners, assassinations motivated by hatred or personal vengeance, and pillage for mere monetary reasons. The assassination of the President, even if it responded to political goals, should also be considered an ordinary offense.[176] Caro, like the rest of the legal thinkers considered in this section, understood rebellions and other episodes of internal conflict as events involving both political and non-political crimes. Yet, like the Mexican lawmakers of 1912, he did not call for the outright criminalization of the latter.

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[174] Caro, *Discursos*, 752-753.

[175] Caro, *Discursos*, 753.

[176] Caro, *Discursos*, 754.

The interpretation by Caro was by no means the only perspective circulating among Colombian legal experts on this sensitive matter. A debate taking place in the legal newspaper *Anales de Jurisprudencia* between July and October 1903 illustrates two other "alternative" positions on the question of whether or not political crimes existed in the legislation. The debate revolved around an essay by Eduardo Rodríguez Piñerez, "*Facultades del gobierno en tiempo de guerra.*" A study of emergency powers in Colombia since the 1830s, Rodríguez Piñerez's work examined the government's response to the Thousand Days and came up with a conclusion that contrasted with Caro's arguments. Since there were no laws defining political crimes before the outbreak of the war, the Executive had all the power to decide if the rebellion was a political crime or not. It was a principle proclaimed by the Constitution in its Article 121. In this light, Rodríguez Piñeres emphasized, the punishment of the Liberal rebellion as a common crime had not been an arbitrary act but merely the exercise of a formal constitutional provision. There was no previous law that forced the government to treat rebels as political offenders, for there were no laws defining what political crimes were. There was no obligation to consider as "political" crimes that the law had not previously defined as such. The Executive power, in consequence, was free to treat those crimes as common if it wanted to.[177]

The editors of the journal did not share Rodríguez Piñerez's position. One of them, Vicente Olarte Camacho, reviewed the essay and concluded that its author was wrong. To Olarte, Rodríguez Piñerez relied on the false assumption that there were political crimes in the Colombian legislation. Crime was "a voluntary and malicious violation of a law,"

[177] *Anales de Jurisprudencia: Órgano de la Sociedad Colombiana de Jurisprudencia*. Tomo VI, Serie VI, Entregas 55 y 56 (1903), 103; and Tomo VI, Serie VI, Entrega 57 (1903), 173-174.

reminded Olarte. If there was no law to violate, therefore there could not be a crime. That was precisely what happened to political crimes in Colombia: there were no political crimes because there was no legislation on them. Without a previous legal definition and classification of political offenses, then, it was impossible to talk about actual political crimes.[178] This did not mean, as Rodriguez Piñerez wanted to believe, that the Executive could issue norms in the absence of formal legislation on the matter. Neither was it authorized to simply define rebellion as a common offense and therefore punish rebels with the death penalty. This represented not only an erroneous interpretation of the nation's legislation, but also a contravention of the basic principles of the *ius gentium* regarding the treatment of combatants in a civil war, Olarte concluded.[179] His was an "essentialist" position that denied from the beginning any legal elaboration on the base of the grey areas of legislation on political crimes. On the contrary, Porras, Caro, and even Rodríguez Piñerez maintained a more "interpretive" perspective, aiming to circumscribe and delineate political offenses on the grounds of the existing legislation, its voids, and its ambiguities.

Reflections and debates on the nature of political criminality and the definition of political offenses shed light on at least three crucial aspects of criminal law and doctrine in Mexico and Colombia during the period. First, they show that the ambiguity of constitutional and criminal prescriptions on political crimes did not go unnoticed. Such ambiguity, in fact, became the center of a series of discussions about the possible meanings of Constitutions and Criminal Codes, as well as about the limits of state authority in matters of legislation.

[178] *Anales de Jurisprudencia*, Entregas 55 y 56, 103-104.

[179] *Anales de Jurisprudencia*, Entrega 57, 175-176.

Second, they illustrate the different legal and political concerns shaping reflections on civil warfare, rebellion, and political criminality. Preoccupations about the limits of state power, "legitimate" and "illegitimate" acts of war, judgement and punishment of ordinary offenses, and even the legitimacy of rebellion as a political act, played a major role in structuring these discussions. Finally, they evidence the extent to which the experience of civil warfare impacted legal and doctrinal developments in both countries, as illustrated by the tone and contents of these reflections after the Thousand Days and during the Mexican revolution. Certainly linked to national circumstances and concerns, these discussions took place within a broader, Atlantic doctrinal framework, involving constant allusions to International Law as well as references to recent and contemporary European legal thinkers. Such broader framework will also be present in the reflections about penalties that the next section addresses.

Towards an Exceptional Regime of Penalties for Political Crimes

The regime of penalties for political offenders represented a second front of legal and doctrinal reflection regarding constitutional and criminal prescriptions on political criminality. Whether in academic essays, legislative sessions, or constituent assemblies, legal experts and lawmakers in Mexico and Colombia widely discussed how criminal laws should punish political offenders and which penalties were better suited to the nature of political crimes. Taken together, these reflections by both Mexican and Colombian jurists and legal thinkers hint at their agreement not only on the "special" character of political criminality, but also on the fact that it deserved a separate and "exceptional" regime of punishment. Although many of these discussions revolved around an analogous set of

penalties, reflections in each country tended to focus on different punishments and legal responses. Such differences not only corresponded to the particularities of constitutional and criminal law in each nation, but also involved specific reactions to concrete political conjunctures.

Common Preoccupations: From Capital Punishment to Exile

Death penalty, as well as punishments involving exile, confinement, and other similar sanctions, called simultaneously the attention of Mexican and Colombian legal experts and lawmakers. In both cases, reflection on these matters involved relatively similar arguments: Capital punishment for political crimes was a barbaric penalty that deserved to disappear. In contrast, penalties such as expatriation, confinement, and relegation were less severe sanctions that actually fit the nature of political crime and effectively neutralized the threats that political criminals posed.

Both Colombian and Mexican legal thinkers drew on similar arguments for supporting the constitutional abolition of the death penalty for political crimes. For instance, they surfaced during the intervention of Mexican Alberto Vieytez before the legislature of Querétaro in 1868. As part of the discussions of a draft bill that eliminated the death penalty for political crimes in the state, Vieytez argued against such penalty. "Death penalty for political offenses," Vieytez affirmed, "is the coldest and less noble revenge of the victor over the vanquished, the legalized aggression of brothers against brothers […], the funerary limit that prevents the union of all Mexicans."[180] Supporting

[180] Alberto Vieytez, *Proyecto de ley sobre abolición de la pena de muerte, puesto a la Cámara Legislativa de Querétaro* (Querétaro: Imprenta de Luciano Frías y Soto, 1868), 4.

Vieytez's arguments, provincial congressmen Angel M. Domínguez y José Bocanegra maintained that punishing political offenders with the death penalty "made us judges of our own causes." It was "the abuse of the right of the strongest," and a penalty that did nothing for convincing rebels that the state was right. Additionally, the congressmen pointed out, political criminality was a variable phenomenon, since public opinion was always changing: "yesterday's executed is today's hero; today's hero might be tomorrow's executed […]. In this permanent change of opinions, who is actually right? Those who execute? Those that decree an ovation? Perhaps nobody is right, but with no doubt the ones that executed have no way of redressing their work."[181] Constitutional assemblies in Colombia and Mexico also involved deliberations on the matter. In Colombia, the 1885 delegates would reformulate the terms of the original article prescribing the abolition of capital punishment for political offenses. The article's original version stated that the law would not recognize as "political" the crimes of treason, murder, arson, and plundering, even if they had political aims.[182] The final version of the article would maintain the restriction for political crimes without including the original exceptions. Discussions were more complex in the Mexican case. Some delegates were particularly concerned with the possible effects of an unclear distinction between political crimes and some of the other offenses that remained subject to the penalty. That was the case, for instance, of Delegates Francisco Zarco and Ponciano Arriaga.

Zarco's and Arriaga's preoccupations had to do with the risk that future governments applied the notions of "traitor" and "*salteador*" to prosecute political

[181] Vieytez, *Proyecto de ley*, 10.

[182] *Antecedentes de la Constitución*, 121.

offenders and thus legitimize their execution. Zarco, for instance, stated that the principle that death penalty applied only to traitors was problematically vague, especially considering that, in the nation's history, "traitor" was a common epithet often used in political and partisan recriminations. It was necessary, thus, to clearly define what treason was, and to limit the concept to cases of foreign invasion. Otherwise, "partisan hatred would make illusory the abolition of the death penalty for political crimes."[183] The notion of "bandit" entailed a similar problem. To Santa Anna, Zarco reminded, the Ayutla revolutionaries were bandits. Had they lost, they would have been hanged under such a misleading charge. [184] Arriaga also feared that the term "traitor" could be subject to further political instrumentalization by the government, and considered that nothing prevented authorities from abusing the term "bandit" in times of civil war. To him, the Constitution required more precise terms, like "treason in foreign war" instead of simple "treason," or another, "less inconvenient" term than "bandit."[185] Arriaga's arguments would finally find echo in the Assembly, and his clarification concerning the crime of treason made it to the final version of the Constitution.

The aforementioned views remained around for decades. In 1897, for instance, Colombian law professor Antonio J. Iregui explained that capital punishment for political offenses was a particularly nefarious penalty, for it represented more an action of political vengeance than an actual act of justice. To him, it was nothing but a "weapon of extermination" that only benefitted the "despotism and intransigence of the party in power

[183] Zarco, *Historia – Tomo III*, 463.

[184] Zarco, *Historia – Tomo III*, 463-464.

[185] Zarco, *Historia – Tomo III*, 464.

against its defeated adversary."[186] That same year, the provincial legislature of Nuevo León, Mexico, revising the terms of Article 23 of the 1857 Constitution, considered that, although the article required some modifications, its prescription about political crimes should remain intact. Political criminality involved acts whose criminal nature escaped "the ordinary rules of criminology," members of the Constitutional Commission in the legislature's high chamber (*Senado*) argued. The criminality of political offenders was also especial, for it depended on the observer's point of view: for some people, they were "execrable villains;" for others, "heroes or martyrs." In addition, as per members of the Commission, granting the government the right to punish political offenders with the death penalty meant "turning justice into a partisan weapon" and an "instrument of terror and personal vengeance."[187]

Taken together, the legislators of Queretaro in 1868, their peers from Nuevo León in 1897, and the Colombian Iregui, based their arguments on three essential points: first, the "special" character of political crimes; second: the "relative" criminality of political offenders; and third: an accepted need for limiting the state's power of retribution against dissidents.

On the whole, constitutional preoccupations with the death penalty and political crimes in Colombia and Mexico were linked to a fundamental concern about the connections between common and political offenses. This time, it was not a question concerning the criteria separating the two criminal categories. It was, rather, apprehension

[186] Iregui, *Ensayo*, 30.

[187] Legislatura de Nuevo León, *Dictamen de la Comisión de constitucionales de la Cámara de Senadores sobre la iniciativa de reforma del artículo 23 de la Constitución Federal* (México: Imprenta del gobierno, 1897), 24.

over the legal and political consequences of merging common and political crimes at the time of administering capital punishment. This unease entailed two completely different preoccupations. In Colombia, it was a concern about common crimes being exempt from the death penalty on account of their political façade. In Mexico, on the contrary, it was an anxiety linked to the use of notions of common criminality for legitimizing the use of "non-legitimate" penalties for political offenders. Such concerns evidence the fact that the separation between common and political offenses was not only a matter of conceptual differentiation, but also a distinction with crucial legal effects.

Less discussed in the legal literature than capital punishment, penalties of exile, expatriation and the like also represented a common concern in Colombia's and Mexico's legal thinking. Discussions about these penalties would entail additional conversations about the nature of political crimes, the limits of state retribution *vis-à-vis* internal enmity, and the best ways of dealing with "illegal" political dissidence. Both Colombian and Mexican legal thinkers considered these penalties the most appropriate and effective responses to political criminality. As the Colombian Demetrio Porras wrote in 1889, they were punishments that "alienated culprits from the theater of their intrigues and made them incapable, as much as possible, to bring to fruition their fratricide projects."[188]

On the whole, the penalties in question included expatriation in its different meanings –*extrañamiento*, *expatriación, exilio,* or *destierro*–, confinement (*confinamiento*), and relegation (*relegación*) or subjection to the authorities' surveillance. Expatriation was the most serious penalty of this group, and it implied the offender's

[188] Porras, *Proyecto de código penal*, cxxxvi.

removal from the nation's territory. According to Porras, this was a common penalty against "disobedient ecclesiastics" and major enemies of public order and peace. In the latter case, he explained, the penalty was meant to fall primarily on rebel or revolutionary ringleaders, punishing them with removal from their milieus as a means to neutralize the political threats they posed.[189] Mexican legal thinkers seemed less enthusiastic regarding the effects of this penalty. According to the drafters of the 1871 Criminal Code, expatriation as a penalty was neither egalitarian not exemplary: not only did the experience of exile vary from person to person, but also people could not witness the expatriate's suffering and thus were unlikely to learn anything from it. It was, thus, an inconvenient penalty that could only work on rare occasions, mostly in cases of treason or rebellion, in which it represented the only way of maintaining public peace. Even in that rare and extreme case, the drafters maintained, this penalty should fall only on rebel chiefs and ringleaders.[190] That was also the opinion of the Mexican José María Lozano, who argued that exile only should apply to political criminals whose political prestige or military glory posed a serious risk to public peace.[191]

Confinement was a less drastic and, to some, more convenient way of dealing with political offenders. According to Lozano, confinement was a penalty that perfectly fitted the purposes of punishment regarding political criminality. Political crimes, to the Mexican jurist, required political penalties, and these, unlike ordinary punishments, did not

[189] Porras, *Proyecto de código penal*, cxxxv-cxxxvi.

[190] *Proyecto de 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* (México: Imprenta del Gobierno, 1871), xxx.

[191] Lozano, *Derecho penal,* 446.

have an expiatory purpose. The main goal of political penalties consisted merely in "putting offenders in a circumstance that made impossible for them to alter public order, by depriving them of their natural means and resources for action." That was, precisely, what confinement made possible, the author pointed out. It took culprits "away from their places or residence in which their presence was dangerous given their relationships, friendships, knowledge, and resources."[192] Confinement, in short, served the same purposes of expatriation, but in a less costly and more efficient way.

Relegation, finally, was a lesser version of confinement, as Demetrio Porras asserted. Those dealing with this penalty, the Colombian jurist explained, enjoyed a degree of liberty that was compatible with the government's need for ensuring their custody, hence their subjection to the authorities' surveillance.[193] The demise of Porras's project of codification hindered the adoption, in Colombia's criminal legislation, of the penalty of relegation for political crimes. That was not the case of Mexico. The makers of the 1871 Code established relegation not as a punishment in itself but as a subsidiary penalty for all political criminals. According to the Code, political offenders should remain subject to the authorities' surveillance right after the end of their corresponding sentences. This additional supervision, according to Lozano, responded simply to the nature of political criminality as a political phenomenon. "Political passions tend to be more obstinate and stubborn than others […] Born out of a conviction that often develops into true fanaticism, they are difficult to silence, those embracing them endure all sorts of difficulties, and offer as their only outcomes whether the glory of triumph or the glory of martyrdom." In such

[192] Lozano, *Derecho penal,* 540.

[193] Porras, *Proyecto de código penal*, cxxxvi.

circumstances, Lozano argued, common penalties were unable to produce any sort of repentance or correction. Resistant to the regenerative effects of punishment, political offenders should then remain under the authorities' radar, "in order to prevent in a timely manner the realization of new plans and conspiracies."[194]

Reflections and concerns about expatriation, confinement, and relegation reveal an understanding of political criminality that previous discussions reviewed in this section have already suggested. The major criminal attribute of political offenses lay in the political threats they embodied, this is, in their potential to alter order, disrupt peace, and put government's stability at risk. It was a criminality whose threats were somehow resilient to ordinary repression; one that could be partially neutralized but never corrected. This characteristic partially explains the "special" character that legal thinkers of the period attributed to political crimes, and therefore the "extraordinary" regime of penalties that in their view they deserved.

Outlining a Lenient Regime of Penalties for Political Crimes and other Mexican Concerns

Discussions in Mexico about the legal treatment of political criminals according to the 1871 Code and the Constitution were not limited to these "common" considerations. They also involved conversations about the lenient treatment that political crimes deserved, and the convenience –or inconvenience– of using extraordinary powers as a response to attacks against public order. When reflecting on the provisions of the Criminal Code, Mexican legal thinkers like Lozano and Medina y Ormaechea tended to underscore the

[194] Lozano, *Derecho penal*, 605.

correspondence between their codification and the principle that political crimes deserved, above all, a lenient treatment. Lozano, convinced that penalties for political crimes should only turn offenders politically harmless, believed that the standard penalties included in the Code properly responded to the nature of political criminality. Formal prison, for instance, did nothing to neutralize the offender's political threats. On the contrary, sufferings linked to prison reinforced the criminal's aura of expiation, which in turn strengthened his political determination and prestige. Suspensions of civil rights did nothing to contribute to the ultimate goal of political penalties. Political crimes, after all, had a "sphere of *penalidad* completely different, in its nature and purpose, from the one that the law establishes for the punishment of common crimes."[195] This is why penalties such as expatriation and confinement, and even incarceration (*reclusion*) and deprivation of political rights, worked better in this case.[196]

These principles found wide reception among the authors of the 1871 Code. Medina y Ormaechea, who had participated in the drafting of the codification, explained that one of the purposes of the new Code had been to establish a series of "exclusive penalties" for political crimes. Besides implementing the constitutional mandate prohibiting the application of capital punishment to political offenders, the Code's drafters also created the penalty of *reclusión*, eliminated restrictions to *indultos* for political crimes, and even limited the application of the penalty of expatriation. The Codification, which required all prisoners to work during their time of incarceration, also released political prisoners from

[195] Lozano, *Derecho penal,* 446.

[196] Lozano, *Derecho penal*, 446.

this obligation.[197] *Reclusión*, according to Medina y Ormaechea, allowed political criminals to experience prison in a separate space or establishment. Such a seclusion aimed, among other things, to prevent common criminals from "besmirching" (*envilecer*) political offenders. There was, again, the idea that political criminals were "less criminal" than others. The Code's authors had adopted this penalty following "the opinion of modern criminalists," as well as the model of the Belgian Criminal Code.[198]

Reflections on expatriation, confinement, relegation, and *reclusión* revolved around penalties that jurists and lawmakers deemed "convenient" and "acceptable" for political crimes. This does not mean that there were no discussions about current or established penalties whose application to political criminals was, to the opinion of jurists and legislators, "inappropriate" and even "dangerous" or "harmful." That was the case, for instance, of the suspension of constitutional guarantees for *salteadores* and *plagiarios*, a penalty that provincial and federal authorities commonly applied to political criminals and other "dangerous" dissidents. The debates of the 1880 Mexican Congress illustrate the concern of some legislators about the consequences of using this penalty against internal enemies.[199] An alleged increase of episodes of banditry and rural criminality during the first months of that year led the Executive to request, from a portion of the Congress, the suspension of constitutional guarantees for bandits, *salteadores*, and other rural criminals. The Law that made the suspension official, enacted in March 1880, triggered a long debate

[197] *Código Penal Mexicano: Sus motivos*, 732.

[198] *Código Penal Mexicano: Sus motivos,* 731.

[199] *Diario de los debates de la Cámara de Diputados, 9ª legislatura constitucional de la Unión (1880)*. Tomo IV (México: Tipografía Literaria de Filomeno Mata, 1880).

in Congress about its constitutionality. Such debates also tackled the apparently "customary" practice of applying this same treatment to political dissidents.

Most of the opponents to the Law argued, among other things, that the government had enacted it without the avail of the whole Congress and on the grounds of false alarms and events whose gravity had been exaggerated. There were, nonetheless, two Congressmen who criticized the Law not only because it was unnecessary, but also because it continued a long tradition of political abuses committed under this constitutional figure: deputies Obregón González and Collantes. Obregón González pointed out that, considering the levels of "political passion" that characterized Mexico's local and provincial politics, this Law would easily become a *carte blanche* for all sorts of abuses. If the Law remained in place, the Deputy explained, "nobody's life would be safe." Its procedural prescriptions, which required only the declaration of two witnesses and a 24-hour term for sentencing any individual, proved particularly dangerous. There was nothing in the Law that prevented local political chiefs and state governors from abusing these conditions, which made such officials free to unleash political vengeances and get rid of "cumbersome" political opponents.[200]

Deputy Collantes held a relatively similar position. In his opinion, Mexican governments throughout the years had used these extraordinary faculties to seize the power of the Legislative and Judicial branches, "turning therefore the Constitution into dictatorship." Under the shadow of these emergency powers, local and national authorities had compromised the nation's interests, dilapidated public funds, and harassed and

[200] *Diario de los debates de la Cámara*, 299-300.

assassinated "citizens discontented with their administrations or that have protested against their abuses."[201] Those acts, to the Deputy, had no justification at all. Even in the case that these "malcontents" represented an actual threat to public order, the Deputy maintained, there was no need for replacing the Constitution's regime with one of authoritarianism by granting the Executive extraordinary powers. This, nonetheless, did not mean that Collantes considered emergency faculties an "inconvenient" measure against political criminality. To him, they were a fair, legitimate, and necessary response, but only in cases of "actual" political crimes –this is, in cases of severe perturbation of public peace. These kinds of measures were indeed indispensable in nations that suffered from criminal organizations dedicated to attack and destabilize their institutions, as it was the case of Prussia, Germany, Italy, or Spain, a clear reference to European anarchism. Those were, to Collantes, real cases of political criminality.[202]

To the Deputy, the Mexican situation had nothing to do with what happened in Europe. There was no "real" political criminality in Mexico. Mexican agitators, conspirators, and other "dangerous" political dissidents were not as "important" and "audacious" as European anarchists. No one, for instance, had attempted to assassinate the President, Collantes remarked. The ones in Mexico were nothing but small problems of "violent" dissidence that at no point required a response that included the suspension of constitutional guarantees. That would be dictatorial and unconceivable. They deserved a legal response, of course, but one within the limits of ordinary law –this is, nothing beyond what already existed. Responses against rebellion only required soldiers and money.

[201] *Diario de los debates de la Cámara*, 304.

[202] *Diario de los debates de la Cámara*, 302-303.

Actions against conspirators simply demanded a good police force. Episodes of sedition, riot, and others could be easily suffocated through the intervention of the military. Authorities could successfully face all these treats without suspending the normal functioning of justice, the Deputy affirmed. All they needed to do was "to scrupulously adhere to the prevailing legal forms and constitutional guarantees," he concluded.[203]

Reflections in the Mexican case highlight a series of points regarding the treatment of political criminals in correspondence with Constitutional mandates and prescriptions from Criminal Law. First, they reveal that conversations about the regime of penalties for political crimes involved both an interest about finding the most appropriate punishments and different preoccupations about the limits of state retribution. Second, they show that Mexican jurists and lawmakers conceived political crimes as offenses whose criminality belonged to a different order than that of ordinary crimes. This other, "alternative" criminality required a more lenient treatment involving not only exclusive penalties but also a special regime of incarceration. Third, they make evident concerns about the ways in which Mexican governments had historically responded to political criminality through the use and abuse of Constitutional prescriptions. Finally, they suggest that Mexican law experts considered and magnified political criminality and internal enmity in their country viewing them against a European backdrop marked by political instability and organized anarchism. Anxieties about the influences of European anarchism would loom large in the ways in which authorities deal with political criminals during the late stages of the Porfiriato.

[203] *Diario de los debates de la Cámara*, 304.

Extradition and Confiscation: The Limits of Punishment for Political Crimes in Colombia

Like in the Mexican case, reflections on Constitutional and Criminal prescriptions regarding the treatment of political criminality in Colombia were not limited to conversations about the death penalty and expatriation. They also involved discussions about the convenience and necessity of certain other penalties for political offenses, as well as about the general limits of the state's power of retribution against internal enemies. Reflections on the "inconvenience" of extradition for political crimes and the "fairness" of punishing rebels with confiscation illustrate the nature of these additional conversations.

Issues of extradition and political crimes appear repeatedly in the works of Demetrio Porras. His first essay on the matter dates from 1885, in the middle of a controversy about the fate of a rebel from the most recent war who had fled to Jamaica and was requested on extradition by the Colombian government. To Porras, the principle of no extradition for political crimes represented a widespread premise implemented in many European legislations as well as in several international treaties in Latin America. Italy, Spain, and the states Helvetic Confederation had different laws and treaties prohibiting the extradition of political exiles and refugees, for instance.[204] In Colombia, although there were no constitutional developments on matters of extradition and political criminality, different international treaties tackled the question. A treaty with France in 1850 excluded political criminals from extradition, Porras explained. Another one, signed in 1870 with Peru, established the same provision but included *delitos conexos* as well. Additional treaties of "friendship, navigation and commerce" with Venezuela, Ecuador, and Costa

[204] Porras, *De la extradición,* 7-8.

Rica prescribed the internment of political criminals within a given distance from their international borders, under each nation's request.[205] They made no reference to matters of extradition, but their intention was to prevent exiled political agitators from returning to their home countries.

The protection of political criminals from extradition was also, to Porras, one of the most important conquests of modern criminal Law. European jurists like the German August Geyer, for instance, maintained that the right of asylum for political criminals was sacred, because there was no way of judging the illegitimacy of their actions. Following the German author, Porras explained that if a nation wanted to give a political criminal in extradition, it had to decide first whether or not the government and the institutions that the offender had attacked were legitimate. It was a question that no tribunal could solve, lacking the necessary elements for making a fair decision. France's legal thinking was also in tune with these considerations, Porras suggested. Those had been, in fact, the arguments with which the French Minister of Justice defended in 1841 his nation's adherence to the principle in question. To the French Minister, political crimes occurred in circumstances that were extremely difficult to evaluate, often emerging out of "ardent passions" whose justification was never clear. French historian and statesman Francois Guizot's works offered Porras an additional perspective. Political offenders, according to Guizot, commonly acted on the grounds of *amor patrio* and "an admirable feeling of abnegation." Their acts did not have the "perversity and immorality" commonly associated to ordinary crimes. Their immorality, in fact, was always relative and impossible to judge in a clear

[205] Porras, *De la extradición,* 8.

and impartial way. This is why, Porras concluded, governments were always unable to fairly decide on matters of extradition of political refugees.[206]

These considerations, to Porras, were ultimately extralegal. According to him, the principle in question did not obey clear legal or political reasons. Legal protection of foreign political criminals, political refugees and exiles, and people defeated in civil wars of other nations was more an issue of "nobility" and "magnanimity" than of actual justice. That was, basically, the principal reason why nations protected foreign offenders. This "noble" need for protecting political refugees was particularly important at the time, Porras affirmed. The entire world was going through a moment in which societies "are intoxicated with idealism, inebriated with the liquor of the seductive sophism of absolute freedoms, those that subvert all orders and all principles." It was a time in which people fell victim of a "terrible vertigo that led them through the terrifying path of demagogical debauchery, making them sacrifice the forces of social life, increasingly wasted in senseless and bloody conflicts." In such turbulent times, the Colombian jurist remarked, it was impossible to deny foreign political offenders asylum and protection from extradition.[207]

Debates about confiscation and political crimes took place during the 1885 Constitutional Assembly. While the 1886 Constitution prohibited the imposition of confiscation penalties (Art. 34), the original draft of this charter still allowed legislators to establish them as a punishment for revolutionary ringleaders. In this particular case, confiscations had the purpose of covering or compensating war expenses with the enemy's

[206] Porras, *Proyecto de código penal*, xxxix-xl.

[207] Porras, *De la extradición,* 12.

property –a provision that followed the principle that, during a war, the adversary was always accountable for the conflict's costs.[208]

Three positions clashed in the Assembly regarding this peculiar exception concerning ringleaders. One was represented by Miguel Antonio Caro, author of the original article. In defense of it, Caro explained that the article did not consider the seizing of the rebels' property a formal act of confiscation. It was, rather, a simple act of accountability for the expenses that their rebellion had caused. In any case, the delegate explained, it was a limited penalty that only applied to ringleaders, not to rebels in general.[209] A second, intermediate position somehow accepted the possibility of imposing the penalty to rebel ringleaders, but with a few precisions and clarifications concerning what counted as confiscation and what did not. Delegate Calderón, in this light, proposed to modify the article by stating that, while confiscation was prohibited as a punishment, pecuniary penalties against ringleaders did not represented acts of confiscation. His clarification was aimed to solve the "contradictory nature" of a prohibition that involved in itself the conditions for its exception.[210]

This desire for clarification did not make Calderón less critical of the provision's spirit. To him, the concealed confiscations stipulated in the Article entailed two major complications. On the one hand, it was a measure doomed to meet resistance and

[208] *Antecedentes de la Constitución*, 127. It was Delegate Ospina Camacho who, during the discussions about expropriations and confiscations in times of war, brought up this principle. The same idea would legitimize, years later, the multiple "war taxes" that the government imposed to armed and non-armed liberals durig the Thousand Days.

[209] *Antecedentes de la Constitución*, 131.

[210] *Antecedentes de la Constitución*, 127.

discontent, for it had a selective –and arbitrary– application and a clear purpose of political retribution. On the other hand, considering the changing tides of Colombian politics, it might at some point bounce back against conservatives and other regenerationists. In sum, concluded Calderón, confiscation for political purposes did little to prevent public disorder and rebellion and a lot to foster partisan hatred and future political conflicts.[211]

The third and final position straightforwardly claimed that the Constitution should ban all sorts of confiscation penalties. As exposed by Delegate Casas Rojas, confiscation was "a barbaric and cruel penalty currently abolished in all civilized nations." As such, it entailed many inconveniences including the fact that, as a general rule, it affected innocents more than culprits, depriving the defendant's family from their rightful property.[212] Its potential political effects were, therefore, almost null and clearly unfair. Confiscations, in this light, should never exist, not even for political purposes. Based on these considerations, Casas Rojas proposed a further modification to the Article, excluding the exceptions in cases of rebellion and leaving only the general banning of confiscation. That was the version of the Article that finally made it to the new charter.

Reflections about extradition and confiscation for political crimes involved in Colombia at least two major legal and political concerns. First, there was in the mind of the most progressive members of the constitutional convention a preoccupation about the convenience or inconvenience of these penalties considering the particular nature of political criminality. The preoccupation entailed deeper considerations about what made political crimes "special," or what made governments repress their own internal enemies

[211] *Antecedentes de la Constitución*, 128.

[212] *Antecedentes de la Constitución*, 129.

while protecting those of other countries. It also involved a question about whether or not it was plausible to reach solid conclusions about the legitimacy or illegitimacy of political offenses. Second, there was a concern about how far could a government go when punishing rebels and other internal enemies. Here, there was fear that an excessive exercise of state retribution could not only lead to overt acts of arbitrariness and authoritarianism, but also provoke resistance, discontent, and further political conflict. The instability and bellicosity of Colombian politics made both options look completely plausible.

The question about a "special" regime of penalties for political offenders was central to the conversations that, during the period, took place in Colombia and Mexico regarding the treatment of political criminality in Constitutional and Criminal Law. On the whole, jurists and lawmakers in both countries agreed that political offenses had a complicated criminal nature. They were crimes, of course, but for different reasons than ordinary offenses were. Theirs was a criminality imagined and measured in levels of political dangerousness and potential to alter public peace. It was also a criminality whose attributes of "illegitimacy" and "immorality" were always relative and impossible to grasp in an objective manner. All these reasons justified –if not demanded– the existence of an "exceptional," "separate" regime of penalties for political offenders. The crafting of this regime involved discussions about the nature and effects of "political penalties," the dangers of treating rebels with penalties designed for ordinary offenders, and the need of limiting state's power of retribution against internal enemies. In both countries, these discussions involved common concerns and inspirations, reactions to specific events and conjunctures, and even references to European legal thinking. Here, Europe offered Colombian and Mexican

jurists more than doctrinal inspiration: it provided them with additional sources of concern, related to the spreading of "new" modalities of organized political criminality such as anarchism. Fears of anarchism would be especially visible in the Mexican case after the turn of the century.

Protecting Society from the Revolutionary Tide: Reflections on Emergency Powers and Political Criminals

Constitutional debates on emergency powers represented in both countries another important arena of reflection about what political crimes were and what kind of treatment they deserved. Mexican and Colombian constitution makers addressed such issues, directly and indirectly, in their different efforts to define extraordinary faculties, outline conditions for the establishment of state of siege, and set up limits for the use of these powers. Two major concerns related to political criminality and its constitutional treatment emerged and clashed in these debates. On the one hand, there was an interest of protecting society and public order from the attacks of subversives, rebels, and revolutionaries. On the other hand, there was a preoccupation about what governments could –and could not– do when responding to threats posed by their internal enemies. It was, in short, a conflict between the need to defend society and the need to protect individuals against possible abuses by the authorities. As the first chapter demonstrates, the Constitutions and prescriptions that emerged from these debates would privilege the former order of needs over the latter.

Discussions on emergency powers revolved around rather different preoccupations in Mexico and Colombia. In the Mexican Constitutional Assembly, debates on the matter revolved primarily around the suspension of constitutional guarantees in cases of

emergency, its justification, and its legal and political consequences. In Colombia, Delegates to the Assembly were predominantly concerned with the crafting of a "war legislation" meant to rule predominantly during times of internal turmoil. Beyond these differences, debates in both nations equally involved issues concerning the limits of state power in times of emergency and the maintenance of constitutional rule during moments of war. They also revolved around the balance between the maintenance of society's order and the respect for individuals' liberties –equilibrium that a Colombian Delegate considered the quintessential problem of politics.[213]

Of Crimes Against Society and Constitutional Guarantees: The Case of Mexico

Judging from the debates surrounding the contents of Article 29, many of the supporters of the suspension of individual guarantees in cases of emergency considered this provision a necessary deterrent for futures episodes of violent internal enmity. It was, in their opinion, a strong but efficient measure to neutralize the actions of subversives, revolutionaries, conspirators, and other "adversaries" of society and public order. Delegate Cerqueda, for instance, claimed that the Article's prescriptions were the only possible way to preserve the "general interests of society" protecting it from the constant threat of "mobs or rogues." Endangered by forces that disturbed public peace and "compromised the existence of every sort of order," Mexican society had no option but to strengthen the government's power at any possible cost. Those were turbulent times that required a severe, inflexible, and energetic authority able to reestablish order, even if that meant neglecting the individual

[213] *Antecedentes de la Constitución*, 288-289. See the intervention by Delegate Samper.

rights and lives of society's enemies. After all, he concluded, the nation's welfare demanded their sacrifice. It could sound dictatorial and authoritative, the Delegate maintained, but it was a demand consistent with society's right to self-conservation. [214]

Like Cerqueda, Delegate Mata considered that future Article 29, as authoritarian as it sounded, simply followed the principle that society's general welfare demanded the sacrifice of individual interests. The suspension of constitutional rights in cases of emergency was, in this light, merely a defensive means to "save" society anytime it faced serious threats. It had the immediate and exclusive goal of preventing public order's enemies from harming society. Like his colleague, Mata understood "states of emergency" primarily as circumstances of domestic turmoil linked to the actions of internal enemies of society.[215] Delegates Arriaga and Olvera also agreed on these points. The Article and its prescriptions were necessary for the sake of society's conservation, especially in moments of great hardships that required swift and vigorous actions. Arriaga justified the existence of emergency powers by explaining that there would always be extraordinary and unforeseen circumstances that, unpredicted by the laws, demanded the immediate reaction of authorities. Such a reaction, he pointed out, was particularly necessary in cases of unexpected threats to social order by conspirators –understanding "conspirators" as people responsible for crimes against society.[216] Delegate Olvera was a bit more moderate in this regard, and aimed to restrict situations of "emergency" to cases of "great conflict" that, like

[214] Francisco Zarco, *Historia del Congreso Extraordinario Constituyente de 1856 y 1857 – Tomo IV* (México: Talleres de la Ciencia Jurídica, 1900), 389 and 394.

[215] Zarco, *Historia – Tomo IV*, 388 and 391-392.

[216] Zarco, *Historia – Tomo IV*, 392-393.

an international war or a "formidable uprising," seriously threatened either the nation's independence or its legitimate of government.[217] The idea of extraordinary powers as a plausible and necessary response to some manifestations of internal enmity was, nonetheless, still present in his arguments.

Positions against the terms of Article 29 revolved around the fear that an exaggerated emphasis on the conservation of society could lead to future episodes of authoritarianism and unnecessary violence against political dissidents. Delegate Moreno, to whom the suspension of constitutional guarantees implied the suspension of life in society, maintained that the Article set the conditions for the re-emergence of dictatorship. [218] His colleague Zarco reminded the Assembly that the nation's past provided sufficient examples of governments abusing their extraordinary powers, and added that Article 29 did not include the necessary provisions for preventing these abuses from happening again. To him, the main problem lay in the vague conditions that allowed the establishment of a state of emergency. They were not limited to specific circumstances of foreign invasion or severe perturbation of public order, but also made reference to any other situation that endangered or could endanger society. These other "eventualities," in the delegate's opinion, could lead to several political abuses, as governments and authorities could use them anytime in order to foster legislation benefitting their parties or to legitimate the extermination of their enemies.[219] Regarding this second scenario, Zarco argued, the Article practically gave governments freedom to do what they wanted with political

[217] Zarco, *Historia – Tomo IV*, 508 and 511-514.

[218] Zarco, *Historia – Tomo IV*, 393.

[219] Zarco, *Historia – Tomo IV*, 387-388.

dissenters, including repressing them with "massive proscriptions, perverse prosecutions, and attacks against property that ruined [their] families."[220]

Even Olvera agreed with some of these objections, and conditioned his support for the Article to the incorporation of some modifications. To the Delegate, it was necessary for instance that the Constitution specified under which circumstances emergency powers became necessary, for how long the government could retain those extraordinary faculties, and which circumstances truly represented states of emergency. The point, to him, was avoiding that those extraordinary powers ended up extending to the point of subverting or destroying the nation's constitutional form of government.[221] His suggestions somehow paralleled the recommendations that Delegates Zarco and Moreno made to the Article. Zarco requested that the article stated "individual liberties" instead of "constitutional guarantees," in order to maintain some restrictions to the government's use of these faculties. Moreno, in a final act of resignation, suggested that if the article was as indispensable as their supporters claimed, it could at least limit the suspension of these guarantees only to those suspicious of causing the state of emergency.[222] Even the critics of the Article implicitly availed the possibility that the government targeted internal enemies and "dangerous" dissidents with the suspension of their individual rights.

[220] Zarco, *Historia – Tomo IV*, 388-390.

[221] Zarco, *Historia – Tomo IV*, 508 and 511-514.

[222] Zarco, *Historia – Tomo IV*, 389 and 394.

Crafting a Legal Regime for Internal Warfare in Colombia

Debates about emergency powers at the Colombian 1885 Assembly also paid a great deal of attention to the actions of subversive, rebels, and other internal enemies. Delegate Miguel A. Caro drafted the initial version of Article 121 with the goal of setting the constitutional foundations of a regime of "martial legality" in Colombia. To him, the country lacked a clear and well-defined set of rules and principles on how to proceed in case of a serious disturbance of public order. Article 121 did not establish a "war legislation" in itself, but declared that the Executive was the primary power in charge of enacting this legislation, by defining crimes and penalties for times of war. After all, the Delegate pointed out, the Executive was the one responsible for "saving society from anarchy and revolution."[223]

The "martial legality" of Caro was, predominantly, a regime for circumstances of internal warfare –of rebellion, revolution, sedition, and political turmoil in general. His arguments at no point contemplated the possibility of a foreign invasion or an international war. Article 121 intended to, first and foremost, give the Executive powers to act against internal enemies and other "dangerous" dissidents. It was a defensive act that developed in its own terms, since the government was able to punish its criminal adversaries with its own series of penalties. The goal, in the delegate's words, was to allow the government to react against a revolutionary treat by designating as criminal "all acts that it considered disturbing." This did not imply a *de facto* suspension of the Constitution, the delegate remarked. This government-made, extraordinary legislation was only part of a

[223] *Antecedentes de la Constitución*, 284-285, and 294.

constitutional mechanism that combined "two orders of legality," one for times of peace and another for times of war. In cases of emergency, he explained, the latter would simply "replace constitutionally" the former. The purpose of this double legality, Caro summarized, was to give the government all the necessary powers for "saving society from the revolutionary tide" and "repressing revolutionary violence."[224]

Delegates Ospina Camacho and Samper led the opposition against Caro and the original version of Article 121. The Article's draft contained a clause authorizing the Executive to establish the state of siege not only in cases of war or internal commotion, but also anytime the government perceived that "peace or public security were endangered." While Caro described this prescription as "fair" and "benevolent," for it allowed the government to take preventive measures in an opportune fashion, Ospina Camacho perceived it as a source of future and unjustified acts of authoritarianism.[225] In his opinion, the clause was dangerously vague. Based on it, a "fearful" or "susceptible" president could, "for mere ill-founded reasons, […] declare public order disrupted and establish the state of siege all over the republic, therefore replacing the quiet regime of peace with the state of atrocity and violence typical of war time." Ospina Camacho certainly agreed that the government should have the necessary constitutional means to maintain public peace and security. Yet, these special faculties should correspond to actual circumstances of emergency, not to simple perceptions or opinions.[226] Simple states of alarm only required

[224] *Antecedentes de la Constitución*, 284-287, and 294.

[225] *Antecedentes de la Constitución*, 288. Caro added, in defense of the clause: "It is better to prevent than to repress; it is better to stop the arm than to repress the blow."

[226] *Antecedentes de la Constitución,* 282-283.

the government to order recruitments, request loans for military improvements, suspend the freedom of press, and order preventive imprisonments of potentially dangerous dissidents. There was no reason for treating circumstances of alarm like if they were actual states of war, the delegate concluded.[227]

Samper's arguments revolved around the need for finding an equilibrium between the need for preserving public order from internal enemies and the goal of preventing a dictatorship against "harmless" dissidents and other citizens. The maintenance of this equilibrium during states of emergency was critical, Samper maintained, for extraordinary powers were always dangerous, regardless the nature of the emergency. They proved especially harmful in cases of internal conflict, the Delegate explained. Since not all citizens took part in a civil war, the government's actions against its own people should meet strict limits. During an internal conflict, "the nation became divided into three groups: rebels or enemies of the government and the prevailing order; the government and its allies; and a great mass of peaceful individuals." While it was understandable that the two first groups exercised violence and vengeance against one another, it was completely unfair that the government also harassed neutral, innocent citizens, Samper commented. Why, in a civil war, should it be permitted that peaceful, non-belligerent people were also subject to the government's arbitrariness? Why should the government ruin them as well, through expropriations and war taxes, under the excuse of protecting or reestablishing public order? "I am not asking for guarantees for the rebels' property […] but I do believe that they are necessary for the innocent, and therefore I demand them," he concluded. It was necessary,

[227] *Antecedentes de la Constitución*, 291.

then, to specify and clarify who should constitutionally be subject to state retribution and which particular constitutional guarantees should be suspended in that case.[228]

Constitutional debates on extraordinary powers offer a different set of understandings of and reflections about political crimes and internal enmity in Mexico and Colombia. Unlike the doctrinal arguments previously reviewed in the chapter, these reflections underscore the dangerous nature of political criminals and highlight their condition of enemies of the nation as a whole. Here, political criminality and internal enmity were matters of "rogues," "anarchists," "revolutionaries," "conspirators," "forces that disturbed peace," and "criminals against society." Their actions put society's existence at risk, and therefore required "swift and vigorous actions" –ranging from the suspension of their constitutional rights to the discretional re-criminalization of all their acts. Even the critics of the functioning of extraordinary powers implicitly agreed on that. Beyond this basic agreement, these debates reveal nonetheless that, at least to some delegates, not all forms of dissidence were dangerous and not all the manifestations of internal enemy required such strong measures. Some "harmless" or "pacific" forms of political opposition should still remain under constitutional protection, as long as they stayed "legal" or "legitimate." The maintenance of this protection should keep in place the line between the fair and necessary repression of internal enemies and the straightforward –and unnecessary– authoritarianism and arbitrariness against every form of dissidence. As the next chapters will show, this line was never clear neither was it unmovable.

[228] *Antecedentes de la Constitución*, 288-289.

Conclusions: Assessing the Nature of Political Crimes and Their Legal Treatment

The legal and constitutional foundations of governmental responses to political offenses during the Porfiriato and the Regeneration involved much more than provisions defining crimes and punishments. They also entailed multiple conversations and debates concerning the meaning, legitimacy, reach, and consequences of such provisions. Legislating on matters of political criminality went far beyond the crafting of dispositions for the criminalization and repression of a series of offenses against public order, the Constitution, and the legitimate government. It implied, as well, reflecting on what political criminality was, what its criminal attributes were, what made it different from other modalities of crime, and what sort of legal treatment it deserved. Legislators and legal experts in Mexico and Colombia paid close attention to these questions at multiple times and venues: during the making of Constitutions and Criminal Codes, in studies of current legislation, and in the defense of legal initiatives of different sorts. Jurists and lawmakers seldom tackled these issues in a direct way; they commonly did it in relationship with larger legal and political matters. Some of these "major" issues included questions about the limits of state power and state retribution or the balance between "social order" and "individual liberties." Discussions about the definition and punishment of "illegitimate" acts of war; the design of legal orders for times of warfare; and even the existence and legitimacy of "alternative" constitutional regimes were also part of this set of larger matters.

What do these reflections show? In general terms, these conversations reveal a panoply of understandings of and concerns about political criminality, its nature, and its effects. There were no single or uniform ways of defining what a political crime was, what made it political, what made it a crime, and what differentiated it from other offenses. For

some jurists, political crimes were offenses against public order, the government, the constitution, and the society in general. For others, they were acts of war –of internal warfare, more precisely– with some degree of political inspiration or motivation. For a few more, they were just exaggerated, unfortunate manifestations of patriotism or political fanaticism. Under some perspectives, they represented one of the most serious and harmful offenses against the society and the nation, completely "illegitimate" and "immoral." From other points of view, they were actions of simple political malcontents, extreme acts of political dissidence whose legitimacy or illegitimacy was always relative. To others, they were merely common crimes in disguise. All these understandings accompanied the crafting –or at least the proposal– of specific legal responses to political criminals. Responses ranked from vigorous reactions in the name of society's right of self-conservation, involving selective suspensions of constitutional rule, to mild and lenient "political penalties" tending exclusively to neutralize their political dangerousness. Penalties in between shaped a sort of grey zone in which punishments for common and criminal crimes converged and foreign political criminals enjoyed a greater deal of protection than domestic rebels.

Some of these conversations tended to address the constitutional and legal treatment of political offenders from a perspective that conceived political criminality in terms of "absolutes." On the one hand, there was society, protected by the government and the Constitution. On the other hand, there were its enemies: subversive, revolutionaries, conspirators and the like. Other reflections, nonetheless, tended to present more nuanced and complex overviews. These "relativist" interpretations invited to differentiate between "warlike," "dangerous" or "violent" forms of dissidence, and "harmless" and "pacific"

modalities of political opposition and dissent. Here, not all forms of dissent entailed the same degree of political enmity, and not all manifestations of political enmity involved the same level of dangerousness or criminality. Furthermore, not all participants in acts of internal enmity were strictly political criminals, since their motivations were not "purely" or "exclusively" political. Legal and constitutional responses to political criminality, then, had to pay attention to these subtle, sometimes unnoticeable differences. The prevention of "dictatorship" or sheer authoritarianism, as well as the maintenance of formal constitutional rule, lay precisely in the clear identification of and respect for those multiple variations of political dissent.

A relatively similar set of doctrinal, legal, and philosophical inspirations helped shape this common array or arguments and concerns. Both Mexican and Colombian jurists and lawmakers looked to Europe in search of legislative models, legal developments, and doctrinal reflections on the matter, translated and incorporated them as part of their arguments, positions, and legal initiatives. European influences were particularly notable on issues such as the criminal nature of political offenses, the differences and connections between common and political criminality, or the distinction between legitimate and illegitimate acts of internal warfare. Inspirations were also significant in relation to the establishment of a separate punitive and penitentiary regime for political offenders, the prohibition of extradition for political crimes, and the legal and constitutional protection of foreign political offenders. European influences in this regard went even further, nonetheless. When looking across the Atlantic, Mexican and Colombian legal thinkers also translated a feeling of overall political turmoil and instability, as well as a fear of anarchism

and anarchist movements. Such additional concerns would also play a role in shaping the discussions in question.

The importance of this trans-Atlantic intellectual framework does not mean that these debates and conversations developed in isolation from local and domestic circumstances. The Mexican and Colombian experiences differed from one another in the kind of questions and problems around which these discussions revolved. The different emphases in the two countries responded to diverse domestic concerns and junctures. Episodes of revolution and civil warfare in each country, local perceptions and anxieties about criminality and public disorder, and even the need to replace or complement previous national legislation represented some of these domestic preoccupations. Such a variety of local conditions made reflections and translations in each country different despite the wide framework of commonalities within which they emerged and developed.

Conversations and debates about the legal and constitutional treatment of political offenders involved in both countries a wide variety of understandings about what political crimes were and what sorts of penalties they deserved. Not all these understandings were necessarily in tune, and some of them reflected very different positions about the nature of political criminality and the reasons why it, after all, must be deemed criminal. Inspired by European legal thinking and shaped by local and domestic concerns, these reflections paid a great deal of attention to what made political offenses singular, their differences with ordinary crimes, and the distinctions between "harmless" and "dangerous" political dissidence. As some of the conversations reviewed in this chapter suggest, such distinctions were neither clear nor absolute. The remaining chapters of the dissertation will demonstrate

not only that there was never an agreement on the matter, but also that the drawing and redrawing of such various differences had major legal and political consequences in both cases.

V. CHAPTER 4. BETWEEN THE LEGAL AND THE EXTRALEGAL: GOVERNMENTAL STRATEGIES FOR PREVENTING REBELLION AND INTERNAL WARFARE IN MEXICO AND COLOMBIA

The discovery by Colombian authorities of the revolutionary plot of August 1893 had serious consequences for the Liberal Party. Governmental reactions to the plot involved the confiscation of the Party's funds, the shutting down of at least four Liberal newspapers, and the apprehension of several partisan leaders both in Bogotá and in other parts of the country. Liberal Santiago Pérez, president between 1874 and 1876 and current editor of the paper *El Relator*, was one of the many victims of these reactions. After accusing Pérez of conspiring against public order and promoting rebellion through his "subversive" newspaper, authorities suspended the publication and sent him into exile.[229] His forced departure paralleled the experiences of Felipe Pérez, Modesto Garcés, Alfredo Greñas and other fellow liberals that, between the late 1880s and the early 1890s, paid with imprisonment and exile their activities as political dissenters and opposition writers. They all faced similar charges: conspiring against public order and encouraging rebellion.

Certainly, none of these accusations had links with actual episodes of rebellion or consummated subversive movements. If anything, the charges in question made reference to alleged and unaccomplished threats against public order. The penalties that they made possible had no other goal than preventing possible or potential outbreaks of rebellion and insurrection. The imprisonments and exiles that Pérez and his fellows faced were, in this

[229] Delpar, *Red Against Blue*, 157.

light, the result of a series of "preventive" endeavors that Regenerationist authorities carried out in order to prevent rebellion and keep "potentially subversive" dissidents in check. These cases exemplify the experiences of dozens of "troublesome" dissenters in Mexico and Colombia that, during the period, faced prison and other penalties only for "preventive purposes." Preventive campaigns against subversion in both countries facilitated the persecution and repression not only of presumed conspirators and rebellion suspects but also of many political writers and opposition journalists. They also played a crucial role in the criminalization of dissent in the Porfiriato and the Regeneration. This chapter reconstructs and analyzes the experiences of several Mexican and Colombian dissidents that, either as potential rebels, rebellion plotters, or simple writers, suffered the consequences of this criminalization.

The Constitutional and legal prescriptions examined in the previous chapters provided Mexican and Colombian governments with a diverse set of resources for responding to threats against public order, revolutionary alarms, and similar states of political or military tension. These resources included both faculties and limits, which somehow traced a line between what governments and authorities could do in this regard and what they could not. This chapter explores and analyses how governments in both countries used this wide legal and constitutional framework for preventing civil war, containing revolutionary waves, and neutralizing "dangerous" internal enemies as well as potentially subversive political dissidents. How did Mexican and Colombian authorities apply these laws and prescriptions? How did they use them to enact preventive legislation on matters of public order? What were the characteristics of this other, complementary legislation? How did

these new laws and their application transformed and re-interpreted previous prescriptions regarding the treatment of political crimes and the scope and limitations of state power? By tackling these questions, the chapter delves into the legal and judicial logics of political repression *vis-à-vis* actual or potential threats against public order in the Regeneration and the Porfiriato. It also sheds lights on the multiple ways in which governments in both countries understood "prevention" and defined what a "threat against public order" was.

The chapter draws on a wide array of sources including memoires; newspapers; laws, decrees, and executive orders; court-cases, criminal expedients, and judicial archival sources; legislative debates; and legal essays. Section one studies the laws, decrees, and legal developments that, in addition to the constitutional and criminal law precepts studied in Chapter 2, made up the legal backbone of governmental efforts for preventing rebellion and internal turmoil in Mexico and Colombia. Section two explores how the "preemptive endeavors" of the Porfiriato and the Regeneration combined the purpose of safeguarding public order from actual or potential threats with an interest on repressing political dissidence. Section three analyzes how governments in both countries used and applied this "preventive" legislation in order to control, regulate, and repress "subversive," and "criminal" journalism. It also shows how the prevention of internal disorder in both countries led to the criminalization, as political offenders, or actual rebels and opposition journalists alike. Finally, section four offers a brief reflection on the multiple meanings that "prevention" and "preventive repression" had in Colombia and Mexico during the period.

The chapter argues that governmental efforts for preventing rebellion and internal turmoil were grounded on a series of laws and decrees that shaped, in both countries, alternative regimes of legality. Revolving around issues of press freedom and maintenance

of public order, these "parallel legalities" put the prosecution and judgement of threats against the government and the public peace outside the reach of the formal laws and ordinary justice. The application of this "other" legislation by local and national authorities had a twofold purpose: protecting public order and governmental stability, and keeping political opposition under strict control and surveillance. This double purpose made possible a practical equivalence between "prevention" and "repression" that led to the "preventive criminalization" of political opposition and its multiple manifestations of dissent and protest. Such criminalization relied on the assumption that there were no major boundaries between "opposition" and "subversion," and therefore all manifestations of dissent could be potentially criminal –at least to the eyes of authorities. This assumption would legitimize intense and persistent campaigns of "preventive repression" in Colombia and Mexico throughout the entire period.

Preventing Internal Conflict Through Legislation: Press and Public Order

Preventing internal turmoil during the Porfiriato and the Regeneration represented, first and foremost, a matter of legislation. Governments in both countries heavily relied on law and lawmaking as the most appropriate ways of containing the outbreak of civil warfare, maintaining the stability of their regimes, and keeping "dangerous" or "subversive" political dissidence in check. Preventive legislation had a more intense development in Colombia than in Mexico. Such difference, nonetheless, does not mean that law and legislation were more important in one nation than in the other. Both countries counted with a relatively similar set of rules that, regardless their different nature, aimed to the same goals, responded to similar motivations, and defined analogous ways of criminalizing and

treating potential political criminals. This section analyzes and compares these legislative efforts, paying attention to their implications on the management and control of political dissent in the two nations.

The Mexican Legal Setting: The Multiple Meanings of "Public Order."

The prevention of internal turmoil in Porfirian Mexico relied primarily on legislative developments on public order and the press. It was a preventive legislation that involved two major characteristics. On the one hand, it relied on a series of laws and decrees on the press and public order that involved abstract and vague criminal definitions. On the other hand, it attempted to outline "special" and "alternative" ways of treating and punishing rebels and potential subversives. Although these laws and decrees entailed their own sets of offenses and penalties, they maintained a great degree of correspondence with the dispositions and classifications of the Mexican Criminal Code. It was also a legislation that, in correspondence with the constitutional division of public powers, subjected most modalities of "subversion" to the ordinary judicial authorities. Only rebels and other insurgents captured and judged as "bandits" would remain outside the reach of the judicial power, judged instead by administrative authorities like the police.

Preventive legislation in Mexico experienced a relatively timid development during the Porfiriato. Many of the regulations on the matter in fact pre-dated the Tuxtepec revolution, had their roots in legislative acts from the Lerdo and Juárez administrations, or simply relied on the prescriptions of the 1857 Constitution. They also comprised, at least at the federal level, a smaller set of laws, decrees, and legal reforms. A few constitutional regulations, two laws about press, and some regulations on individual guarantees that the

Congress re-enacted time and again with almost no variation comprised the bulk of this legislation. Regulations from the Constitution refer to articles 6 and 7 on freedom of speech and press; articles 15 and 23 on extradition and death penalty for political crimes; and Article 29 on the emergency suspension of individual rights. Press laws included the Organic Print Law from February 1868, together with the reform to constitutional Article 7 in May 1883. Other norms included the several laws or decrees ordering the temporary suspension of constitutional guarantees for *salteadores* and bandits, that the Congress enacted almost every year.

All these regulations, despite their diverse nature and origin, involved similar characteristics. They aimed to prevent internal conflict and political turmoil through the criminalization of a series of actions that "attacked" or "threatened" public order and peace. Many of these "threatening" actions involved acts of political dissidence that authorities might interpret as "subversive," as "invitations to rebellion or disobedience," or simply as attacks against the Constitution, the laws, and the legitimate authorities. Other criminalized actions were less political, as in the case of the different manifestations of rural banditry. This did not prevent authorities from considering them threats against public order as well, and to use them for launching "preemptive" campaigns against dangerous or potentially subversive political dissidents. The next pages review the legislation that made possible both kinds of criminalization. They also examine some contemporary reactions regarding the impacts of these regulations on the way in which Mexican governments could treat –or actually treated– potential rebels, dissidents, and political adversaries in general.

Among the constitutional prescriptions on public order, already reviewed in chapters 1 and 3, regulations on freedoms of speech and press deserve special attention. They were the basis for the preventive regulation of "subversive" and "dangerous" press during the Porfiriato. Articles 6 and 7 from the Constitution guaranteed those freedoms as long as they did not attack people's private life, public morality, or public order. None of the articles established what those notions meant or what represented an attack against them, leaving considerable room for interpretation. Lawmakers and journalists criticized such vagueness for almost the rest of the century, pointing out that it could lead –or actually led– to political instrumentalization and abuses of power against political dissidents. In the late 1850s, for instance, several members of the Constitutional Assembly manifested their fears about the possible political misuses of these provisions. Recalling Mexico's history, Delegate Francisco Zarco argued that almost all Mexican constitutions had included analogous restrictions to the freedom of press, and every single time such limitations had given way to a myriad of "scandalous abuses" on the government's part. An authoritarian, vengeful, and partisan government could see a publication criticizing an authority or official as an attack against his private life, and therefore prosecute it and its author. A political statement, a satirical text, an innocent joke, could be interpreted as an attack against public morality or public order. Often, he asserted, "public order is nothing but the peaceful reign of all tyrannies."[230]

To some Delegates, constitutional understandings of public order, at least in the case of the press and press crimes, proved dangerously abstract. Going back to Mexico's

[230] Francisco Zarco, *Historia del Congreso Extraordinario Constituyente de 1856 y 1857 – Tomo II* (México: Talleres de la Ciencia Jurídica, 1899), 551-552.

history, Delegate Díaz González maintained that, anytime the government feared a conspiracy, it invoked the protection of "public order" and satisfied, in its name, "ignoble vengeances."[231] That was also the opinion of Zarco. A government fearful of discussion and dissent, he argued, saw attacks against public order and peace almost everywhere in the press: in the disapproval of the acts of public officials, in the thorough examination of a law, in the claim for social reforms, and in the petition for legal or constitutional reforms. Under such restrictions, then, there would be no freedom or the press at all, he concluded.[232] Delegate Cendejas went even further, and claimed that these prescriptions would make it impossible to write about anything at all. Everything could be an attack against public order because nobody knew what "public order" was, he pointed out. "What is order?" The Delegate asked. Who could explain and dictate that order was? "The answer is clear," he responded: "it is the triumphant party, which tells the defeated one: 'order' is what I establish; 'order' consists on me being on the top and you staying below me." "These are times of political passions," Cendejas reminded, and within such a context the Article would be nothing but a partisan weapon –a weapon of the government in its efforts to neutralize their opponents.[233]

Further legislation on the press and press crimes helped delimit what "attacks against public order" were. The 1868 Organic Print Law considered as such all publications that encouraged citizens to disobey the law and the legitimate authorities, or to use force

[231] Zarco, *Historia – Tomo II*, 537.

[232] Zarco, *Historia – Tomo II*, 551, 552, and 555.

[233] Zarco, *Historia – Tomo II*, 548 and 563.

against them (Art. 5). Press offenses against public order received penalties of confinement between one month and a year, and could include the removal of the defendant from the state's territory (Art. 8). In correspondence with the original version of Article 7 of the constitution, the 1868 Law left the prosecution and punishment of all press offenses to a special jury, putting the press relatively outside the formal justice system.[234] This parallelism in matters of justice administration came to an end in 1883, during the administration of the Porfirista Manuel González. His reform of Article 7 in May that year established that, from then on, the prosecution of all press crimes corresponded to ordinary justice. The reform dissolved the press juries that existed since 1857, and put the legal management of the press on the hands of both state and federal tribunals.[235]

During the Porfiriato, many dissident journalists complained that these reforms had done little to create an actual legislation on the press involving well-defined crimes and rules. In January 1895, for instance, the opposition newspaper *El Demócrata* maintained that Mexico still lacked clear laws in matters of the press. Assassins, arsonists, and even *salteadores* enjoyed a greater degree of legal security than journalists and writers. All of them counted with actual laws that clearly defined their crimes and punishments, even providing them with formalities for their defense. That was not the case of journalists, "commonly subject to the whims of a vague, indeterminate will; one that works in the shadows and that nobody knows who it belongs to." The newspaper concluded with a

[234] *Constitución Federal de los Estados Mexicanos…*

[235] *Derecho político de los Estados Unidos Mexicanos*, 78. On the workings of press juries between 1857 and 1883, see Pablo Piccato, *The Tyranny of Opinion: Honor in the Construction of the Mexican Public Sphere* (Durham: Duke University Press, 2010), especially Chapter 1: "Setting the Rules of Freedom: The Trajectory of the Press Jury."

calling for a more detailed legislation, a law "wisely done" and shaped on the grounds of always consistent and predictable juridical decisions. To *El Demócrata*, it did not matter how severe or strict this law might be, as long as it provided journalists with what they lacked: legal and judicial security.[236] Independent journalists would still voice this kind of complaints during the 1900s. "One does not know then and how one transgresses the law," a writer complained at the end of the Porfirian period. "The government preferred not to legislate about [the press] so as to be able to oppress all the better," he maintained.[237]

Outside the sphere of the press, preventive legislation on public order relied on laws and decrees regulating the suspension of constitutional guarantees for bandits, kidnappers, and *salteadores*. These laws were not exclusive of the Porfiriato: the administrations of Lerdo and Juárez had enacted similar acts in six different opportunities.[238] Porfirian legislators would enact –or propose– similar acts at least four times between 1880 and 1895, often in response to alleged increases in rural criminality and "heinous crimes" –including murder, robbery with violence, and kidnapping.[239] The terms and conditions of these laws did not differ substantially from one occasion to another. On the whole, they outlined vague definitions of what a bandit or a *salteador* was, and established a gradation of penalties in correspondence with the multiple crimes and levels of criminality involved. In addition,

[236] "El martirologio de la prensa en México," *El Demócrata*, January 3,1895.

[237] Di Fornaro, *Díaz*, 96.

[238] Herrera, *Estudio*, 3.

[239] In May 1886, for instance, the government decreed this suspension as a response to a recent wave of armed robberies in the nation's railways. A draft of a similar law in 1880 allowed the government to order the suspension anytime "heinous crimes" grew "more than usual."

they prescribed some judicial formalities for the prosecution and judgment of this kind of offenders. One of these decrees, from 1895, distinguished for instance between criminals responsible for murders, serious injuries, or robbery with violence, and offenders responsible for other, lesser crimes. The decree prescribed the death penalty for the first group of criminals, and established prison penalties between 5 and 12 years for the others. Authorities that captured criminals in flagrante could sentence them to death with no previous trial and no other judicial formality than the preparation of a minute. In other cases, they should process criminals through verbal summary trials, conducted whether by political or military authorities.[240]

Variations between the 1895 Decree and previous legislation on the matter were minimal. A similar Decree, from May 1886, had established the same treatment for bandits and *salteadores*, but included more limitations for the application of death sentences – available only for cases of murder and serious injuries. It also prescribed a maximum of 10 years of prison for those *salteadores* that dodged the death penalty.[241] A project of decree from 1880 prescribed similar penalties, and added up to five years of prison for abettors or *encubridores*. Unlike the examples from 1886 and 1895, this project did not put all bandits completely outside the reach of ordinary justice. While criminals captured in flagrante were subject to an administrative treatment, other offenders still could appear before a local

[240] Decreto Número 209 (June 8, 1895), in *Recopilación de leyes, decretos y providencias de los poderes legislativo y ejecutivo de la unión, formada por la redacción del Diario Oficial*, Tomo LXIV (México: Imprenta del Gobierno, 1895), 651-653.

[241] Decreto Número 9517 (May 17, 1886): "Se suspenden algunas garantías constitucionales, exclusivamente para los salteadores de caminos," in *Legislación Mexicana o colección completa de las disposiciones legislativas expedidas desde la independencia de la república – Tomo XVII* (México: Imprenta de Eduardo Dublán y Comp., 1887), 443-444.

judge. Judges, nevertheless, had to solve their cases through verbal summary trials. To Mexico's lawmakers, these quick trials, devoid of the formalities and terms of ordinary processes, had the goal of making the judicial treatment of bandits more efficient and exemplary. The 1880 project, explained a Congressman, "aims to simplify the action of the tribunals by shortening their terms and procedures." The goal, in this regard, was to avoid delays in the administration of justice that undermined both the credibility of the justice system and the effect of its judicial decisions.[242]

Initially conceived as preemptive and repressive responses to rural common criminality, these "anti-banditry" laws were abstract and comprehensive enough to allow authorities to apply them in other circumstances. Actions of banditry did not differ significantly from the acts of hostility commonly carried out in a rebellion or an uprising, and judges or military authorities could easily charge a rebel with any of the charges included in the decrees. Furthermore, authorities could simply treat rebels or dangerous dissidents as bandits and subject them to the special regime created by this legislation. One way or another, this legislation allowed the government and its representatives to treat actual, potential, or alleged political criminals as *salteadores*, and to prosecute them outside the formalities and guarantees of ordinary justice.

This possibility is what concerned the most contemporary critics of these decrees. In their opinion, the suspension of constitutional and procedural guarantees in cases of banditry would cause –or actually caused– the unfair punishment of lots of innocent Mexicans, especially within contexts of electoral struggle or intense partisan conflict. In

[242] *Diario de los debates, 9ª legislatura*, 62-63.

1880, for instance, the jurist Rafael Herrera claimed that the legislation "sacrificed the presumption of innocence to the shortness of procedural forms," which represented a straightforward violation of the Constitution.[243] It was also a legislation that basically left people unprotected against the will of a despotic authority, one that from then on was authorized to "shoot us five times whenever it wanted to."[244] That was also the opinion of the journalist Adolfo-Duclós Salinas, an inveterate critic of Díaz and his administration in the early 1900s. To Duclós-Salinas, the legislation in question elevated the discretional power of the tyrant and the executioner to the category of law. Such decrees, he contended, did not have the purpose of "appeasing, through an exemplary punishment, restless spirits, [let alone of] subduing armed men that […] attacked the established social order." They merely had the purpose of allowing authorities to "perpetrate detrimental violence against the lives of citizens."[245]

In general terms, preventive legislation in Porfirian Mexico responded to concrete questions about the most appropriate legal means for avoiding rebellion and civil war, preventing the spread of "subversive" messages, and containing and repressing "dangerous" political dissidence. Questions about the management of "subversion" and political opposition through press legislation were also linked to concerns about the logics and boundaries of state power and the need for limiting state authoritarianism. Preoccupations about issues of jurisdiction and justice administration also played a part

[243] Herrera, *Estudio*, 7-8.

[244] Herrera, *Estudio*, 10 and 14-15.

[245] Duclós-Salinas, *México*, 131-132.

here. It is possible to perceive certain tendency to turn the legal treatment of public order into an administrative matter, at least in the case of banditry. It is also possible to identify some degree of mistrust towards the effectiveness of the processes and formalities of the ordinary justice system regarding the management of this kind of crimes. Such mistrust, nonetheless, did not make Mexican lawmakers advocate for a complete break up with ordinary justice in the prosecution of crimes against public order –unlike what would happen in the Colombian case.

Press and Public Order in Colombia: A Legislation in Constant Reinvention

Preventive legislation on public order in Colombia partially paralleled the Mexican experience. As in Mexico, it was a legislation that combined concerns about the protection of public order with preoccupations about the limits of the press. It was also a legislation that involved vague criminal definitions and aimed to create an alternative legal and judicial sphere for the treatment and neutralization of potential political criminals. Differences between the two experiences were, nonetheless, significant. Preventive legislation in Colombia was much more extraordinary in its nature. A big portion of it was a direct product of states of emergency and owed its existence to executive decrees. Similarly, and unlike the Mexican case, it established an overly-parallel legal regime for the definition and punishment of the crimes in question, independent from the provisions and punishments that the Criminal Code established on the matter. In addition, it was a legislation that practically put all internal enemies outside the sphere and reach of the ordinary justice system. Compared to the Mexican experience, the Colombian case offers a more complex picture that deserves a more detailed examination.

Preventive legislation in the Colombian Regeneration experienced a more intense development than in Porfirian Mexico. Between the mid-1880s and the late 1900s, the Colombian government issued a significant collection of decrees and laws on the matter that exploited and built on the gray areas left by the Constitution on issues of public order. Their dispositions would shape a legal regime that, like the "martial legality" defended by Caro, paralleled the "normality" of the Constitution. Involving its own set of crimes, penalties, faculties, and exceptions, this "alternative legislation" supplemented and made more complex the repertoire of penalties and criminal categories contemplated in the Criminal Code for cases of internal enmity. Most of this "alternative legality" remained in place almost until the end of the period, turning the "exceptionality" of emergency decrees into formal and permanent legislation.[246]

The decades in question witnessed the enactment of at least twelve laws and decrees on matters of press and public order. Legislation on press was particularly dynamic between the expedition of the 1886 Constitution and the Thousand Days, encompassing at least 5 different executive decrees. The first of them dates from 1886 (Decree 635), followed by another one in 1888 (Decree 151), and two more in 1889 (Decrees 286 and 910). A final one in 1896, took the form of law (Law 157). The Reyes administration (1904-1909) only issued a major press act in 1905 (Decree 4). Legislation on public order shows an inverse development, with only one Law enacted before the Thousand Days (Law 61, 1888). Laws and decrees on public order had a more intense development during Reyes's five-year rule or *quinquenio*, with at least three decrees enacted in the last moths of 1904

[246] Alejandro Pajón, "Policía y orden público en la Regeneración," in *La regeneración revisitada: Pluriverso y hegemonía en la construcción del Estado-nación en Colombia*, ed. Leopoldo Múñera Ruiz y Edwin Cruz Rodríguez (Medellín: La Carreta, 2011), 234 and 280-281.

(Decrees 750, 845, and 948), another one in 1906 (Decree 11). The final was a law enacted in 1908 (Law 13). The need for expanding and concretizing the Constitution's vague prescriptions on freedom of press in a context of intense partisan conflict helps explain the rapid development of press legislation before the turn of the century. The proliferation of public order decrees in the first years of the Reyes era, to a great extent, responded to the urgent necessity of pacifying the country after the Thousand Days and preventing further outbursts.

Overall, these decrees and laws encompassed a series of characteristics that remained more or less stable throughout the decades in question. It was a body of norms that depended almost exclusively on provisions of the Executive power, barely relied on the authorities and processes or the ordinary judicial system, and revolved around dispositions that did not correspond to those from the Constitutions and the Criminal Codes reviewed earlier in this study. Additional characteristics included the management of threats against public order as administrative matters under the control of the police; a strong limitation of the freedom of press; a vague typification of the offenses against public order; and the multiplication and intensification of existing penalties for potentially dangerous dissidents and other internal enemies.[247] The next pages explore and analyze these characteristics through a revision of some of the most important and representative pieces from this collection.

[247] Lina Adarve Calle, "La ley de los caballos de 1888: entre la búsqueda del orden y la construcción del enemigo," *Nuevo Foro Penal* 78 (2012), 153; and Manuel Malagón Pinzón, *Vivir en policía: una contralectura de los orígenes del derecho administrativo colombiano* (Bogotá: Universidad Externado de Colombia, 2007), 155-156.

Before the Thousand Days, the preventive management of public order in Colombia drew on the dispositions of Law 61, 1888, best known as *Ley de los Caballos* (Law of Horses). The Law was the reaction of President Núñez to an alleged state of emergency concerning the mutilation of a few horses somewhere in the Department of Cauca, in May that year. Interpreting the episode as the prologue of an upcoming uprising, Núñez convinced the Congress to grant him legislative powers in order to suppress the movement before it started.[248] The resulting law gave the President wide and undefined faculties for administratively preventing and repressing "offenses against the state affecting public order" and "conspiracies against public order." It also gave him powers to respond to any attack against public or private property that, to the President's judgement, represented "a threat against public order."[249] Law 61 also established a series of penalties for those incurring any of the mentioned offenses, including confinement, expatriation, and prison. There was no fixed limit for such penalties, for they could be as severe and lengthy as the President deemed necessary (Art. 1).

These punishments were as imprecise as the offenses that the Law created. The *Ley de los caballos* did not define what "offenses" or "conspiracies" against public order were. It all depended on whatever the President wanted those actions to be. Discretion and

[248] Adarve Calle, "La ley," 154.

[249] Ley 61 de 1888 (Mayo 25): "Por la cual se conceden al presidente de la república algunas facultades extraordinarias," *Diario Oficial* 7399, May 29, 1888. It was not until the beginning of the Reyes administration that a law on public order legislated in such a way on matters of "subversive" or "dangerous" associationism. Decree 845 from October 1904 ordered the Police to reviwe the statutes of every existing association, in order to determine if they dealt with issues thatt, "putting at risk the nation's security, degenerated or could degenerate into tumultuous acts." (Art. 1). The Decree also prohibited the establishment and functioning of associations and meetings whose objectives included the public discussion of political matters (Art. 2), see: Decreto 845 de 1904 (18 de octubre): "Por el cual se reglamenta la inspección de ciertas juntas y sociedades." In *Actos oficiales de la Actual Administración Ejecutiva durante las sesiones ordinarias del congreso de 1904* (Bogotá: Imprenta Nacional, 1904).

unpredictability surrounding both crimes and penalties were, thus, the major markers of this legislation. It allowed the government to react and punish on the basis of mere suspicions, and granted defendants no formal procedural guarantee. The administrative treatment of these offenses meant that the Police was the one in charge of prosecuting offenders, according to summary processes and without following the formalities of the ordinary justice system.[250] Conservatives widely supported the Law as a "wise prevision" against revolts and an "effective remedy" against rebels and conspirators.[251] Liberals, on the contrary, perceived it as a major violation of the Constitution, for it allowed authorities to punish people for crimes that had not been previously established in the legislation current at the time.[252] It was also law so wide and vague that practically entitled the Executive to commit all sort of abuses, as pointed out by the Liberal Congressman Luis A. Robles.[253] Initially conceived as a transitory legislative act, Law 61 remained in force for a decade, until May 1898.[254]

The *Ley de los caballos* operated in tandem with a contemporary decree on the press: Decree 151. Enacted in February 1888, this piece of legislation represented the most important and influential norm on press and journalism during the late 1880s and early 1900s. A central consideration inspired the Decree: press abuses deserved a differential treatment depending of the offenses involved. The judgment of offenses against civilians

[250] Pajón, "Policía," 246; and Malagón Pinzón, *Vivir en policía*, 168.

[251] Adarve Calle, "La ley," 166.

[252] Adarve Calle, "La ley," 163-164. The remark belongs to the Liberal José Vicente Concha.

[253] Adarve Calle, "La ley," 161.

[254] Law 18, 1898 finally decreed the derogation of Law 61. See: *Diario Oficial* 10792, October 25, 1898.

and private individuals should correspond to ordinary justice, while the prosecution of crimes against public order and peace fell into the government's hands.[255] In correspondence with such principle, Article 1 of the Decree divided press crimes into offenses against society, materialized through "subversive publications," and attacks against private individuals, realized through "offensive publications." Article 2 put the treatment of subversive publications in the hands of the Executive.

The Decree distinguished among ten different modalities of press offenses against society (Articles 4 and 7). They included attacking the law and the government's institutions, encouraging people to disobey them, or justifying actions that the laws considered criminal. Other offenses of a relatively similar nature involved attacking the military; assuming the voice and representation of the people; promoting conflicts among social classes; and spreading fake news that could cause either alarm or disruptions of public order. Other modalities of "subversion" encompassed attacks against the Catholic Church and the Catholic authorities; protests against judicial decisions; insults and threats against judges; the revealing of official secrets; and even the impugnation of the recently reformed monetary system. Penalties against subversive publications ranked from simple warnings and demands for rectification to temporary restrictions to the promotion and sale of the sanctioned newspapers. In the worst cases, authorities could suspend the publication for a period between fifteen days and six months. A complementary decree from March

[255] Decreto 151 de 1888 (17 de febrero): "Sobre prensa," *Diario Oficial* 7299, February 17, 1888.

1889 established additional fines for subversive newspapers, and made their public vendors (*voceadores*) subject to penalties of arrest up to ten days.[256]

Conservatives defended with political and legal arguments the "alternative" legality that Decree 151 created for the press. "All the newspapers from the opposition that had circulated in the last years," complained Minister Ospina Camacho in 1889, "have been characterized by the short-sightedness of their writers, their bold and aggressive language, and their tendency to dodge the dispositions regulating the press."[257] A year before, Miguel A. Caro had insisted on the necessity of the Decree on the basis of the "special nature" of press crimes against society. Caro considered that these offenses were elastic and mutable, and therefore escaped the rigid stability of the prescriptions from the Criminal Code. The criminality of subversive publications was always subject to changing social and political conjunctures. Press offenses were "elastic" crimes that required similarly "elastic" laws, maintained Caro. They required special prescriptions that, like the Decree in question, were always susceptible of reform.[258]

The *Ley de los Caballos* and Decree 151 had several features in common. They outlined a parallel regime of crimes and penalties for potential rebels, conspirators, and "dangerous" dissidents. They also shared the premises that internal enemies had to remain outside the jurisdiction of the formal justice system and that their prosecution, carried out through administrative means, should be exclusively under the Executive's control. These

[256] Decreto 286 de 1889 (27 de marzo): "Adicional al 151, de 17 de febrero de 1888, sobre imprenta," in Caro, Miguel Antonio. *Libertad de imprenta: Artículos publicados en "La Nación" en 1888* (Bogotá: Imprenta de La Nación, 1890), 39-140.

[257] Caro, *Libertad*, 141-142.

[258] Caro, *Libertad*, 68-69.

assumptions also implied that the government and its authorities were the ones in charge of deciding over the criminality and punishment of the offenses in question. All these considerations were grounded on the belief that the justice system was slow, cumbersome, and inefficient. Such situation proved particularly counterproductive when it came to the prevention of crimes against public order, for they required immediate and efficient responses. This was why, Caro explained, "the timely suspension of a seditious newspaper, carried out as a matter of Police, produces better results than a long trial."[259]

There were additional reasons for leaving the repression of these crimes to the Executive and the Police, in Caro's opinion. The importance and repercussions of press offenses against society made their prosecution by the ordinary justice untenable. "Sedition, subversion, everything that disturbs public order and tranquility cannot be left, without great inconveniences, to the examination and correction of ordinary tribunals," he wrote in 1888. This was particularly clear in the case of subversive newspapers, in his view: "the more irresponsible the political press is, the less convenient the intervention of the judicial power becomes."[260] Subversive publications demanded the direct intervention of the government because they put at stake interests that were above the reach of common judges: society's feelings, public peace, and even the dignity of the nation's highest political authorities. In these cases, the government should intervene not only as a judge, but also as a representative of society and ultimate guardian of social interests.[261]

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[259] Caro, *Libertad*, 26.

[260] Caro, *Libertad*, 122-123.

[261] Caro, *Libertad*, 85-86.

The dispositions of Decree 151 remained unchanged until December 1896, with the expedition of Law 157.[262] This law gave a new development to the repertoire of press crimes against society delimited in 1888. While Decree 151 only distinguished among a dozen crimes against society, Law 157 defined 17 offenses. Besides the offenses already included in the 1888 Decree, the new law also considered subversive all publications that "encouraged the nation's dismemberment or the secession of a portion of its territory" and "promoted uprisings and incited civil war." New subversive acts also involved "encouraging members of the military to perform acts of disobedience or rebellion," and even "insulting or slandering the person in charge of the Executive power and the nation's bishops." (Art. 32). These changes in the repertoire of crimes against society were not surprising, considering that only a year earlier a liberal uprising, in part fueled through opposition newspapers, had escalated into a nation-wide civil war. Penalties for press crimes also became more diverse and stricter. New penalties included fines and the temporary closing of printing presses, as well as several prohibitions for editors and printers. The law, for instance, forbade proprietors and directors of subversive newspapers from performing those roles in any other publication for a period up to six months (Art. 36). Law 157 set the stage for an even more intense control of dissident and subversive newspapers.

The end of the Thousand Days' War in 1902 and the later secession of Panamá the following year made the maintenance of peace a top priority for the Reyes administration. This is why the first months of the *quinquenio* were particularly prolific in measures on

[262] Ley 157 de 1896 (diciembre 12): "Sobre Prensa," *Diario Oficial* 10233, August 12, 1897.

public order, with the enactment of acts such as Decrees 750 and 948 from September and November 1904 respectively. Both decrees aimed to prevent further episodes of internal warfare by "disarming" the nation and containing the spirit of rebellion. Decree 750 ordered the collection of all war weapons and ammunitions that remained by the time in hands of civilians. It gave Colombians a sixty-days term to turn in all weapons to the authorities, and ordered the latter to treat as conspirators all citizens that, after the deadline, were still in possession of such materials.[263] The Decree formalized a modality of internal enmity that did not exist before: the possession of war weapons that could be used to disturb public order. Reyes believed that since after the war many civilians remained heavily armed there was a serious threat against public peace, and ensured "enemies of the constitutional order" the means for carrying out future rebellions. The measure, in this light, represented an important step towards the consolidation of internal peace after three years of civil war, as the President explained in a circular from November 1904. [264]

The enactment of Decree 948 responded to the supposed circulation of rumors predicting the outbreak of a new insurrection. It had, in Reyes's words, the goal of preventing "belligerent" people from putting at risk the rights of the rest of the nation.[265] The Decree ordered the arrest, for up to ten days, of every individual that, whether in public or in private, spread false rumors about the alleged upcoming revolt (Art. 1). It also

[263] Decreto 750 de 1904 (9 de septiembre): "Sobre recolección de armas, municiones y demás elementos de guerra," in *Actos oficiales*.

[264] "Circular urgentísima a los gobernadores, prefectos, [y] comisionados para colectar armas," (Bogotá, November 11, 1904), in *Actos oficiales*.

[265] Decreto 948 de 1904 (noviembre 27): "Sobre Alta Policía Nacional que previene la turbación del orden público," in *Diario Oficial* 12235, Diciembre 14, 1904.

established that all citizens that obstructed the authorities' efforts to collect war weapons from civilians should face fines and could be subject to any other penalty that the government deemed convenient (Art. 3). Apparently, the weapon collection decree had not been well received in many parts of the country, facing resistance specially from people believing that the government's plan was to re-arm Liberals.[266] In 1905, the Congress turned this presidential decree into a formal and conventional law: the *Ley de Alta Policía*, the legal backbone of the Reyes administration in matters of public order.[267] Decree 11, from February 1906, turned these prescriptions into a more comprehensive and detailed legislation.

The most important reform that Decree 11 brought on matters of *Alta policía* was the definition and penalization of a specific set of political crimes. Political offenses included in first place the crimes of rebellion, sedition, riot, and *asonada*, in the terms in which they appeared in the Criminal Code. Hindering the gathering of war weapons by the correspondent authorities and spreading fake news that caused alarm or fomented internal turmoil were also political crimes. So were insulting or slandering high-rank public officers and attempting to discredit the government and the authorities through speeches or publications. Finally, the Decree considered a political crime the public resistance to the

[266] On the resistance to the weapon collection decree, see the heading of Decree 948, 1904; see also: "Circular de enero 7 de 1905 a gobernadores," in *Constitución política de Colombia: Actos legislativos que la reforman y leyes de 1905* (Bogotá: Imprenta Nacional, 1905).

[267] See Article 6 of Decreto Legislativo 11 de 1906 (5 de febrero): "Por el cual se amplía la ley de alta policía nacional," in *Decretos Legislativos Expedidos en 1906: Edición oficial dirigida por la secretaría general de la presidencia de la república* (Bogotá: Imprenta Nacional, 1906).

introduction and collection of taxes.[268] The decree recognized 9 different modalities of political criminality in total. In terms of penalties, the Decree allowed the President to administratively punish offenders with *reclusión* up to one year, prison up to six months, arrest up to one month, confinement up to two years, or expatriation up to four years (Art. 2).[269]

A final modification of this legislation would take place in August 1908, with the expedition of Law 13.[270] The Law would transform even more the previous repertoire of criminal actions against public order, with the identification and punishment of six different criminal modalities. New crimes included acts such as attacking the freedom or the life of the President or any of his ministers, punished with the death penalty (Arts. 1 and 3). Other criminal actions included in the law were, attempting to "overthrow legitimate authorities or disobeying the nation's Constitution and laws;" spreading fake news that disrupted public peace; "discrediting" the government through speeches and publications. Two more included the rebellion of public servants against the Constitution; and, the intervention of foreigners in "political endeavors against public order" (Art. 1).

Preventive legislation on public order before and after the Thousand Days entailed both continuities and changes. From the *Ley de los Caballos* to Law 13, 1908, the basic

[268] Decreto Legislativo 11 de 1906 (5 de febrero). This last disposition was Reyes's response to a riot occurred in June 1905 in the town of Cartago, Cauca, concerning the functioning of liquor taxes; See: "Circular de junio 30 de 1905, al gobernador en Popayán y al prefecto de Cartago," In *Constitución política de Colombia*.

[269] In addition, the Decree gave the Executive the power of deciding how and under which jurisdiction these offenders could be prosecuted and judged, depending on the severity of the crimes and the nature of its perpetrators. Political criminals, in this light, could be administratively processed by the Executive and the Police, summarily judged in court martials, or formally prosecuted before the ordinary justice (Art. 3).

[270] Ley 13 de 1908 (agosto 18): "Sobre orden público," *Diario Oficial* 13371, August 24, 1908.

characteristics of these legal strategies remained almost unchanged. They all proclaimed the seizing of the prosecution and judgment of internal enemies by the Executive power, together with the almost complete inattention to the formalities of the ordinary justice system. Similarly, they all turned the management of public order into an administrative matter in the hands of the government and the police, and made the Executive an alternative yet legitimate judicial and legislative organism. Developments and changes between one law and another had to do, primarily, with the progressive transformation of the actions considered "attacks against public order" and their corresponding punishments. By the end of the *quinquenio*, the reasons according to which authorities could call somebody an internal enemy were certainly more diverse than they were back in the 1880s. So was the repertoire of penalties that the legislation allowed for those crimes, which from the beginning included penalties that neither the Criminal Code nor the Constitution established for political offenses –confinement, expatriation, and, later on, capital punishment. Such legal developments represented systematic governmental responses to a series of events and circumstances that gave authorities the impression of an apparently growing state of political unrest. It was, on the whole, a dynamic legislation that evolved together with the turbulent development of Colombia's political life throughout the period.

How did Mexican and Colombian governments apply this legislation? How did they enforce it, and what does its enforcement reveal about the ways in which authorities in both countries tried to prevent rebellion and maintain "dangerous" political dissidence in check? The next sections address these questions in an effort to uncover and analyze the logics of state power *vis-à-vis* actual or potential threats against public order in the Regeneration and the Porfriato.

Fighting Rebellious Plots and Potential Rebels: The Legal and Judicial Logics of State Repression

Governmental efforts to prevent rebellion and neutralize potentially subversive dissidence in Colombia and Mexico fell primarily on partisan leaders, political malcontents, electoral rivals, and even military adversaries. Drawing on the reviewed preventive legislation, these efforts conditioned a repression of "dangerous" dissenters that, despite its undeniable legal grounds, involved different decrees of "alternative legality" and extra-judicial activity. This section reviews and analyzes some of the principal measures in which these preventive efforts materialized, paying special attention to their legal implications and the ways in which dissidents in both countries experienced them.

Between "the Judicial" and "the Extrajudicial": Governmental Responses to Dangerous Dissidence in Porfirian Mexico.

The preventive treatment of rebellion and subversion in Porfirian Mexico relied on a varied set of legal, judicial, and extrajudicial strategies. A first strategy consisted in formally arresting and processing potential subversives and "dangerous" internal enemies in correspondence with the Criminal Code and under the jurisdiction of ordinary justice. A second strategy involved the prosecution and treatment of "targeted" revolutionaries in correspondence with the several laws ordering the suspension of constitutional rights for bandits and *salteadores*. Here, the discretion of political and military authorities and the scarce guarantees under summary trials replaced the formalities and protections available under ordinary justice. A final strategy, barely founded upon legal or judicial formalities, had to do with the discretionary and informal administration of punishments such as the

death penalty for "dangerous" dissidents or potential revolutionaries. Extrajudicial executions and selective political assassinations were frequently part of this third set of practices.

The coexistence of the three strategies throughout most of the Díaz regime reveals a parallelism between "formal" and "informal," "legal" and "extralegal," "judicial" and "extrajudicial" modalities of preventive responses to political criminality. Such simultaneity of strategies provided Porfirian authorities with wide legal –and extralegal– resources for treating and neutralizing "dangerous" or merely "uncomfortable" dissidents. Their implementation represented not only a resource for dismantling conspiracies against public order, detaining conspirators, and suffocating attempts at rebellion or sedition. It was also a tool for neutralizing political or electoral rivals, putting dissidents out of circulation, and hindering the political activities of the opposition.

The "formal" strategy of prosecuting "dangerous" dissidents according to the criminal code materialized, primarily, in the denunciation and arrest of dissenters for "conspiring against public order" or "preparing subversive acts" against local or state authorities. It did not matter that the alleged conspiracies never took place or were only the result of exaggerated rumors. In 1886, for instance, fears of a potential rebellion led by General Trinidad García de la Cadena put the state of Zacatecas in a state of alarm. According to a contemporary writer, authorities arrested about a hundred people accused of being part of the alleged revolutionary plot. According to the *antiporfirista* Adolfo

Duclós-Salinas, the feared rebellion never took place, for it was nothing but a small, weak uprising that did not last long and left no serious consequences.[271]

Analogous concerns between late 1890 and early 1891 led the government of Nuevo León to request the United States the arrest and imprisoned of a group of Mexican exiles. The targeted expats were apparently responsible for preparing a revolution against Díaz's and plotting against the life of General Bernardo Reyes. Authorities from Texas arrested the suspects and presented them before an American court, which acquitted them after the prosecution proved incapable of proving the actual existence of such plans.[272] In Monterrey, the preparation of a Liberal demonstration in support of Bernardo Reyes's rival to the upcoming state election provoked, between March and April 1903, the arrest of about a dozen people under charges of conspiring against public order. Pro-government newspapers backed the preemptive arrests, arguing that liberals "[invoked] rebellion, promoted *asonada*, threatened [the City] with disorder, [and] made the establishment of the state of siege an urgent necessity."[273]

Another common practice in this regard was labelling opponents as "suspects of rebellion," which allowed authorities to arrest and imprison them for "preventive" purposes. In March 1880, for instance, the Supreme Court conceded Amado Triviño an *amparo* against the acts of the political chief of Baja California. According to the case'sfile, the political chief had ordered Triviño's prison after considering him a rebellion suspect.

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[271] Duclós-Salinas, *México*, 129-130.

[272] Ramón Prida, *De la dictadura a la anarquía: apuntes para la historia política de México durante los últimos cuarenta y tres años* (El paso: Imprenta de "El Paso del Norte," 1914), 88-89.

[273] Duclós-Salinas, *México*, 270. The demonstration finally occurred in April 2 and involved a skirmish between demonstrators and local authorities that caused no less than 20 casualties (see page 394).

A military court had put the defendant in prison without a formal order of imprisonment, an act that, according to the high court, violated basic procedural and constitutional guarantees.[274] Earlier that year, the Supreme Court had confirmed the sentence, dictated by a judge from Michoacán, that absolved Jesús Odariza and others from imprisonment under suspicions of rebellion. Apparently, the state authorities, wanting the defendants to remain in prison, rejected the judicial decision and brought it before the high tribunal, whose decision benefitted the prisoners.[275] Years later, in May 1887, the paper *El Tiempo* denounced that, as a consequence of the supposed revolutionary threat in the state of Zacatecas 1886, authorities had sent several people to a state prison. Suspects of participating in the alleged subversive plot, the prisoners had spent months in jail waiting for a court to prove their crimes. The victims, according to the newspaper, were "expiatory victims of an imaginary revolution."[276]

"Preemptive strikes" of this nature seemed to intensify after the reorganization of the Liberal Party and in the midst of the revolutionary wave of the late years of the first decade in the twentieth century. In September 1906, authorities from Aguascalientes arrested Félix Rubalcaba as a rebellion suspect. Weeks before, Rubalcaba had left Morenci, Arizona, with the mission of distributing proclaims for the Liberal Party across northern Mexico and organizing in the region a political club in its support. Authorities arrested Rubalcaba as a rebellion suspect not only because of his political activities down the border, but also for being member of a political association from Arizona that, in May that

[274] SCJ, 1880, Expediente 151: "Toca al juicio de amparo promovido por Amado Triviño."

[275] SCJ, 1880, Expediente 0: "Toca a la causa contra Jesús Odariza y cómplices por sospechas de rebelión."

[276] "Por fin!..." *El Tiempo*, May 26, 1887.

year, had delivered insulting speeches against Porfirio Díaz. The events from May had led Mexico's government to request the Governor of Arizona the permanent surveillance of Rubalcaba, as well as his arrest at the slightest sign of a criminal or subversive activity. In a telegram from September 24, a judge from San Luis Potosí requested the authorities in charge of Rubalcaba to proceed with all the effectiveness and severity of the law. It is possible to imagine the judge's frustration when, a few days later, authorities reported that the alleged revolutionary had ran away by jumping off a train's window.[277]

Rubalcaba's was just one of the many cases of arrest under suspicions of rebellion between 1906 and 1907. In November 1906, for instance, the newspaper *La Opinión* denounced that the law students Eugenio Méndez y Teodoro Hernández, together with a lawyer from Veracruz, were in prison facing similar charges. Authorities accused Méndez, an author of satirical articles, of maintaining correspondence with revolutionaries from northern Mexico. The lawyer from Veracruz, on the other hand, was a suspect of participating in a rebellious plot in the town of Acayucán. None of these accusations had solid grounds, the paper maintained, and the arrests seemed to respond to "hidden intrigues" and personal vengeances.[278] Similar arguments used *El Diario del Hogar*, in August 1907, to criticize the arrest of Leopoldo Álvarez and other people in Coahuila, all of them accused of provoking a rebellion. A local judge processed Mayor Álvarez and acquitted him due to lack of evidence. To *El Diario*, the case of Álvarez was representative of what currently happened with many other people. "[Authorities] arrest them, imprison

[277] AGNM, Secretaría de Justicia, Caja 552, Expediente A: "Sobre Causa de Félix Rubalcaba y Socios;" AGNM, Secretaría de Justicia, Caja 552, Expediente 303: "Averiguación practicada sobre Félix Rubalcaba y socios por delito de rebelión;" and *El Contemporáneo*, September 19, 1906.

[278] "Efervescencia estudiantil – Un cateo riguroso," *La Opinión*, November 15, 1906.

them for a relatively long time, and then have to release them because there is no evidence that can prove their condition of agitators or *revoltosos*."[279]

During the conflictive years of 1906 and 1907, suspicions of rebellion, rumors of uprisings and conspiracies against public order, and even "imaginary revolutions" provoked waves of preventive arrests, not only in México but also north of the border. Right before the failed rebel movement of September 1906, a series of rumors about an upcoming revolt of Mexicans in the American south raised the alarm in the United States. As a result, American authorities arrested and sent back to Mexico 150 "pacific citizens accused of the terrible crime of rebellion," as informed by *El Diario del Hogar*. "Nothing was true, well-grounded, or acceptable," the paper remarked. The rumors proved exaggerated, the feared rebellion never took place, and the tribunals in charge of judging the deportees had already acquitted many of them by November 1907.[280] Massive imprisonments like the one denounced by *El Diario* seemed to have become common at the time. Earlier in 1907, the paper *Revolución* complained that, since the start of the revolutionary threats by the Liberal Party in 1906, the government of Díaz had been persecuting "all those that the dictatorship considers rebellion suspects." According to the newspaper, persecutions equally included men, women, seniors, and even children, all of them imprisoned without the minimal evidence or justification. "The jail of Orizaba [Veracruz] hosts a multitude of women and children, eight and nine years old, accused of

[279] "El mayor Leopoldo Álvarez," *El Diario del Hogar*, August 17, 1907.

[280] *El Diario del Hogar*, November 19, 1907.

rebellion […] Ulúa also accommodates a great number of children accused of being revolutionaries, whose ages rank between 8 and 11 years old," the paper denounced.[281]

The strategy of persecuting, judging, and punishing "dangerous" dissidents as bandits or *salteadores* also had a legal foundation –at least partially. Although there were no laws authorizing this proceeding, some local and provincial authorities used the legislation suspending the constitutional guarantees of bandits and *salteadores* for neutralizing or getting rid of dissidents and political rivals. Under the pretext of fighting and preventing rural banditry, several regional and local political bosses unleashed campaigns of political repression that led to the summary judgement and extrajudicial execution of dozens of dissidents. Implicated authorities put these executions in the hands of the *Rurales* or, more frequently, the *Acordadas*, small private armies at the service of a local political boss that carried the name of the judicial institution created in the early 18th century, in particular to fight brigandage.[282]

The use of legislation against banditry for the persecution and punishment of "potentially dangerous" dissidents was particularly common in northern Mexico during the 1890s and 1900s. That was precisely what, according to Duclós-Salinas, Bernardo Reyes did in Nuevo León after the expedition of the aforementioned Decree from May 1886. Reyes initially used the law to get rid of rural bandits, kidnappers, and assassins, manufacturing long lists of names that he would later deliver to the chiefs of the *Acordadas*.

[281] "La barbarie de Porfirio Díaz," *Revolución*, June 15, 1907. The note makes reference to San Juan de Ulúa, an island with a fortress, a castle and a prison overlooking the seaport of Veracruz.

[282] On the Acordada in Colonial Mexico, see: Colin MacLachlan, *Criminal Justice in Eighteenth Century Mexico: A Study of the Tribunal of the Acordada* (Berkeley: University of California Press, 1974).

According to the author, Reyes elaborated such lists on the basis of denunciations that no authority cared inquire about much less prove. Lists in hand, the *Acordadas* would find the targeted individuals, arrest them, and then applied them the popular *ley de fuga* or "runaway law." Troops would take one or several prisoners to a desolate place, shoot them in the back, and then present them as "hunted" runaways. Over time, Duclós Salinas maintained, Reyes would start adding to these lists the names of several dissidents and political rivals.[283]

Judging from Duclós-Salinas's account, by the early 1900s, the politization of the *Acordadas* in Nuevo León had already reached dramatic levels. "The *Acordada* is not only for criminals, and its acts rarely follow the commission of a crime," he denounced in 1904. "In general, the victims of the *Acordada* are opponents to the government. [Its goal] is merely to disappear fearful people, whether bandits or political dissidents."[284] "The *Acordada* is usually in charge of the personal enemies of the governor and the local political bosses," wrote in 1909 John K. Turner also on the case of Nuevo León.[285] Almost all of their victims were "political suspects," Turner commented: "[people] that dared to pronounce a single world against the governor […] I personally know a Mexican whose brother was shot down by the *Acordada* only for yelling 'long live Ricardo Flores Magón.'"

[283] Duclós-Salinas, *México*, 112-114 and 116: see also: Vanderwood, *Los Rurales*, 154. Writing about the *ley fuga* in 1909, Carlo di Fornaro remarked: "This natural impulse to run away was cleverly used by the governors, *jefes políticos*, etc., to get rid of their enemies […] There are no more bandits in Mexico, but the *Ley Fuga* is still in full vigor; it is used for private vengeance [or] for political purposes." Di Fornaro, *Díaz,* 87-88.

[284] Duclós-Salinas, *México*, 115-116.

[285] Turner, John Kennet. *México Bárbaro*, (Edición digital del Instituto Nacional de Estudios Políticos – INEP A.C. Originally pubished in 1909), 64.

[286] According to both Turner and Duclós-Salinas, these scenes of clandestine executions occurred not only all across Nuevo León but also in other northern states including Coahuila and Tamaulipas.[287] In Coahuila, Turner wrote, authorities gave an *Acordada* leader orders of "discreetly executing all people along the [Mexican-American] border that he suspected were in contact with the Liberal Party."[288] The victims of the *Acordada* commonly exceed a hundred people every year, Duclós-Salinas maintained. "The Mexican government is always whether author or accomplice of these acts," he denounced.[289]

Political prisoners were particularly aware of these practices, and some of them even publicly manifested their fears of falling victim of an extrajudicial execution. In May 1894, *El Tiempo* published the letters of two prisoners that, days before their referral to other carceral institutions, wanted to put on record that they were not planning to run away. One of the letters stated, among other things, that "since it is common that the escort parties, with or without instructions, commit attacks against the people they are supposed to watch […], I beg you to publish in your popular newspaper that I will not try to run away for any reason whatsoever." "It is very important to make this clarification," the letter continued, "so people know that any attack against me would be highly unjustifiable."[290] These

[286] Turner, *México Bárbaro*, 64-65.

[287] Duclós-Salinas, *México*, 119 and 123.

[288] Turner, *México Bárbaro*, 64.

[289] Duclós-Salinas, *México*, 115-116. The *ley fuga* was not an exclusive method of the *Acordadas*. Although the Mexican law prohibited the *Rurales* to apply the *ley fuga*, they still managed to perform a few extrajudicial executions, especially of political targets. In 1905, for instance, they were responsible for the summary execution of a notable from Tlaxcala, an ardent opponent to the fourth consecutive reelection of governor Próspero Cahuantzi. See: Vanderwood, *Los Rurales*, 153.

[290] "Otro preso político que no pretende fugarse," *El Tiempo*, May 9, 1894.

"clarifications" still seemed habitual by the mid 1900s. In February 1905, the paper *Regeneración* published two telegrams from the wives of two political prisoners that apparently were awaiting an extrajudicial execution. "Fearing his assassination by the *Acordada*," one of the telegrams said, "I ask for guarantees for my husband Toribio de los Santos, made political prisoner by the municipal president Adalberto Viesca."[291] Fear of the *Acordada* seemed to go beyond the denunciations of a couple *antiporfirista* writers.

The works of the *Acordadas* linked the still legal strategy of punishing "potential rebels" as bandits with the sheer extra-legal practice of assassinating dangerous dissidents and other political rivals. Outside the domains of the para-institutionality of the *Acordada*, this third practice materialized in the selective assassination of dissidents, opposition journalists, and "likely revolutionary" military leaders. Duclós-Salinas, for instance, denounced the "strategic assassination" in 1886 of several military *caudillos* accused of plotting rebellions against Díaz. The denunciations included the cases of Trinidad García de la Cadena in Zacatecas, Donato Guerra, and General Ramón Corona in Guadalajara.[292] General Ignacio Martínez suffered the same fate in February 1891, while allegedly plotting an insurrection against Bernardo Reyes from Laredo, Texas.[293] In his book *De la dictatura a la anarquía* (1914), Ramón Prida denounced the assassinations of several opposition journalists in mid-1895: one in Hidalgo, another in Puebla, one more in Tampico, and a fourth one in Mexico City.[294] During the early 1900s, according to Prida, Reyes's

[291] "Autoridades asesinas," *Regeneración*, February 25, 1905.

[292] Duclós-Salinas, *México*, 129-130.

[293] Prida, *De la dictadura*, 88.

[294] Prida, *De la dictadura*, 141.

"preemptive strikes" against potential revolutionaries in the north caused the disappearance of at least 80 people "without the instauration of a process or the intervention of any judge."[295] These preventive measures would parallel the reaction of Díaz and his governors against the many uprisings that shook Mexico during the last years of the Porfiriato.

Preventive measures against rebellion during the Porfiriato were, to a certain point, properly founded in the rule of law and the Constitution. They maintained some degree of correspondence with the prescriptions of the Criminal Code and the formalities and protections of the judicial system. Preventive imprisonments of conspirators against public order and arrests under suspicions of rebellion somehow relied on these formalities, and defendants could find some kind of redress by ordinary justice. This treatment, nevertheless, represented just one of many other possible ways of preventing rebellion and repressing "dangerous" dissidents during the Porfiriato. Porfirian authorities commonly dealt with potential rebels and "uncomfortable" political opponents by criminalizing them in a "preventive" way, and such criminalization, in order to work, required most of the time alternative resources. A "preventive criminalization" could not have its desired effects if ordinary tribunals had the option of protecting or acquitting criminals. It was necessary to treat them, then, in a way that guaranteed their ideal punishment, whether it was through summary trials, extrajudicial executions, or straightforward assassination.

The extrajudicial nature of many of these "alternative" methods allowed Mexican authorities to act against dangerous or rebellious dissidents outside the formalities and

[295] Prida, *De la dictadura*, 89.

protections of the justice system and the reach of state institutions like the police and the military. As the reviewed cases exemplify, many political opponents in Porfirian Mexico were subject to a vague, discretional, and often arbitrary criminalization and punishment. The surprisingly scarce development of the legislation on public order in the Porfiriato conditioned particularly high degrees of discretion in the acts and decisions of political and military authorities, especially at the local and regional levels. The wide discretion that governors, local political bosses, and leaders of *Acordadas* enjoyed for deciding who was criminal and who deserved punishment is more than illustrative in this regard. Authorities' reliance on the *Acordadas* for the purposes of intimidating and neutralizing potential rebels and other "uncomfortable" opponents partially put the administration of state punishment in the hands of private institutions. This partial privatization of repression turned the treatment of political criminals in the Porfiriato into a matter that escaped the sphere of the state and went beyond the action and intervention of state agents. State repression in Porfirian Mexico, at least in its more extra-legal and extra-judicial expressions, was not a monopoly of the state. Many of these attributes would also characterize the ways in which Mexican authorities treated rebels and subversives during and after actual episodes of internal warfare.

The Criminal Faces of Dissent: Preemptive Strikes Against Dangerous Dissidents in Colombia.

As in the Mexican case, preemptive campaigns against dangerous dissidence in Colombia targeted partisan leaders, critics of the government, and other political malcontents. Before the Thousand Days, governments primarily targeted national and regional Liberal leads, arresting and punishing them as conspirators. During the *quinquenio*, state repression focused on neutralizing people that refused to adhere to the policies and spirit of the new regime. The *Ley de los Caballos* and the legislation of *alta policía* made up the legal foundations of these preventive endeavors against political dissent.

From 1886 to 1899, "preemptive" campaigns against the Liberal party focused on the uncovering and dismantling of alleged conspiracies against the Conservative government and public order. Such efforts often led to the arrest and expatriation of key Liberal writers, candidates, and leaders. The repressive cycles commonly coincided with moments of regrouping and reorganization of the Liberal Party as a political and electoral force. In 1887, for instance, a Liberal meeting aiming to reorganize the party after their military defeat in 1885 alarmed President Núñez and provoked a first repressive wave. Nuñez considered the meeting "a subversive reunion" and a "conspiracy" against the new political regime, and ordered the arrest and exile of several Liberal leaders including Daniel Aldana, Carlos Martín, and the former president Aquileo Parra.[296] A year later, in the context of the elections that brought Carlos Holguín to the presidency, the paper *El Espectador* would denounce the imprisonment of the Liberal candidate Felipe Pérez. The

[296] Delpar, *Red Against Blue*, 142-143.

denunciation also reported the arrest and expatriation of all the members of Panama's *Directorio Liberal* that were in charge of coordinating the Deparment's electoral activities.[297]

From 1891 on, Regenerationist campaigns against Liberal conspirators counted on the support of a "secret" or "political" police, created that year with the primary intention of "uncovering plans from the government's enemies" through surveillance and espionage.[298] The activities of this "secret" organization were particularly intense after the Bogotá riots in 1893. Soon after the events of January that year, the "political" police installed permanent spies in several points of the city. The measure responded to "well-founded suspicions that in those places many persons formed meetings with subversive purposes and with the aim of plotting conspiracies against the government." Spies inspected stores (*tiendas*) and taverns (*chicherías*) in search of "suspicious attitudes" and "subversive conversations," and reported their infiltration in at least two reunions in which they had allegedly discovered several revolutionary plots against the government.[299]

Reports of alleged conspiracies and revolutionary plots by the secret police proved fatal to many Liberal leaders. The discovery of the revolutionary plot of August 1893, presumably headed by the Liberal leader Avelino Rosas, provoked the shutting down of the newspapers *El Relator*, *El Espectador*, *El Contemporáneo*, and *El 93*, together with the confiscation of the Liberal Party's funds. The government also ordered the apprehension

[297] "Ventajas del silencio." *El Espectador*, October 13, 1888.

[298] Aguilera Peña, *Insurgencia*, 195 and 199.

[299] Report from February 8, 1893, AGN, República, Fondo Policía Nacional, Legajo 4, Carpeta 2, Folios 543-544.

of the leaders Santos Acosta, Modesto Garcés, and Santiago Pérez. Authorities decreed the exile of Pérez and Garcés almost immediately. Several liberals in many parts of the country ended up in jail as well, some of them just for having brief conversations with the alleged conspirators. Other "renowned bellicose" liberals like Javier Vergara, Abraham Acevedo, and Juan de Dios Uribe received penalties of confinement, and the government sent them to the island of San Andrés, off the Caribbean. The wave of arrests also affected two foreign citizens from Spain and Italy, one as suspect of smuggling war material from Peru and another accused of signing a political manifesto published in *El Relator*.[300] This "preventive" strike dissolved almost completely the national leadership of the Liberal Party, and left it without a formal structure almost until the end of the war of 1895.[301]

Authorities applied similar preventive measures during the months previous to the outbreak of the Thousand Days. The eruption of a revolution in Venezuela, together with the circulation of rumors about an upcoming liberal uprising forced the government to decree the state of siege in Cundinamarca and Santander on July 28.[302] That same day, the Minister of Government ordered the arrest of 13 liberal leaders in Bogotá, Cali, Palmira, and Cartago. Authorities justified the arrests on the grounds that the implicated Liberals plotted a revolution supported by Venezuelan rebels. The defendants spent only a few days in prison, apparently because the government was incapable of linking them to the

[300] Delpar, *Red Against Blue*, 157; Aguilera Peña, *Insurgencia*, 312-314; and Adarve Calle, "La ley," 159.

[301] Delpar, *Red Against Blue*, 157.

[302] Decreto 333 de 1899 (28 de julio): "Por el cual se declara turbado el orden público en los departamentos de Santander y Cundinamarca, y en estado de sitio sus respectivos territorios," in José Manuel Guzmán, comp., *Decretos legislativos expedidos durante la guerra de 1899 a 1902* (Bogotá: Imprenta de Vapor, 1902).

commission or plotting of any actual crime.[303] The reaction of the liberal press was energetic. "Nowadays, the pretext [of the conspiracy against public order] lacks originality and is worn out," wrote *El Criterio* in August 10. "The nation knows now what those conspiracies mean […] People know that, lacking resources and the opinion's support, the government finds it convenient to create fictitious states of abnormality, inventing uprising plots that it blames on the defeated party," the paper maintained.[304]

Liberal newspapers considered both the imprisonments in question and the declaration of the state of siege completely unjustified. In October 1899, *El Ferrocarril* argued that the government's legal motivations for enacting such measures were never clear, if they ever existed.[305] To *El Espectador*, the fact that the state of siege only covered two departments was a proof that it was nothing but an imaginary conspiracy. Another proof in this regard was the fact that the number of "preventive" imprisonments, compared to previous states of alarm –like the one from August 1893, for instance–, was significantly low. Additionally, the paper remarked, "the precedents of the current regime make us doubtful [of the actual proximity of a revolution]." The Regeneration "has been extremely suspicious since its beginnings, and more than once has filled the jails with prisoners [and] the roads with outcasts, without being able to justify […] such serious and detrimental measures."[306] That was also the opinion of *El Criterio*, which maintained that the alleged plot "only existed in the sick imagination of some senile individuals […] and in the

[303] "La situación," *El Espectador*, August 3, 1899 ; see also: Villegas and Yunis, *La guerra*, 45.

[304] "La conspiración," *El Criterio*, August 10, 1899.

[305] "Editorial," *El Ferrocarril*, October 13, 1899.

[306] "La situación."

Machiavellian will of others [official instigators]." To the paper, the government had no evidence at all of the existence of the alleged revolutionary plans. It had merely acted on the grounds of "gossips invented by secret agents whose remuneration increases with the seriousness of what they report."[307]

Regenerationist campaigns against Liberal conspiracies left behind a wave of repression that alarmed not only liberals but also some conservatives. In a letter to Carlos Holguín in 1888, Conservative Marceliano Vélez commented: "There is something alarming going on in the government […] These are times of peace […] Nonetheless, the government keeps carrying out acts with all the characteristics of violations against individual guarantees." The imprisonment and exile of people like César Conto and many others, maintained Vélez, "are delicate acts whose motivation and legality still await proofs."[308] Years later, in 1896, Liberal Rafael Uribe Uribe commented that the Regeneration had achieved peace on the grounds of sheer authoritarianism and fear. Armed with the perennial pretext of preventing and neutralizing conspiracies, Conservative authorities had destroyed any notion of security among Colombian citizens. Yet, the author underscored, the government had remained unable to present clear proofs of at least one single actual conspiracy.[309] Writing in the 1930s about the situation of liberals in the 1890s, Lucas Caballero recalled: "many of the most glorious men of the Liberal Party were exiled,

[307] "Editorial: El estado de sitio," *El Criterio*, August 17, 1899. For an additional source on the July arrests, see: Joaquín Tamayo, *La Revolución de 1899* (Bogotá: Biblioteca Banco Popular, 1975), 30-32.

[308] Quoted in Pajón, "Policía," p. 245.

[309] "Regeneración práctica" (May 2, 1896), in Rafael Uribe Uribe, *La regeneración conservadora de Núñez y Caro: Antología y prólogo de Otto Morales Benítez* (Bogotá: Instituto para el Desarrollo de la Democracia Luis Carlos Galán, 1995), 115.

[and] the secret police, together with the tyranny of local authorities, made life insufferable."[310]

Legal prevention of rebellion during the Reyes administration did not involve the extreme traces of repression that characterized the Regeneration before the Thousand Days. The partial incorporation of major liberal leaders into the new administration helped de-escalate the hostilities between the two parties. Political rivalries, nonetheless, did not disappear during Reyes's regime of concord. The new administration would meet strong opposition from hardcore Conservatives and other groups that resisted its government's political and administrative measures. During the *quinquenio*, then, "preemptive" campaigns against potential rebels did not have the primary goal of hindering the activities of a particular political party, but of preventing the appearance of any foci of subversion among the emerging dissident factions regardless of party origin. Ultimately, the repertoire of responses to potential subversives did not experience major changes between the two periods. Reyes's insistence in a regime of concord devoid of partisan hatred, together with the fears of a new civil war like the Thousand Days, once more gave shape to a relative equivalence between "dissidents" and "internal enemies." The *quinquenio*'s set of preventive measures also paralleled to a certain point those of the first decades of the Regeneration: imprisonment of journalists, and arrest and confinement of alleged subversives. There were important differences, nonetheless. Expatriations were

[310] Lucas Caballero, *Memorias de la guerra de los mil días* (Bogotá: Punto de Lectura, 2006. Originally published in 1938), 22-23.

uncommon, confinements became more recurrent, and there was a clearer willingness to use the military against "stubborn" opponents.

The first manifestations of Reyes's "preventive" style emerged in December 1904, with the President's reaction to a group of 14 congressmen that publicly manifested their opposition to the new regime and its policies. Reyes considered the congressmen's attitude "rebellious" and ordered the confinement of those implicated. This "internal purge" also included the removal of his vice-president, General Ramón González Valencia, under charges of conspiracy.[311] Later in 1905, Reyes would give the same treatment to Supreme Court magistrates that dared to question the legitimacy of his electoral triumph in 1903.[312] Reyes would in fact strengthen his control of "rebellious" opposition during the first semester of 1905, through a series of orders and communiqués encouraging the enforcements of his legislation of *alta policía*.

Reyes issued the first of these communiqués on January the 2nd. The document urged governors to punish all citizens suspect of violating the decree of *alta policía*. "It is necessary that, at the same time [we] give our peaceful citizens all sorts of guarantees […] [we] take preventive measures against agitators (*revoltosos*) in order to incapacitate them," Reyes remarked in the circular.[313] Days later, on January 7, the president ordered a General in Barranquilla to suffocate "any movement attempting to challenge the authority of both the local and the national government." "I trust you will be a jealous and relentless

[311] Villate Santander, "Las conspiraciones," 45; and Lemaitre, *Rafael Reyes*, 300.

[312] Villate Santander, "Las conspiraciones," 51.

[313] "Circular de enero 2 de 1905 a gobernadores, jefes militares y prefectos," in *Constitución política de Colombia*.

[defender] of the maintenance of peace and the [protection] of the guarantees of our peaceful citizens," Reyes told the General. The nation was "thirsty for peace and tranquility," the President maintained, and it was thus necessary to achieve these needs "through an energetic and strict application" of the decrees on weapon collection and *alta policía*. The circular also put the national army at the General's entire disposal if he needed to suffocate any movement against the government. "If it is necessary," Reyes added, "I will go by myself and subdue and punish the *revoltosos*." "Make everybody feel that the government is [respecting] the truce in matters of partisan hatreds […] so we can finally focus on healing our *patria*'s wounds," the instruction concluded.[314]

A final note, from April that year, offers additional details regarding the application of Reyes's preventive legislation. The note ordered another General from Barranquilla to arrest several members of Cartagena's local government for signing a letter of protest against the presidential current project of territorial division. Reyes considered the letter an act of rebellion, and its authors and supporters a group of *revoltosos* that pretended to outsmart the government's authority. "The entire country has applauded the project of territorial division, with the exception of Cartagena's Municipality, which has declared itself in state of rebellion," stated the note. The order instructed the General to capture those responsible for the letter and send them back to Bogotá "strongly escorted." Upon their arrival to the capital, the government would decide on their place of confinement. Like in previous situations, Reyes put the military at the service of the General, and even ordered

[314] "Circular de enero 7 de 1905 a gobernadores y un general en Barranquilla." in *Constitución política de Colombia*. A third circular, from March 16, recommended governors to impede at any cost the revival of "political circles that could threat public peace," applying the legislation of *alta policía* if it was necessary. See: "Circular de marzo 16 de 1905. A gobernadores," in *Constitución política de Colombia*.

him to mobilize to this end all the forces available in Barranquilla. Such a display of power was necessary in order to "demonstrate the *revoltosos* that the orders from the national government are not empty words, and that it would fulfill its duty of maintaining peace [and] public tranquility."[315] A few days earlier, Reyes had issued similar orders against a prefect from Antioquia who attempted to organize a movement to challenge the same territorial division project. The President sent a hundred soldiers to capture the prefect and his supporters, and later decreed their confinement.[316]

The enforcement of the legislation of *alta policía* at the beginning of 1905 did little for neutralizing the opposition. In December that year, the government discovered a plan to overthrow Reyes, plotted by an alliance of malcontent liberals and conservatives. The discovery of the conspiracy provoked the arrest of over twenty people and their trial by a court martial. Charges included rebellion, sedition, mutiny, and conspiracy against public order. A presidential decree established the proceeding and conditions for the judging of the conspirators: the court's sentence would be indisputable (*inapelable*), and the President had the faculty to modify it according to his own will. The military tribunal sentenced the defendants to confinement between one and two years.[317] Reyes's reaction to this plot would prove particularly lenient in comparison to the measures he would take months later, after the attempt against his life in February 1906.

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[315] "Telegrama de abril 10 de 1905, Al general Amaya en Barranquilla," in *Constitución política de Colombia*.

[316] Quinche Castaño, "El Quinquenio," 61.

[317] Villate Santander, "Las conspiraciones," 55, 61, and 57; and Enrique Santos Molano, "El quinquenio de la modernización," *Credencial Historia* 175 (July 2004), electronic version.

The application of preventive legislation on public order during the Reyes era did not differ significantly from what it had been before the Thousand Days. In both periods, authorities accused dissidents of plotting rebellion and fostering civil warfare as a legal way of neutralizing their actions and putting them out of circulation. It was an instrumental criminalization whose recurrent use by authorities blurred the political distinction between "opponent" and "enemy", as well as the legal difference between "dissenter" and "criminal." Similarly, both before and after the war, the preventive repression of dangerous dissidents depended on the application of an "alternative" legal regime mostly grounded on extraordinary legislation and extrajudicial proceedings. If something changed in this regard after the Thousand Days, it was the active role that Reyes gave to the military in the enforcement of his preventive legislation. While the first Regenerationist governments made public order a matter for the police, Reyes made it a military issue. Reyes's tendency to resort to the military for capturing potentially dangerous dissidents or eradicating possible foci of subversion clearly paralleled the style of Porfirio Díaz in his campaign against internal enmity in Mexico.

Campaigning Against Subversive Journalism: The Legal and Judicial Control of Opposition Press in Mexico and Colombia

Governmental efforts to neutralize "dangerous" dissidence in Colombia and Mexico not only targeted rebels and conspirators but also writers and journalists. The application of press legislation to prevent internal conflict gave governments in both countries more than a chance to hinder and punish the promotion and encouragement of rebellion through the press. It also gave them an opportunity to legally repress opposition press through its

criminalization. This final section reviews the ways in which authorities in both nations applied these laws and gave them a political use. It also analyzes how this application shaped a series of political, legal, and judicial practices whose primordial objective were the subjugation of political dissent and the neutralization of opposition journalism.

Journalists on Trial: The Political and Judicial Treatment of Subversive Press in Mexico. Preventive legislation in Mexico did much more than allowing authorities to act against rebel suspects, potential subversives, and other dangerous dissidents that threatened public order and peace. It also provided the Porfirian regime with legal tools for limiting the exercise of political opposition, silencing "subversive" or "offensive" manifestations of political dissent, and hindering the activities of dissident parties and factions. Legislation on press and press crimes became a powerful legal weapon against the enemies of the Porfiriato, allowing authorities of different sorts to criminalize opposition journalists as both common and political criminals. The instrumentalization of this legislation by the Mexican government provoked the shutdown of dozens of opposition newspapers and the arrest of hundreds of dissident journalists under the pretexts of safeguarding public order, protecting public authorities, and neutralizing potential acts of subversion. The repertoire of criminal charges underpinning such repressive measures commonly involved "inciting rebellion or sedition" and "defaming public authorities." In the Mexico of Porfirio Díaz, press offenses against "public order" and attacks against the "private life" of public officers became practically equivalent to political crimes. While the law distinguished both kinds of attacks as offenses of a different nature, in practice they tended to be part of the same crime: offenses against the government and its representatives.

Journalism remained under strict control during the Porfiriato. Díaz controlled many of the major newspapers of Mexico City, ensuring their loyalty through constant subventions. As a result, some of Mexico's most notable newspapers, including *El Universal, El Partido Liberal, El Nacional*, and *El Siglo Diecinueve*, were overtly Porfiristas.[318] Sponsored newspapers returned the favor by widely supporting the government in its campaign against opposition press. In February 1893, for instance, *El Siglo Diecinueve* defended the official persecution of the paper *El Demócrata* by declaring it a dangerous publication driven by "a savage intolerance." "*El Demócrata* has no principles, no program, no ideas, nothing. Absolutely nothing. It only has the goal of overthrowing the government," the paper maintained. Its ways reminded *El Siglo* of the position of another newspaper, *La Voz de México*, which once had said "if our words could kill our enemies, much better!" To the porfirista newspaper, those were all symptoms of a mental disease called "political crime:" "A sort of craziness drives *El Demócrata* to deem everything as wrong, to attack everything, to bite everything, to destroy everything." "That is what we call a severely sick opposition," the paper concluded.[319] The words of *El Siglo Diecinueve* comprise many of the arguments under which Porfirian authorities persecuted and repressed dissident newspapers between the 1880s and the 1900s.

The preventive control of "dangerous" or "subversive" press in Mexico went far beyond the suspension of newspapers or the arrests of writers and editors. The Porfiriato extended its repression to printers, managers, sellers, newsboys, and even people that

[318] Prida, *De la dictadura*, 140.

[319] "Los revolucionarios obligados," *El Siglo Diecinueve*, February 22, 1893.

maintained indirect relationships with the sanctioned publications.[320] In the late 1870s, for example, a tribunal accused a group of printers of supporting the rebel Miguel Negrete after printing a "subversive" proclaim with his program. Further inquiries demonstrated that there was no relationship between the printers and the rebellion, and that their only fault was to reproduce the document in their shop.[321] Decades later, in 1905, two people from San Pedro, Coahuila, went to prison for allegedly providing a newspaper with news concerning the arbitrary acts of governor Miguel Cárdenas.[322] That same year, an article listing the many newspapers that authorities had punished throughout the last ten years included the names of 76 people associated to all sorts of roles. The list included owners and directors of opposition newspapers, writers, printers, proofreaders, and even paper distributors.[323]

The prosecution and judgement of all press crimes corresponded during most of the Porfiriato to the ordinary justice. Given the lack of precision in the legislation about the specific circumstances that made a publication a "crime," judges had a great deal of discretion to decide whether or not a writing was criminal. Sometimes, it was not necessary that the publication in question directly encouraged rebellion or insulted a particular authority. Judges could convict writers only on the grounds of the assumption that their intention, at the moment of writing, publishing, or circulating the publication, was criminal.

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[320] Di Fornaro, *Díaz*, 90; and Prida, *De la dictadura,* 100.

[321] SCJ, 1879, Expediente 0: "Toca a la averiguación en la supuesta complicidad de Vicente Villalba y socios en la rebelión de Miguel Negrete."

[322] "Autoridades asesinas," *Regeneración*, February 25, 1905.

[323] "Lista de escritores procesados," *El Demócrata*, January 1, 1895.

Many contemporary journalists criticized this practice and considered it a "deviation" of the justice system, for it allowed judges to decide, not on the basis of solid evidence but of mere "psychological" considerations.[324] Opponents of the Porfiriato called this practice "judicial psychology" or the "psychological method," and blamed it for the high and constant number of convictions of dissident journalists during the period.

As a judicial practice, the "psychological method" originated in 1885. It was the result of a judicial decision in a trial against a group of journalists and printers from Mexico City accused of "attempted sedition through the press." The case included about 15 people, associated to the newspapers *El Monitor Republicano* and *El Correo del Lunes*, as well as to a leaflet titled *"Al pueblo: protesta."* Charges included different modalities of sedition as well as insults and slander against public authorities. A first instance judge sentenced the defendants to prison between three and seven months, and ordered them to pay fines between 300 and 100 pesos. Although the defense appealed and a second judge revised the sentence, the results of the revision, ratified by the Supreme Court, did not benefit the defendants.[325] The details of the trial illustrate many aspects of the ways in which judges, prosecutors, and lawyers in Porfirian Mexico understood press offenses against public order and debated about their alleged criminality.

The trial responded to a series of "subversive" writings that had circulated between June and July that year. The process, initially, hat to do with the publication in *El Monitor* of a collection of articles criticizing Díaz's recent law on the payment of Mexico's foreign

[324] See for instance: Duclós-Salinas, *México*, 57; and Prida, *De la dictadura*, 99-100.

[325] *Colección de pedimentos fiscales presentados y de autos y sentencias pronunciados en la causa seguida a algunos periodistas, licenciados y estudiantes, como responsables del conato de sedición, cometido por medio de la prensa* (México: Secretaría de Fomento, 1886), 13-15, 47, 94, and 121-122.

debt.[326] Their author, Enrique Chavarri, accused the president of being more arbitrary than his predecessors Lerdo and Juárez, and considered the law in question the government's ultimate act of authoritarianism. The articles also included a few "incendiary" sentences such as "we don't believe revolution is either unlikely or impossible."[327] A few days later, a group of students, apparently inspired by *El Monitor*, published the protest "*Al pueblo.*" In the leaflet, the students called Díaz's government "tyrannical" and "arbitrary," and manifested their wish that the Mexican people joined the protest "with energy and patriotism."[328] Later on, the newspaper *El Correo* reproduced the protest, together with an article, written by Adolfo Carrillo, that invited Mexicans "to organize clubs so they could discuss, in every place or reunion, any issue in which the nation's honor is at stake." In the article, Carrillo also called the government "autocratic" and "plunderer."[329]

To the prosecution, all these publications insulted Díaz and his government and represented clear and intentional attempts at encouraging people to commit sedition. The defense claimed that there was no crime in any of the publications. Both Chavarri and Carrillo pleaded innocent, and claimed that their writings neither insulted the authorities nor had a subversive or seditious nature. The defense also maintained that the defendants had done nothing but exercising their constitutional rights to voice their opinions and protest against the authorities. "Looking at the articles," the defense pointed out, "it is

[326] On this law and the reactions it sparked in the Mexican press, see: Piccato, *The Tyranny*, especially chapters 3 and 4.

[327] *Colección de pedimentos*, 46-47.

[328] *Colección de pedimentos*, 3-10 and 43-47.

[329] *Colección de pedimentos*, 56.

impossible to see where the crime is." "There could be an offense, morally speaking, but under the law there is no way of establishing whether or not there was a crime," it concluded.[330]

The tribunal's response to this last argument set the foundations for the so-called "psychological method." Certainly, the tribunal admitted, the law did not provide means for telling whether or not the articles and contents in question were criminal. Nevertheless, judging from the context in which these writings had appeared, it was possible to attribute the writers a criminal intention. Carrillo, Chavarri, and the students knew that the circumstances were tense and even so voiced their seditious proclaims, calling people to organize and protest. Their intention, concluded the judge, was clear: they wanted provoke a sedition.[331] The alleged "psychological" nature of this proceeding lay in two central beliefs. There was, in the first place, the assumption that it was possible to presuppose a criminal intention in the defendant's action, regardless the probative material available. There was, secondly, the idea that it was legitimate for a judge, based on his "legal consciousness," to decide in a subjective way about the criminality of an act, even in the absence of formal proofs.[332] This "method" accounts for the high degrees of discretion that judges enjoyed during the period when dealing with press crimes against the government and the public order. As a judicial practice, it represented a way of dodging basic

[330] *Colección de pedimentos*, 41-42, 67-69, 72, 77, and 87-88.

[331] *Colección de pedimentos*, 62.

[332] Prida, *De la dictadura*, 99-100; and Isidro Montiel y Duarte, *Apuntamientos del pedimento fiscal pronunciado en los estrados del tribunal de circuito de México en la causa que por sedición se sigue al Sr. Licenciado Ricardo Ramírez, E. De los Ríos, Carlos Basave, León Malpica y R. Del Castillo* (México: Tipografía de La Época, 1885), 29.

procedural guarantees in order to ensure the sentencing and punishment of dissident writers.

The "psychological method" would become common all over Mexico, shaping a sort of "judicial habit" in the treatment of these offenses that would prevail during the rest of the Porfiriato.[333] In 1904, the journalist Adolfo Duclós-Salinas blamed the intensification of judicial persecution against opposition press, from 1885 onwards, on the rapid extension of this "habit" from Mexico City's tribunals to the rest of the states.[334] The already mentioned list from 1905, with its 76 names, illustrates the extent of this persecution in the years following the trial in question. All people from the list had faced charges at least once for allegedly encouraging sedition, attacking public order, or slandering political authorities. Many of the people had appeared before a tribunal more than once. Some counted several processes but no sentences at all. Several more had been in prison on repeated occasions. Yet others had remained imprisoned for several moths awaiting trial and sentencing.[335] There were cases in which journalists spent in jail longer periods than the maximum time prescribed by the law for their crimes, awaiting a judicial decision. Sometimes the decision came after a period that duplicated the duration of the penalty imposed.[336]

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[333] Prida, *De la dictadura,* 100; and Duclós-Salinas, *México*, 56.

[334] Duclós-Salinas, *México*, 56-57.

[335] "Lista de escritores procesados," *El Demócrata*, January 1, 1895.

[336] Allen Wells and Gilbert M. Joseph, *Summer of Discontent, Seasons of Upheaval: Elite Politics and Rural Insurgency in Yucatán, 1876-1915* (Stanford: Stanford University Press, 1996), 66 and 69.

People from *El Diario del Hogar, El Hijo del Ahuizote*, and *El Demócrata* made up some of the most extreme cases, according to the list. During these ten years, *El Diario* had received 42 denunciations from public servants of all sort. *El Hijo del Ahuizote* had published 468 issues in the last 9 years, and its director had spent in jail an almost equivalent number of days. People from *El Demócrata* served prison terms of up to 15 months, the highest in the list; and, all their new journalistic endeavors –*El Hijo del Demócrata* and *El Nieto del Demócrata*– similarly suffered from the state's persecution. Not even foreign journalists escaped judicial repression: a certain Mr. Henriot, director of the *Lanterne de Cocorico*, ended up in jail three or four times.[337] Persecution against opposition journalists and newspapers after 1895 was similarly intense. Between 1896 and 1897, for instance, *El Universal*, once a Porfirista newspaper, faced more than a dozen criminal accusations. One of its owners ended up in jail three times before fleeing the country. His replacement also faced imprisonment, together with the owner of the printing press, its manager, its employees, and even some of the people who defended them in court.[338] In 1902 alone, authorities from a dozen states including Mexico City ordered the prosecution of 39 papers.[339] It was a repressive wave that, in the words of *El Hijo del Ahuizote,* pretended nothing but to punish a "new" political crime that had emerged in the midst of Díaz's regime: *antiporfirismo*.[340]

[337] "Lista de escritores procesados."

[338] Prida, *De la dictadura*, 140-141.

[339] Di Fornaro, *Díaz*, 103.

[340] "La nueva candidatura," *El Hijo del Ahuizote*, December 24, 1899.

The "psychological method" was not the only judicial practice responsible for the intense persecution of the opposition press during the Porfiriato. The customary intervention of the government in the administration of justice in these cases represented another major feature in this regard. Although the law gave ordinary tribunals jurisdiction over press crimes, the President, his governors, and other public authorities often managed to control the functioning and decisions of these organisms. The Executive had the authority to freely appoint and remove federal and provincial judges; and, regional and local authorities could always appoint specific judges to particular cases. In consequence, anytime an authority wanted to neutralize a newspaper, it only had to find a judge willing to declare its content "subversive" or "slandering."[341] That was precisely the strategy that General Bernardo Reyes used in 1901 to shut down the paper *Regeneración*, written and directed by the brothers Ricardo and Enrique Flores Magón. Irritated by the newspaper's criticisms of his political maneuvers in northern Mexico, Reyes convinced a former minister of justice to help him shut it down. Reyes and the former minister convinced a local political chief from Oaxaca to bring a suit for defamation against the paper, and then put the case under the jurisdiction of an allied judge. The judge put the brothers in prison for a few months and ordered the suspension of the paper.[342]

Bernardo Reyes would use the same strategy against the brothers Flores Magón a year later, this time through a judicial campaign against *El Hijo del Ahuizote*. Reyes

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[341] Prida, *De la dictadura*, 100. On matters of press and slander charges in Porfirian Mexico, see: Piccato, *The Tyranny*, especially Chapter 6: '"A Horrible Wave of Insults:' The Everyday Defense of Honor."

[342] Lomnitz, *The Return*, 101-102. In its issue from December 21, 1902, *El Hijo del Ahuizote* criticized the authorities' habit of selecting "special" judges for the prosecution of opposition journalists: "In these cases, [authorities] look for […] the most complacent judge; the one with the most enthusiasm for accusing journalists."

declared war on the newspaper after it published a series of articles criticizing his political use of the "Segunda Reserva."[343] The General ordered a subaltern to denounce the paper before the military authorities for "insulting the Mexican army."[344] According to *El Hijo*, the denunciation did not convince any current military judge, which forced Reyes to find a new, more manipulable judge. He found a Mr. Telésforo Ocampo, a plain citizen with judicial aspirations, invested him with a middle-rank military position, and made him a military judge.[345] Judge Ocampo ordered the arrest of the brothers Flores Magón and all the employees of the newspaper. He also shut down and confiscated the corresponding printing press. The defense, carried out by the lawyer Francisco Serralde, appealed the judge's decision before the Supreme Court and managed to get them a protective judicial injunction or *amparo*.[346] Serralde's appeal maintained that that the brothers Flores Magón had not committed any sort of military crime, and therefore their imprisonment and judgement by a military court was unconstitutional.[347]

The granting of the *amparo* did not bring the case to an end. Although the Supreme Court suspended the process and ordered the immediate freedom of the brothers Flores Magón, a local judge jeopardized their release by charging them with the additional crime of insulting the government. Apparently, after their first arrest, the brothers had yelled

[343] The "Segunda Reserva" was an auxiliary corp of the Mexican military created in 1900 by Bernardo Reyes. Its purpose was to work both as a reserve unit and an institution for the training of future army officials. See: López-Portillo, *Elevación y Caída*, 313.

[344] Serralde, *Ilegitimidad*, 5 ; and "El Reyismo en agonía," *El Hijo del Ahuizote*, November 23, 1902.

[345] "El Reyismo en agonía."

[346] Serralde, *La 2ª Reserva*, 3-5.

[347] Serralde, *La 2ª Reserva*, 3-4, 9-10, and 14.

"death to tyranny" in several occasions on their way to the prison. Once again, Serralde had to resort to the Supreme Court, arguing this time that yelling those kinds of words did not fulfill the legal requirements of a criminal action –let alone being a crime of insult or slander.[348] The high tribunal backed the lawyer's arguments, conceded a second *amparo*, and the brothers Flores Magón could finally leave prison. 34 days had gone by since their arrest. Their case was not unique. In the early 1900s, the authorities of Lampazos, Nuevo León, imprisoned the journalist Felipe Naranjo, a collaborator of the newspaper *Redención*. After over a month in prison, Naranjo managed to obtain an *amparo*. Nonetheless, as soon as authorities in Lampazos heard of the decision, a local judge issued a new order of arrest and sent the journalist to a penitentiary in Monterrey.[349] That was also the case of Duclós-Salinas, who, right after spending some time in a jail in Nuevo León, received another prison sentence with no clear justification. Once he regained his freedom, authorities threatened him with a third imprisonment if he continued publishing his newspaper *La Democracia Latina*.[350]

The justice system not always worked against the interests of *antiporifista* journalists. Judicial *amparos* were always an option that could eventually yield positive results, as illustrated by the cases of the brothers Flores Magón and Felipe Naranjo.[351]

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[348] Serralde, *La 2ª Reserva*, 23 and 25.

[349] Duclós-Salinas, *México*, 262.

[350] Duclós-Salinas, *México*, 219.

[351] The case of José F. Granados and Jesús Rodríguez, from Guanajuato's newspaper *El Barretero*, offers an additional example of an *amparo* granted by the Supreme Court. A state judge processed them under charges of slander and ordered their imprisonment as well as the confiscation of their printing press. After asking the Supreme Court to revise the sentence, the high tribunal ordered both their liberty and the return of the confiscated equipment. See: "Un triunfo de la justicia," *El Hijo del Ahuizote*, August 10, 1902.

Defendants could also appeal their sentences before an appeals or second instance tribunal and, if needed, request the Supreme Court to revise the decision. In December 1894, for instance, a second instance tribunal reduced the sentences of five people that worked for the newspaper *La República*. Six months earlier, a first instance court had convicted them for "provoking rebellion and slandering public servants." The sentence had imposed on them between 9 and 19 months of prison, and ordered, in addition, the confiscation of all materials and equipment from their printing press. The defense appealed. A second instance tribunal gave each defendant a reduction of between 3 and 6 months, and even ordered the release of three of them. Although the prosecutor rejected the decision, the defense took the case to the Supreme Court and obtained its ultimate confirmation.[352]

Not all journalists had to go to the extreme of filing a claim before the Supreme Court. In some lucky cases, defendants could find judges that dismissed the accusations for lack of evidence or because the publications in question were not, in their opinion, criminal enough. In August 1902, authorities from San Luis Potosí arrested the director and printer of *El Demófilo*, and confiscated their printing press, on charges of falseness and slander against a local public officer. A lower court quickly disqualified the first charge after considering it ill-founded and ordered the return of the confiscated materials. *El Hijo del Ahuizote*, which reported the case, was confident that the judge would also dismiss the second charge, considering that he "was an exception within this corrupt environment of judicial prostitution."[353] A relatively similar case occurred in 1906, when an official from

[352] SCJ, 1894, Expediente 489: "Toca a la causa contra Lorenzo A. Miranda y socios por injurias y provocación a la rebelión."

[353] "El asunto de El Demófilo," *El hijo del ahuizote*, August 10, 1902.

Mexico City's Police denounced the papers *El colmillo público* and *La revolución social* for their "subversive" content. In the official's opinion, both newspapers "provoked the crimes of rebellion and attacks against industry."[354] The tribunal disqualified the accusations from the beginning, considering them exaggerated and, since there was no crime to prosecute, put the officer's claim on hold. A judge reopened the case in March 1911, only to declare that, by then, it was already statute-barred.[355]

What were the central characteristics that defined the "preventive" control of press in Porfirian Mexico? It was, first and foremost, a control that authorities used as a political tool against dissidents, repressing opposition journalists under the pretext of protecting public order. This repression was legally grounded and operated on the basis of criminalizing dissident writers as internal enemies. It was a notion of internal enmity in which society's adversaries were not only those who conspired against public order and peace, but also those who attacked the dignity of public authorities. The relative equivalence between slander and rebellion gave governments a particularly wide frame of action against dissident writers. It extended the circumstances according to which a journalist could commit a crime, and ensured the possibility of punishment even in the case that authorities decided to pardon or disregard his charges as a political offender.

[354] AGNM, Tribunal superior de justicia del distrito federal, Caja 443, Folio 78748: "Denuncia que hace el jefe de policía por provocación de un delito." According to the denunciation, *El Colmillo's* "calls to rebellion" consisted on a reproduction of the program of the Liberal Party and its lists of proposed reforms; an article on the elections in San Luis Potosí; and a list of opposition journalists that were currently in jail. The oficial denounced *La Revolución* for an article that exposed the miseries of the working class in Río Blanco, Veracruz, and encouraged the organization of the region's workers.

[355] "Denuncia que hace el jefe de policía."

Additional characteristics concern the functioning of Mexico's justice system in cases of press crimes against the government and the public order. It was a system that relied on high degrees of judicial discretion, even against the procedural guarantees of the Mexican law. It was also a system that did not operate independently from the Executive power, and therefore was highly politicized. As a result of this, Mexico's justice system operated with almost the same degrees of discretion and legal insecurity that would characterize the administrative prosecution of subversive journalists in Colombia. Nonetheless, it was a system that, despite their arbitrariness and lack of guarantees, still offered processed journalists some degree of judicial protection or redress, a possibility that did not exist for Colombian Liberals during the Regeneration.

Responding to Subversive Journalism in Colombia: The Case of the Liberal Press Before the Thousand Days.

The governmental treatment of subversive journalism in Colombia partially resembles the Porfirian experience. Like their Mexican counterparts, regenerationist governments turned legislation on the press into a legal tool against the opposition. There were some important differences between both cases, though. While the criminalization of opposition journalism in Mexico relied on a combination of political and non-political accusations, in Colombia it depended almost exclusively on political charges. By labelling opposition newspapers as "subversive publications," Colombian authorities were able to shut down papers, fine publications and writers, and arrest and even exile journalists. As in Mexico, the treatment of opposition journalism involved high degrees of judicial discretion and legal insecurity. Yet, in the Colombian case, discretion and insecurity were even higher, for the judgement

and prosecution of "criminal" publications corresponded almost entirely to the Executive power and unfolded completely outside the reach and guarantees of the judicial system.

The next pages analyze how authorities in Colombia applied and instrumentalized this legislation on the press between the 1880s and the 1890s, a moment in which state's persecution against dissident journalism was particularly intense. During the decades preceding the Thousand Days, Conservative authorities used this legislation to criminalize many of the reorganization efforts of the Liberal Party after the war of 1885. This "preventive" criminalization of the press would revolve around a series of criminal actions that, despite not being related to political crimes such as rebellion and sedition, had a clear political nature as well –they were criminal acts of political dissent. Their treatment as "subversive acts" and their criminalization as threats against public order put them at the same level with other, major political offenses. This would trace a link between the figures of the subversive journalist, the "conspirator against public order," and the actual rebel. The practical parallelism among these three notions would allow authorities to treat dissident writers as particularly dangerous internal enemies.

Repression against subversive press during this period relied on both the *Ley de los caballos* and Decree 151. Governments made a wide use of both pieces of legislation to keep dissident newspapers under a strict control and take Liberal journalists out of circulation. Under the pretexts that their publications encouraged rebellion, and that their leaders plotted conspiracies against the government every now and then, authorities managed to neutralize almost all efforts of Liberalism to survive as a political party. Arguments involving conspiracies and subversive plots loomed large in these reactions against Liberal journalism. In the majority of cases, authorities penalized newspapers and

writers on the grounds of charges of "conspiracy against public order," and justified their actions against papers and writers as "preemptive strikes" against "uncovered conspiracies."[356]

The Regenerationist campaign against "subversive" Liberal press involved, among other measures, the suspension of at least 36 newspapers between 1886 and 1898. The list included prestigious titles such as Santiago Pérez's *El Relator*; *La Crónica*, directed by the also former president Aquileo Parra; and *El Espectador*, directed by Fidel Cano, one of the fiercest critics of the *Ley de los Caballos*. Many other newspapers received expensive fines on more than one occasion, as happened to notable titles such as the *Diario de Cundinamarca*, perhaps the most important Liberal newspaper in the late-nineteenth century, and *La Estrella de Panamá*, one of the region's most important newspapers.[357] Repression against Liberal writers also fell on cartoonists like David Granados and Alfredo Greñas, best known for his newspapers *El Barbero* and *El Zancudo*, and even on poets and playwrights such as Adolfo León Gómez.[358] Repression of liberal newspapers right after the expedition of both laws seemed to be so intense that, in October 1888, *El Espectador* complained that the government had managed to achieve "the almost complete suppression of the oppositionist press."[359]

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[356] See: "Sofismas políticos: las conspiraciones," *El Relator*, June 15, 1889.

[357] Aguilera Peña, *Insurgencia*, 70. Other titles in this list included the papers *El Progreso, La Siesta, El Comercio, El Renacimiento, El Semanario*, *El Cronicón*, *El Partido Nacional, La Prensa, El Liberal, El Empecinado, La Libertad, La Reivindicación, El Zancudo, El Repiublicano, El Sufragio, El Mago, El Telegrama* and *El Debate*.

[358] Aguilera Peña, *Insurgencia*, 60-61.

[359] "Ventajas del silencio," *El Espectador*, October 13, 1888.

Penalties of expatriation followed the closing or suspension of newspapers in more than one occasion. That was the case, for instance, of the paper *El Liberal* in 1888. The government suspended the publication and imprisoned its director, the renowned Liberal leader César Conto. Soon after his arrest, Conto abandoned the country "voluntarily" and moved to Guatemala, where he died in 1892. Nicolás Esguerra, who tried to reopen *El Liberal* after Conto's arrest, suffered the same punishment. He got to bring out only one issue of the newspaper before authorities suspended it again for six months and sent Esguerra into exile. The exile of Santiago Pérez followed the suspension of *El Relator* in August 1893. Authorities penalized the publication for considering it part of a revolutionary conspiracy discovered that month.[360] Earlier that year, Alfredo Greñas had suffered the same fate. The Police of Bogotá arrested the author right after the January riots in the city. Authorities sent Greñas to prison and later expelled him from the country "without the mediation of a trial or a defense, not even a public sentence," as denounced by *El Espectador*. Authorities also suspended his newspaper *El Barbero* and shut down his printing press.[361] Conservative press defended such measures on the grounds that the penalized newspapers were nothing but "publications of fanatic and revolutionary propaganda that, instead of enlightening their readers, [aimed] to heighten their spirits," as *El Orden* remarked in June 1892.[362]

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[360] Aguilera Peña, *Insurgencia*, 313; and Delpar, *Red Against Blue*, 143.

[361] "Las dos prensas," *El Espectador*, February 25, 1893.

[362] "Interpretaciones malignas," *El Orden*, June 4, 1892. To *El Orden, El Relator* was perhaps one of the most dangerous publications in this regard. Its articles not only insulted the president but also attempted to spread alarm and resentment both within and outside the national territory. See: "La traición de El Relator," *El Orden*, June 11, 1892.

Liberal newspapers reacted to and campaigned against these measures in different ways. Many papers periodically published lists of suspended or fined publications, as well as of arrested journalists and printers. A list from October 1890, published simultaneously by *El Combate* and *La Estrella de Panamá*, informed for instance that their fellow papers *El Vigilante* and *El Demócrata* had fallen victim of the government's persecution. While the former newspaper had received a fine, the later had its editor in prison. The list also informed that a conservative printer from Medellín had received a fine after publishing an apparently subversive leaflet for some liberals. "Acts like these," *El Combate* denounced, "happen time and again in Colombia by orders of the President, his minister, and his governors." "There are no abuses here," the paper pointed out. "Everything is very legal, in correspondence with the current legislation on the press." Authorities "apply the law to all those who still have the habit of saying what they think, regardless the existing prohibitions." "The ones that do wrong," remarked *El Combate* in a satirical tone, "are the journalists who say what it is forbidden […] It is a stupidity to write just to get beaten up later."[363]

Liberal newspapers also criticized the current press legislation and its enforcement. In February 1899, *El Carnaval* from Bogotá mocked a recent wave of fines against several satirical newspapers by saying "today, everything has a price, even laughter."[364] Later that year, *El Demócrata*, also from Bogotá, argued that the current press legislation "depressed and humiliated the Colombian press" by allowing the government to discretionally decide what and who was criminal. This legislation, the paper maintained, consisted basically of

[363] "La obra de la regeneración," *El Combate*, October 10, 1890.1

[364] "De la prensa," *El Carnaval*, February 9, 1899.

an Executive decree "that tells the citizen: 'you go on and publish, that I, *a posteriori*, will declare you innocent or guilty [….] And if I decide to find you guilty, I will punish you […] according to my will.'" This, according to *El Demócrata*, was "a trait of audacity that goes way beyond the limits of the believable in matters of arbitrariness."[365] Writing on the legal insecurity stemming from the government's excessive discretion, *El Relator* claimed for a clearer and more precise press law. "Let the prior censorship come; let the fine come; let whatever other measure come. Everything is better than the insecurity and the doubt," maintained the paper in March 1890. "No matter how rigid the [new] law could be, it will guide the judgement of the public writer, so that if he breaks it, he will do it deliberately […] That is not what happens nowadays," the paper concluded.[366]

Liberals denounced time and again the many governmental efforts for shutting their newspapers down. In 1938, the veteran of the Thousand Days Lucas Caballero remembered the 1890s as a terrible decade for Liberal journalism. "Our newspapers were all suspended and fined, and their directors sent to prison and even exiled for the slightest critique," he wrote.[367] During that same decade, Santiago Pérez claimed multiple times that the "independent press" was the victim of innumerable acts of oppression. In an article from 1889, for instance, Pérez maintained that liberal newspapers and journalists suffered from the worst and most lethal kind of calumny: "state calumny." It was a calumny that had no other purpose than "subordinating [the government's] enemies and dominating through terror." State calumny went beyond the simplicity of words and materialized in "fines,

[365] "La lección. Libertad de prensa," *El Demócrata*, December 14, 1889.

[366] "Nuevos peligros para la prensa," *El Relator*, March 1, 1890.

[367] Caballero, *Memorias*, 22.

confinements, imprisonments and expatriation, most of the time without any legal or judicial formality." "Anytime the government feels that the opposition harms it," Pérez explained, "it simply declares: 'you all conspire.' And on such grounds it sends its opponents to confinement and jail; sometimes even leading them to their very death." Calling Liberal writers "conspirators" was, then, more of a political calumny than an actual criminal accusation. It was, nonetheless, a calumny with serious legal consequences, for it materialized in arrests, imprisonments, and exile.[368]

Liberal newspapers also underscored the multiple abuses stemming from the government's way of defining and judging press crimes against society. In March 1888, for instance, *El Relator* denounced that the government's persecution of liberal newspapers entailed a crucial injustice: it relied on "the assumption of the commission of a crime" instead of relying on the commission of an actual offense. This made no sense at all to the newspaper, for according to the law, criminal responsibility stemmed from a crime, not from simple "suspicions of a crime." That was also the case with the "innocent action [that the state] turned into a crime." To the paper, it was yet another illegal measure since the decision of whether or not an act was criminal corresponded to the ordinary justice, not to the government. What was happening in Colombia, then, was not a legal campaign against criminal publications, but merely an illegitimate, extrajudicial demonstration of state retaliation disguised as "official punishment."[369]

The customary treatment of journalists as conspirators also received harsh critics. "Is there any actual conspiracy [involving the press]?" wondered *El Relator*. "No. There is

[368] "Sofismas políticos;" and Adarve Calle, "La ley," 158 and 160.

[369] "E pur si mouve," *El Relator*, March 5, 1888.

discussion. A discussion allowed by the law, accepted by civilization under the form of custom, and sometimes provoked by the government." To the newspaper, the government was unable –or simply unwilling– to take part in this discussion, and only responded to it by "pushing laws aside." Anytime a newspaper confronted the government, authorities "requested the barracks a 'constitutional help' consisting of a corporal and four soldiers." All it took was a verbal order to make these "*representantes del derecho social*" put the challenging journalists in prison or on their way to exile. The government celebrated the strike and presented it as an unveiled conspiracy. Yet, *El Relator* insisted, there was no conspiracy involving the press. Even further, the acts of a newspaper at no point could entail a single trace of conspiracy. "To conspire means to secretly get together to overthrow the government. Newspapers are public by nature […] therefore there is nothing more unfair than accusing a paper of conspiring." A newspaper can be "revolutionary, seditious, immoral, deceitful, exaggerated, ardent, etc., but never conspirator, because nothing that is published in a paper […] can be secret," *El Relator* stressed. Accusing writers of conspiracy then, meant shrouding them "with atrocities, delusions, [and] crimes, and justifying *a priori* all measures, all proceedings applied against them."[370]

Conservative leaders did not hesitate in discrediting Liberal complains on the matter. Carlos Holguín, president between 1888 and 1892, maintained for instance that Liberal denunciations were unfair and exaggerated. During his administration, he recalled in 1893, arrests of journalists had been minimal, involving just four or five individuals that had refused to pay their corresponding fines. Their arrests indeed had concluded as soon

[370] "Sofismas políticos"

as they decided to pay. It was also false that, during his administration, the press had remained muzzled. During this time, he pointed out, liberals had in fact flooded the nation with newspapers, leaflets, and other publications "in which they said whatever they wanted with no respect for truth or decency." After all, they only wanted "to maintain the nation in constant agitation, […] fostering unrest and mistrust."[371] There were suspensions of newspapers and fines, of course, but many of them responded to the insistence of Liberals in re-opening papers as soon as the authorities ordered their shut down. His alleged abuses had only consisted in "seven temporary suspensions and twelve fines in a period of four years in which newspapers from the opposition had multiplied by the dozen."[372] Many of these punished publications were, in Holguín's account, "nothing but hideous pamphlets (*pasquines inmundos*)." The former president also denied that his government had sent Conto and Esguerra into exile. While it was true that they had left the country, they had done so voluntarily. "Mr. Conto […] left [Colombia] so exiled that he even came to my house and said good bye."[373]

Repression against subversive journalism after the Thousand Days revolved primarily around the prescriptions and penalties of the legislation of *alta policía*. A circular

[371] "Carta Décimasexta. Bogotá, Junio 3 de 1893," in Holguín, *Cartas*, 274, 277, and 279.

[372] In Holguín's account, the list of papers fined or temporarily suspended between 1888 and 1892 included one suspension in 1888; three suspensions and one fine in 1889; one suspension and three fines in 1890; two suspensions and 8 fines in 1891, including two fines against the same newspaper; and two fines in 1892. The newspapers in question included titles such as *La Libertad, El Sagitario, El Precursor, El Amigo del Pueblo, El Eco Liberal, El Demócrata, El Gladiador, El Zancudo, La Nación, El Sufragio, El Relator* and *El Diario de Cundinamarca*. From all these papers, *El Diario de Cundinamarca* experienced the greatest number of sanctions, with a fine in 1890, two more in 1891, and another one in 1892. See: "Carta Décimasexta," 298-300.

[373] "Carta Décimaséptima. Bogotá, Junio 10 de 1893," in Holguín, *Cartas*, 298, 302, and 303-304.

from January 1905 illustrates the influence of these laws and decrees on the control and repression of "dangerous" press outlets. In the document, Reyes recommended all his governors, prefects, and military chiefs to ensure strict compliance with the prescriptions of the decree of *alta policía*, "especially in all matters regarding the press." The circular ordered to punish with prison all individuals –journalists– that violated the regulations of *alta policía* in that particular point.[374]

In correspondence with the spirit of this legislation, persecution of "subversive" press during the *quinquenio* primarily targeted newspapers that, in the view of the government, encouraged "resistance to the law" and fostered hatred among social classes. Those were, precisely, the arguments under which the government declared the newspaper *El Faro* "a publication highly dangerous for peace and public tranquility," in June 1906.[375] The government had used similar pretexts in February 1905 to order the capture and confinement of six people, including the writers of the newspapers *El Santo y Seña* and *Ensayos Republicanos*. All of them had violated, "with subversive manifestations," the decree of *alta policía*. The order underscored that the government could make no exceptions in this regard. Otherwise, "it would put at risk the nation's reorganization and encourage tumultuous and "demagogical" scenes fostering civil war."[376]

[374] "Circular de enero 2 de 1905 a gobernadores, jefes militares y prefectos," in *Constitución política de Colombia*.

[375] Adarve Calle, "Gobernar, reformar y encarcelar," 177.

[376] "Circular de febrero 15 de 1905 a gobernadores," in *Constitución política de Colombia*.

The preventive control of subversive press during the Regeneration constantly swung between the legal domain of current normativity and the extrajudicial sphere of state retribution. There was a legislation on the press, and legal developments were more or less constant. Yet, the contents and prescriptions of this legislation still allowed a great degree of discretion in the definition and punishment of press crimes against society. A lack of formal judicial and procedural parameters for the prosecution and judgement of these offenses reinforced the legal insecurity ensuing. It was a legislation whose vagueness and grey areas could easily turn its enforcement into a sheer exercise of state power, as it happened many times before the Thousand Days –at least in the view of Liberal journalists. Legally entitled to define who and what was "subversive," the governments of the period turned these laws into a political weapon for neutralizing and terrorizing their rivals. Opposition journalism became thus a modality of internal enmity, one according to which criticizing the government in a public manner was a political crime almost equivalent to rebellion or conspiracy. The close relationship among these three crimes emerges clearly out of the fact that state repression against journalists operated under the guise of a preventive struggle against rebellion and internal turmoil. Both in the Regeneration and the Porfiriato, the "preventive" criminalization of the press on the grounds of the defense or public order fostered a legal and practical identification between "the rebel" and the "opposition journalist."

Conclusions: The Many Faces of Prevention

Preventing rebellion and internal turmoil in Colombia and Mexico was a complex and challenging endeavor that shaped diverse legal and judicial strategies. Those strategies

responded in each country to particular circumstances including political conflicts, partisan rivalries, reactions to specific measures and policies, and even legal and constitutional backgrounds. Different in their origins, preventive strategies in both cases had nonetheless several features in common.

A first feature in this regard has to do with the fact that all these strategies had a legal nature, no matter how "informal" or "extraordinary" they were. They were the result of multiple acts of legislation: constitutional precepts, prescriptions from the criminal codes, formal legislative acts, executive orders, and emergency decrees. Although some of these acts could seem more "formal" and "constitutional" than others, they all represented, ultimately, manifestations of the same law-making will –the state's law-making will.

A second, more complex, feature is that these strategies configured in both countries regimes of "alternative legality" for the legal and judicial treatment of actual or potential threats against public order. These parallel regal regimes had their own sets of crimes and penalties, often independent from the prescriptions, limits, exceptions, and guarantees established in codes and constitutions. Overall, both countries seemed to share the conviction that the prevention of internal conflict was an objective whose importance and urgency was worth dodging the prescriptions, actors, and formalities of normal laws, tribunals, and authorities. Such conviction encouraged the creation of alternative jurisdictional spheres that put defendants outside the reach of formal law and the ordinary justice system. This plurality of jurisdictions for the management of public order and the "preventive" treatment of political criminality reveals that state's legal logics for the prevention and repression of political offenders were neither monolithic nor a monopoly of a single institution or authority. Even when these logics seemed to be almost completely

subordinated to the Executive power, no single power, authority, or jurisdiction could claim an absolute monopoly over them. Problems concerning the monopoly of the functions of state repression were particularly drastic in the Mexican case, in which state authorities partially handed the administration of repression to private armies.

A third feature of these strategies refers to the characteristics of the "alternative legalities" they shaped. Their conditions of criminalization were most of the time vague, as were their criminal categories and the conditions for the administration and gradation of penalties. The legislation backing these regimes was full of abstract notions and grey areas that allowed for great degrees of discretion in the interpretation and application of the law. They were also legal regimes that relied heavily on the decisions and initiatives of the Executive power, even against the principle of independence of the judicial branch. Whether through direct, sanctioned intervention (Colombia) or through indirect manipulation (Mexico), the criminalization, prosecution, and judgement of threats against public order became primarily a political matter in the hands of the government and its agents. This political "twist" helps explain the fourth characteristic of the strategies in question: the political instrumentalization that these "alternative legalities" experienced in both countries. Governments in Colombia and Mexico applied this legislation not only to contain the outbreak of civil warfare and extinguish real threats against public order, but also to keep political dissidence in check through the criminalization of its actions, even manufacturing artificial political plots if needed.

The twofold use of this legality had major political and legal consequences in both countries. It dissolved in practice the distinctions among "preventing civil warfare," "protecting a regime's stability," and "repressing political opposition." Practices such as

charging dissidents with "conspiracy against public order" and treating them as "rebellion suspects" made possible the practical identification between one purpose and the others. Criminalizing opponents on the grounds of political charges –this is, treating dissenters as potential political criminals– allowed governments to legitimate political repression under the pretexts of safeguarding public order, preventing civil war, and protecting public authorities. It was a legal way of legitimizing not only the penalization of dissent, but also the application of a series of repressive and punitive practices that drifted away from what constitutions and codes prescribed regarding the limits of state power and state retribution. These practices furthered a systematic transformation of prevailing legal notions of internal enmity and political criminality, and extended the repertoire of possibilities according to which authorities could consider a dissident an "internal enemy." Legal, judicial, and administrative responses to "dangerous" dissidence and threats against public order reinvented time and again the sphere of political crimes. Reinventions included the politicization of common offenses like slander, the treatment of "conspiracy" as a political crime in itself, and the conversion of a long series of acts of dissent and protest into crimes against public order and the government.

Beyond these similarities, preventive strategies in Colombia and Mexico had their own particularities. In Colombia, for instance, they were subject of multiple and constant legal developments. Developments in Mexico had less to do with matters of legislation than with issues of judicial practice and habits. The legal and judicial monopoly of public order issues by the Executive in Colombia deprived dissidents from legal and judicial protections that their Mexican counterparts could still enjoy. Despite their manipulation by the government, Mexico's justice system still offered defendants ways of finding

protection against state vengeance. This does not mean that "preventive" repression in Mexico was less intense, more legalistic, or more constitutional than it was in Colombia. The Mexican case, in fact, involved significant displays of illegality, extrajudiciality, and unconstitutionality, and was marked by displays of state retribution that, in more than one occasion, went way beyond the limits of the rule of law. Preventive acts and displays of state power were mutable, involving different legal and judicial responses in different moments. The workings of repression in Colombia during the *quinquenio* were different from what they were before the Thousand Days, for the end of the war brought important transformations on the nature and dynamics of political conflict. In Mexico, state repression became more intense, informal, and less law-bounded in the first decade of the 1900s, with the reorganization of the Liberal party and the wave of uprisings that predated the Mexican revolution.

What do these strategies, measures, and displays of state power reveal about the legal prevention of internal warfare in the Regeneration and the Porfiriato? The Colombian and Mexican experiences show that "prevention" was a complex notion, linked to different yet interconnected objectives. It could mean prevention of rebellion, civil warfare, and internal conflict. It could also mean control of a subversive or incendiary press, as well as neutralization of criminal or potentially criminal political dissidence. It could equally mean deterrence of threats and attacks against public order and the government; surveillance of the legality of the acts of the opposition; and even restriction to its capacity of hurting established governments by military or electoral means. Here, the prevention of internal warfare, the protection of public order, and the preservation of governments and regimes seemed to be equivalent concerns –if not interchangeable. Within such a context, was there

a "pure," non-instrumental, non-politicized notion of prevention? Judging from the Colombian and Mexican cases, it is difficult to imagine such a notion outside the purely theoretical sphere of the law. What both countries had, in practice, was a series of strategies of "preventive" political repression, and sometimes sheer displays of state power disguised as "preemptive" measures. Legal and judicial campaigns against plots and conspiracies – real or imaginary– easily turned into offensives against "dangerous" and uncomfortable dissidents –sometimes against entire rival parties. Often, "prevention" and "repression" simply operated like two sides of the same legal and political endeavor.

At least two factors contributed to this practical equivalence between prevention and repression. The first, most obvious one, refers to the political instrumentalization of these preventive strategies, evidenced for instance in the political uses of press legislation and the imprisonment, as conspirators, of opposition journalists. The second one has to do with the many grey areas that legislation on public order entailed. The lack of clear parameters to define what "public order" was, what "subversive acts" were, and what represented "crimes against authorities and the public order," made this legislation a *carte blanche* for the criminalization of everybody the government wanted to target. Such criminalization came particularly in handy within contexts of revolutionary alarm, high political tension, or strong electoral competition. These responses and strategies closely paralleled the repertoire of legal and judicial measures with which governments in Colombia and Mexico reacted to actual episodes of rebellion and civil warfare, as the next chapter illustrates.

VI. CHAPTER 5. THE MANY FACES OF STATE RETRIBUTION: GOVERNMENTAL RESPONSES TO POLITICAL CRIMINALITY IN TIMES OF REBELLION AND CIVIL WAR

Perhaps no other Colombian liberal in the 1890s had a career remotely similar to that of Rafael Uribe Uribe.[377] One of the most prominent leaders of the Liberal Party throughout the decade, Uribe Uribe was a Congressman, a journalist, a political agitator, and a rebel leader during the wars of 1895 and 1899-1902. All these roles granted him multiple opportunities to speak out against the Regeneration, the policies of the Nationalist administrations, and the political exclusion that his party had suffered since the mid-1880s. His multiple actions as a dissident leader, together with his constant attacks against the Conservative regime, earned him an official persecution that extended from the office of his newspaper, *El Autonomista*, to the battlefields during the Thousand Days. As political agitator and opposition journalist, Uribe Uribe experienced the consequences of the regime's "preventive endeavors," which for him included a short prison term and the shutting down of his paper, right before the events of October 1899. As one of the three major rebel generals during the Thousand Days, he became a high-priority military target. Political and military authorities alike made him subject not only to the customary penalties that Colombian laws established for rebellion and other political crimes, but also to additional punishments including the death penalty. Uribe Uribe, nonetheless, managed to

[377] On Rafael Uribe Uribe's career, see Bergquist, *Café y conflicto*, 84-92.

survive the conflict. His negotiated rendition in October 1902 represented the first step towards the peace treaties that, a month later, put an end to the Thousand Days.

As one of the most versatile dissident leaders of his time, Uribe Uribe had to experience both the effects of the "preventive" ventures of the Regeneration and the force of the government's repressive responses to the 1899 movement. His case, although special, was not exceptional. Many other dissidents in Colombia and Mexico –included Ricardo Flores Magón– also fell victim of this double logic of criminalization, either because they switched from unarmed to armed modalities of dissidence or because their governments simply believed they had. How different were those two experiences? What differences separated the regime's legal efforts to prevent rebellion from its legal strategies to repress and neutralize actual rebel movements? Were there any substantial distinctions between the logics of "prevention" and those of "repression"? Moreover, what did "repression" mean? What characterized its logics? Addressing these questions requires complementing the previous reflections on the dynamics of prevention with a closer look to the logics of repression both in the Mexican Porfiriato and the Colombian regeneration.

Many of the initiatives that characterized the prevention of rebellion in Mexico and Colombia were also present in their respective responses to actual episodes of insurrection and civil warfare. Reactions to rebellion shared with these preventive measures their reliance on legislation, their tendency towards the construction of alternative legalities, their realignment of jurisdictional spheres, and their propensity to criminalize political dissent. This chapter reconstructs and analyzes the various repressive responses that Mexican and Colombian authorities gave to rebellion and revolutionary movements during

the period. How much did these responses rely on legislation and justice administration? How did governments use the law and the justice system as mechanisms of punishment against rebels and revolutionaries? How "legal" and "judicial" were these responses, and to what extent did they combine both legal and extra-legal punitive practices? What do these practices reveal about the nature and workings of state retribution against internal enmity both during the Regeneration and the Porfiriato? Drawing on these questions, the chapter reflects on the ways in which these governments treated rebels and other political criminals, the punitive practices through which state retribution unfolded, and the multiple meanings that internal enmity acquired in this context.

The chapter draws on a variety of materials. Primary sources include court-cases and judicial archival sources; laws and decrees; legal and political essays; memoires and correspondence; political manifestos; legal and political essays; and, newspapers. Secondary sources include studies on rebellions in Mexico and Colombia during the period. Section one explores the Mexican experience through an analysis of the role of ordinary courts, national and trans-national strategies of law enforcement, and extra-legal punishment practices in the Porfirian responses to a series of rebellions occurred between the late-1870s and the mid-1900s. Section two looks at Colombia and offers an analysis of governmental responses to rebellion during the Thousand Days War. It pays attention to the roles of executive legislation, the justice system, international law, and a series of extrajudicial repression practices in the shaping of logics of state retribution in the late-nineteenth century. Section three offers some concluding remarks concerning the roles of "legality" and "extra-legality" in the logics of state repression in Mexico and Colombia,

and about the nature of political offenses as criminal categories during the Porfiriato and the Regeneration.

Governmental responses to rebellion in Mexico and Colombia encompassed a variety of legal, political, and military purposes that demanded a combination of both "legal" and "non-legal" measures. State retribution, in consequence, was as formal and legalistic as it was informal and extralegal. In times of internal turmoil, it unfolded simultaneously in the legislation, in the justice system, in the courts, and both within and outside battlefields. It involved not only actual rebels and active combatants but also internal enemies of all sorts –armed or not. Differences in the nature of political conflict and the evolution of revolutionary movements shaped important distinctions between the Colombian and the Mexican experiences. Although repression in both cases was strongly legalistic, the "legality of retribution" in Colombia involved greater degrees of exceptionality than in the Mexican case, for instance. Regardless these differences, responses to rebellion in both countries turned political offenses into a flexible criminal category in which crimes and punishments were mutable and subject to constant redefinitions.

Responding to Rebellion in Mexico: Justice, Retribution, and Sovereignty during the Porfiriato

Governmental responses to rebellion and internal turmoil in Porfirian Mexico involved a set of strategies of state punishment and retribution that combined legal and judicial practices with extralegal and extrajudicial means. These practices not only extended throughout the Mexican territory but also beyond. The particularities of political conflict

during the late Porfiriato would turn the regime's legal war against insurrection into a trans-border endeavor tending to ensure the punishment of *antiporfirista* rebels both in Mexico and the United States. This singularity made the legal treatment of political criminality in Mexico not only a matter of law enforcement and justice administration, but also an issue of international diplomacy and bilateral relationships. This "trans-nationality" not only involved Díaz's "formal" and judicial responses to rebellion: it extended as well to his regime's extralegal and extrajudicial practices of punishment and repression. This section examines and analyzes the diversity of governmental responses to rebellion during the Porfiriato by grouping them into three categories: justice administration, trans-national law enforcement strategies, and extralegal practices of state retribution.

Rebellion and Justice Administration in Porfirian Mexico.

Justice administration in cases of rebellion and insurrection during the Porfiriato corresponded predominantly to ordinary courts and relied on the prescriptions of the Criminal Code. The judgement of rebels and other political criminals commonly fell on federal judges or *Jueces de distrito*, in accordance with the assumption that crimes against public order always represented federal offenses. This position, grounded on a law from 1856 that turned all acts of rebellion and sedition into federal crimes, maintaining that all disturbances of public order, regardless their scope, always affected general interests that concerned the whole nation.[378] Trials against rebels and other armed *antiporfiristas* often

[378] The state or provincial counterparts of the *jueces de distrito* were the *jueces de letras*. For an example of a conflict of jurisdiction between *jueces de distrito* and *jueces de letras* concerning the judgement of rebels, see: SCJ, 1885, Expediente sin número: "Problema de competencia en la causa contra Teodoro Real y Eutimio García," which makes reference to the mentioned law from 1856.

involved processes combining both common and political crimes, although cases exclusively dealing with political charges were not uncommon. Political offenses included rebellion, sedition, conspiracy, and "attacks against public order." Common crimes involved, primarily, homicide and different forms of robbery.

Judicial decisions tended to vary depending on the type of crime in question and the nature of the people involved. Direct, first-instance acquittals were scarce, and seemed to be reserved for light modalities of political criminality and low-profile political offenders. That was the case, for instance, of Ramón Granados, processed in 1879 for "insurrection and attacks against public order." The prosecution accused Granados of being part of a recent insurrectionist movement, a charge that in the judge's opinion was not "criminal" enough to earn him a prison sentence. The trial ended with Granados's acquittal. Although the prosecution appealed, a second-instance judge confirmed the decision, with the subsequent support of the Supreme Court.[379] That was also the case of a small group of people involved in the failed insurrectionist movement of mid-1908. Despite being part of a larger process for conspiracy and rebellion against important members of the Liberal Party in Oaxaca, they managed to obtain a first-instance acquittal due to their lack of political value.[380] Sometimes a defendant had to wait for a second-instance judicial decision, as happened to Sabas Lomelí in the late 1870s. Facing an initial sentence of five

[379] SCJ, 1879, Expediente 0: "Toca a la causa contra Ramón Granados o Polanco por rebelión."

[380] SCJ, 1908, Expediente 37: "Toca a la causa e incidente de libertad en la averiguación contra Plutarco Gallegos."

years in prison for conspiracy, Lomelí appealed the decision and an appealsjudge granted him conditional release under the authorities' surveillance.[381]

High-profile rebels, even if they only faced charges for political crimes, faced a more complicated situation. In 1901, a process against the rebel Colonel Donaciano González and his fellows in arms ended up in irrevocable prison sentences. González had been on the authorities' radar since 1897, when he took part in the rebellion of Canuto Neri in the state of Guerrero, and was finally captured in November 1899.[382] A judge sentenced him to six years in prison as "principal responsible for the crime of rebellion," and gave ten of his people a couple years of the same penalty as accomplices. Although González appealed and tried to obtain a shorter prison sentence, a second-instance judge ratified the initial decision. He would die in prison before his process came to a definitive conclusion.[383] Something similar happened in 1908 to Plutarco Gallegos, Miguel Maraver, and Gaspar Allende, arrested in 1906 under charges of rebellion and conspiracy and processed in 1908 by a tribunal in Oaxaca. Active antiporfirista journalists and agitators,[384] Gallegos and Maraver received, together with Allende, prison penalties of over a year plus fines ranging from 800 to 1,000 pesos. Although the three of them appealed the decision and obtained a sentence revision, the new sentence introduced insignificant modifications

[381] AGNM, Secretaría de Justicia, Caja 93, Expediente 54: "Causa contra Sabas Lomelí."

[382] "Un mesías de nuevo cuño," *El Xinantecatl*, October 10, 1897; and "El levantamiento en el estado de Guerrero," *El Chisme*, November 30, 1899.

[383] SCJ, 1901, Expediente 165: "Causa contra el coronel Donaciano González, Manuel Soto, Manuel Pastrana, Manuel Salinas, Isidro Valladares y socios acusados del delito de rebelión ;" and "Muerte del Coronel Donaciano González," *La Voz de México*, May 19, 1901.

[384] On Gallegos and Maraver, see: "Persecuciones cobardes," *Regeneración*, July 1, 1906; "El 18 de julio en Oaxaca," *Regeneración*, August 5, 1905; and "Oaxaca," *El Diario del Hogar*, March 20, 1908.

to the original penalties.[385] Ángel Barrios, another agitator from Oaxaca who faced charges of conspiracy in 1907, would receive a similar sentence. Barrios would not succeed either in obtaining a significant sentence reduction after his appeal in 1908.[386]

Rebels facing trials for both political and common crimes would face even more complicated situations. Combined charges often hindered acquittals, gave judges additional reasons to punish rebels, and, like in Colombia, allowed tribunals to sentence political offenders to death. The cases of Tomás Sánchez in 1886, and Pascual Reyes and his fellows in arms in 1906, exemplify the first situation. Tomás Sánchez, together with 11 more people, appeared before a federal judge in Guadalajara under charges of conspiracy, robbery, and homicide. The judge dismissed the conspiracy charges in all the cases, which made possible the acquittal of eight of the defendants. Sánchez, nonetheless, also faced charges for stealing a horse, and he and two more people charged with homicide had to remain linked to the process and wait for their sentencing as common criminals.[387] Pascual Reyes's case illustrates an opposite situation. Reyes, together with eight more people, appeared before a tribunal in San Luis Potosí under charges of rebellion and "association to commit attacks against property." Unlike the previous case, a judge declared them innocent of the common crime charge and issued sentence exclusively on the grounds of their political crime. The sentence gave Reyes eight years of prison as "author" or leader, gave other four people prison terms of over a year, and punished two "accomplices" with

[385] SCJ, 1908, Expediente 37: "Toca a la causa e incidente"

[386] SCJ, 1908, Expediente 115: "Toca a la causa seguida contra el ingeniero Ángel Barrios."

[387] SCJ, 1886, Expediente 152: "Toca a la causa contra Tomás Sánchez y socios por rebelión."

eight months of the same penalty. Reyes would appeal the decision and obtain a substantive sentence reduction that would set him free in 1910.[388]

The trials against some of the *antiporfiristas* arrested after the failed insurrection of September 1906 offer additional details of how judges administered justice when dealing with both common and political crimes. The process against Juan Sarabia and other 15 people in January 1907 offers a first example in this regard. Sarabia was the director of the oppositionist newspaper *Regeneración*, and had entered the state of Chihuahua from the United States with a group of Liberal agitators exiled north of the border. Once in México, the party tried to raid Ciudad Juarez' custom house, with no success.[389] Authorities from the state charged the party with rebellion and other federal crimes of a common nature. A judge declared Sarabia, together with Cesar E. Canales and Vicente de la Torre, guilty of the crimes of attempted homicide, attempted robbery of federal funds, and attempted destruction of public buildings. Each received between five and seven years of prison. In addition, the judge sentenced Sarabia, Canales, and de la Torre on "conspiracy for rebellion" and gave them an extra penalty consisting of a fine of 500 pesos. As an opposition journalist, Sarabia would also receive a third penalty for slandering President Díaz, and had to pay a second, much larger fine.[390]

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[388] SCJ, 1908, Expediente 776: "Toca a la causa contra Pascual Reyes y Vicente Cedillo por el delito de rebelión."

[389] "El proceso instruido a Sarabia y socios," *La Patria*, January 5, 1907; and "Captura de bandidos en la frontera," *El Contemporáneo*, October 25, 1906.

[390] AGNM, Secretaría de Justicia, Caja 593, Expediente 76: "Sobre Juan Sarabia y socios procesados por rebelión y otros delitos."

The rest of the defendants included in the process would face more lenient penalties. Some of them received prison penalties over a year, as responsible in a lower degree of the mentioned crime of conspiracy. The judge would even acquit six people for lack of evidence. The sentence concluded with the petition requesting the extradition of the exiled Liberal leaders Ricardo Flores Magón and Antonio Villareal. By March 1907, authorities had sent all defendants to the infamous prison of San Juan de Ulúa, where one of them, Francisco Guevarra, would die of tuberculosis. Although all defendants appealed the decision, a second-instance judge confirmed the sentence in October that year.[391]

The second example from the events of 1906 has to do with the trial of Abraham Salcedo and Bruno Triviño, members of a Liberal club in Metcalf, Arizona, and leaders of a raid against the custom house of Nogales, Sonora.[392] The process against them included a total of 18 people, all of them charged with crimes of conspiracy and robbery. In May 1907, a judge from Querétaro sentenced Salcedo and Triviño as recidivist conspirators, and gave them both 8 years in prison and a costly fine of 2000 pesos. Triviño, additionally charged with property damage, would receive an additional penalty of seven months in prison. Lázaro Puente, whom authorities accused of "formally inviting several people to commit conspiracy," would receive over seven years in prison plus an even larger fine. Eight more people, processed as co-authors of the same crime, would face prison sentences between five and six years, with additional fines ranging from 500 to 1800 pesos. Some of the defendants appealed, and by December 1907 obtained important sentence reductions.

[391] AGNM, Secretaría de Justicia, Caja 593, Expediente 76: "Sobre Juan Sarabia."

[392] "Arresto de malhechores mexicanos," *El Tiempo*, September 7, 1906. Additional references to Salcido and Triviño appear in the documents regarding the capture of Félix Rubalcaba: AGNM, Secretaría de Justicia, Caja 552, Expediente A: "Sobre causa de Félix Rubalcaba y socios."

A second-instance judge took two years off Salcedo's and Triviño's sentences and reduced the amount of their fines. Other petitioners would receive reductions of a year and equivalent discounts in their corresponding fines.[393]

The combination of common and political crimes in a process for rebellion could lead to particular penalties like the one that authorities from Veracruz tried to impose on Palemón Riveroll in December 1906. Riveroll was the alleged ringleader of a Liberal uprising that had taken place in Ixhuatlán in October that year. During the uprising, Riveroll and his people stole the funds of the town's city hall and ordered the forced collection of a sum of money among the inhabitants. Soon after the raid, the town's authorities requested the tribunal in charge of judging Riveroll for rebellion and robbery to open a parallel process against him, this time for civil responsibility regarding his illegal "collection" of money. The request included a list of 41 *vecinos* that claimed for compensation, each claim ranging from two to two thousand pesos. The total of reclamations amounted to 7,358 pesos. They all manifested their wish for Riveroll to "return" all the money he had stolen.[394] The incident with the people from Ixhuatlán did not mark the end of Riveroll's career as a rebel. By the outbreak of the Mexican revolution, he had become a well-known "*magonista"* with some influence in Veracruz. Authorities would capture him again in September 1911 under charges of rebellion.[395]

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[393] SCJ, 1908, Expediente 757: "Toca a la causa contra Ricardo Flóres Magón, Epifanio Vieira y Abraham Salcedo."

[394] AGNM, Secretaría de Justicia, Caja 596, Expediente 446: "Incidente del movimiento revolucionario iniciado en Ixhuatlán."

[395] "Continúan las persecuciones contra los presuntos magonistas," *El Diario del Hogar*, September 19, 1911.

Combined charges of political and common nature could also lead to death sentences, as illustrated by the case of the half-bandit, half-rebel Juan Galeana. Galeana had started his criminal career as a low-profile bandit in the state of Guerrero, somewhere in the 1880s. In April 1899, his participation in a couple of bandit rides in the district of Tecoanapa put him on the radar of Ayutla's political chief, José Pandal. Pandal started an intense but unsuccessful persecution against Galeana, who reacted by attempting twice against the chief's life, once in December 1889 and again in February 1890. The second attack included a raid on Ayutla that ended up with a series of robberies and the assassination of Pandal. In a letter to the state governor, Galeana and his people presented the raid as an act of "popular justice," by claiming that all they wanted was to liberate the town from the chief's iron fist. The events of February 1890 made Galeana a primary target of the federal army. Feeling cornered, Galeana joined the forces of the rebel Cornelio Álvarez, and together they launched a frustrated rebellion whose first and only episode was an attack in April that year against the town of Cautepec. The rebels executed the local judge, ransacked a few houses, and kidnapped a couple people. Díaz's aggressive response to the rebellion forced the rebel movement to disband, and after a few months the federal army had either shot down or arrested the bulk of its members.[396]

The process against Galeana, Álvarez, and their people would extend for almost two years, involving more than 120 people and encompassing all the events from April 1899 to April 1890. On May 31, 1899, a first-instance judge sentenced Galeana and

[396] *Pedimento y réplica del promotor fiscal del tribunal de circuito… en la causa instruida contra Juan Galeana y socios por los delitos de asonada, rebelión, sedición y otros cometidos en varios distritos del Estado de Guerrero* (México: Secretaría de Fomento, 1892), 3-14; and Salazar Adame, "Movimientos," 113-115.

Álvarez to death as principal authors of a series of crimes that included rebellion, sedition, *asonada*, injuries, and homicide. Four more defendants also received death sentences for their participation in the executions of Pandal and Cautepec's judge. About 30 people received prison sentences between 10 and 20 years, whether as authors or accomplices of the multiple attacks addressed in the process. Five additional people, accused of hiding and protecting Galeana, received 22 months in prison. The judge acquitted the rest of the defendants.[397] Galeana's defense appealed the sentence by criticizing the way in which the prosecutor had classified the crimes. To the prosecutor, Galeana and his people were responsible for both political and common crimes. Political crimes included sedition, related to the attack on February 1890, and rebellion, related to the events in Cautepec. All the previous incidents represented nothing but acts of common criminality, with no political meaning whatsoever. The defense, on the contrary, claimed that all the offenses in question were part of a single, encompassing political crime. To them, all the events between April 1889 and February 1890 had been "preparatory steps" towards the major act of rebellion of April 1890. The robberies, murders, and kidnappings in questions represented simple connected crimes (*delitos conexos*) through which the major and continuous political crime had materialized.[398]

The defense's argument did not convince the court, which insisted on processing Galeana, Álvarez, and their people for both political and common crimes. The second-instance tribunal, nonetheless, did not ratify their death sentences, for it found several procedural irregularities in the initial organization of the process. There were no autopsies

[397] *Pedimento y réplica*, 15-17.

[398] *Pedimento y réplica*, 81-83.

on the people that the rebels murdered during their incursions, and therefore there were no formal proofs of the victims' assassination. According to Mexican law, a judge could not sentence a murder suspect to death if there were no sufficient proofs of the crime. The tribunal, then, had no option but commuting the sentence in all cases. It was already December 1892 when the court finished the revision of the original sentence and agreed to modify the bulk of the initial penalties. The new judge gave Galeana 20 years of prison. Álvarez and the rest of the defendants sentenced to death received between nine and ten years of the same penalty. Many of the people that initially received 10 years now faced between two and six years. The judge also acquitted about a dozen more people.[399] Although Galeana's life was spared, he would die in San Juan de Ulúa when a high tide conveniently flooded his underground cell and drowned him.[400]

Galeana's story deserves special attention because it comprises some of the most important features that characterized the administration of justice in cases of rebellion during the Porfiriato. First, it illustrates how judges dosed the application of state punishment in correspondence with the crimes in question, the kind of criminals involved, and their high- or low-profiles as internal enemies or disturbers of public order. Second, it sheds light on how the justice system understood political and common crimes, and used the combination of both kinds of offenses as a judicial tool for re-criminalizing rebels and ensuring their effective and exemplary punishment. Finally, it reveals that, regardless of the functioning of the justice system as enforcer of state retribution, tribunals and courts still offered defendants some guarantees and protections in correspondence with the

[399] *Pedimento y réplica*, 83-84, 100, and 159-168.

[400] Salazar Adame, "Movimientos," 116.

Constitution and the law. As in the Colombian case, legal and procedural formalities mattered, and rebels could find in them a way to protect themselves against unbridled displays of state retribution. The workings of second-instance tribunals and the Supreme Court of Justice would prove crucial in this regard.

When it came to requests of protection of constitutional and procedural guarantees in cases of rebellion, Mexico's Supreme Court dealt with much more than appeals and sentence revisions. Petitions before the high tribunal could also make reference to conflicts of jurisdiction, for instance. In October 1885, the rebels Teodoro Roel and Eutimio García requested the Supreme Court to solve a jurisdictional dispute between Monterrey's *juzgado de letras* and Nuevo Leon's *juzgado de distrito* about the management of their case. The tribunal would solve the dispute in favor of the latter institution, as the petitioners wanted, for it was a federal tribunal and rebellions were federal crimes.[401] Later on, in January 1886, Roel and García would address the Supreme Court once more, this time requesting an *amparo* on the grounds that the authority that had ordered their apprehension was not legally competent to do it. This time, nonetheless, the high tribunal would not favor them and defended the legality of the proceeding.[402] A petition from March 1899 by Ignacio Brito would address analogous concerns. Brito, an alleged member of Donaciano González's army, claimed that his process had been deadlocked for three months because no authority knew which jurisdiction should take care of his case. He would also maintain that his imprisonment was illegal, since the authorities that put him in prison had apparently violated several procedural rules. While the Supreme Court helped the petitioner regarding

[401] SCJ, 1885, Expediente sin número: "Problema de competencia en la causa contra Teodoro Real."

[402] "Jurisprudencia federal – Juzgado de distrito de Nuevo León," *El Foro*, January 20, 1886.

his jurisdictional problem, it decided that there was no procedural irregularity in his imprisonment and ordered to keep him in jail.[403]

Other petitions involved complains about the slow development of judicial processes, as the case of Rafael Mosqueda illustrates.[404] In 1890, Mosqueda took part in a frustrated rebellion in Guanajuato, and a result of this paid three years of prison in the town of Celaya. His freedom did not last much, for he still had an ongoing process for rebellion and robbery in the same state. In September 1896, authorities imprisoned Mosqueda once again while this second process concluded and a judge dictated the corresponding sentence. In January 1899, still in prison, Mosqueda decided to file a claim before the Supreme Court in order to speed up the long-awaited judicial decision. According to the petitioner, nine years had passed since his first imprisonment, and his judicial situation was still unclear. The tribunal declared itself unable to help Mosqueda with his request. All he obtained was an explanation as to why his process was taking that long. Apparently, the process in question involved a large number of people responsible for the events in Guanajuato, many of them current fugitives. Anytime authorities made a new arrest, they had to stop the process and add new material to the file, already consisting of 941 pages. The fact that the records had to go from one town to another anytime a new arrest was made compounded

[403] SCJ, 1899, Expediente 0: "Queja de Ignacio Brito."

[404] Apparently, judicial processes in cases of rebellion were commonly slow and cumbersone. Both trials and sentence revisions would take several years. The process against Pablo Mandujano and other 11 rebel supects in Guanajuato, for instance, took seven years (from 1882 to 1889) to come to a conclusion. See: SCJ, 1882, Expediente 70: "Toca a la causa contra Pablo Mandujano y socios por conato de rebelión."

the situation. The explanation, in short, gave Mosqueda no hopes of a prompt solution to his prolonged imprisonment.[405]

A final example sheds additional light on the variety of claims that political prisoners would file before the Supreme Court in alleged defense of their constitutional guarantees. In June 1894, Aniceto Villareal, a participant in Catarino Garza's armed expedition, wrote the high tribunal a letter denouncing a *juez de distrito* from Nuevo Laredo for violating his right to a defense. According to Villareal, the judge had refused to accept the lawyer he had appointed, Antonio Martínez Cáceres. The refusal was grounded on the fact that Martínez Cáceres was under preventive imprisonment in the same town since May that year, facing charges for rebellion as well. The judge maintained that he had not violated Villareal's right to a defense. The defendant had always been able to present all the evidence he wanted, and had complete freedom to appoint any other lawyer as long as he did not have any sort of legal impediment. Ultimately, despite the judge's opposition, Villareal would be finally able to appoint his fellow rebel as his lawyer. Martínez Cáceres was still awaiting sentence, and therefore was able to exercise his civil rights.[406] Villareal's defense, nonetheless, would prove incapable to save him from the severity of state retribution. The tribunal in charge of his case sentenced him to death in August 1898, on charges of rebellion, robbery, homicide, kidnapping, and arson. Villareal remained in

[405] SCJ, 1899, Expediente 0: "Queja del C. Rafael Mosquera." (Consisting of two separate expedients). Also: "Acusados de rebellion," *El Monitor Republicano*, September 1, 1896.

[406] SCJ, 1894, Expediente 86: "Anotación hecha por el C. Aniceto Villareal contra el juez de distrito de Laredo;" and "Las aprehensiones en Laredo," *La Voz de México*, May 29, 1894.

prison until 1901. In May that year, after filing a petition of *amparo*, he decided to stop waiting for the Supreme Court's intervention and escaped from prison.[407]

On the whole, the administration of justice in cases of rebellion during the Porfiriato reveals a dynamic of state punishment that relied heavily on the logics of the ordinary justice system.[408] It was also a dynamic that, instead of transforming current legislation and attempting to craft its own –like in the Colombian case–, maintained a great degree of correspondence with the existing legislation. From this perspective, and compared with what would happen in Colombia, the Porfirian experience entailed a legal regime of punishment that had no extraordinary nature and involved higher degrees of stability and predictability. Regardless of their outcomes and the severity of their sentences, ordinary trials against rebels in the Porfiriato ensured a relatively consistent administration of state retribution, subject to clear laws and limited by concrete rules and guarantees. The regular administration of justice against rebels in Porfirian Mexico worked in two ways. First, it was a standard, formal practice for the application of state punishment in cases of internal enmity. Second, it represented a ritualized display of state retribution aiming to accentuate and reinforce state sovereignty over the nation's internal enemies. Mexico's justice system, nonetheless, did not exclusively work as a theater and instrument of state retribution. It also functioned as a mechanism through which rebels could find some sort of legal protection against state retribution. As the reviewed stories of appeals, sentence revisions,

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[407] "To be shot: Garza rioters receive the capital sentence," *The Mexican Herald*, August 17, 1898; and "Graves responsabilidades contra dos jefes de prisión," *La Patria*, May 15, 1901.

[408] This does not mean that the military justice had no role at all in the punishment of rebellion in Porfirian México. Its jurisdiction, nonetheless, remained restricted to military crimes and members of the army. See for instance the court-martials against rebellious members of the *Rurales* in the 1870s and 1880s, mentioned in Vanderwood, *Los Rurales*, 62 and 125-127.

and other claims before the Supreme Court illustrate, procedural formalities and constitutional guarantees mattered, and defendants used them strategically in their benefit, often with some degree of success.

Extending Law Enforcement and Retribution Beyond the Mexican Territory.

Diaz's responses against Liberal rebels would extend state logics of justice, punishment, and repression beyond the territorial limits of the Mexican nation. The flight of many *antiporfirista* leaders and journalists in the early 1900 to the United States would make the northern country an important center of political agitation against the Porfiriato in the decade prior to the Mexican Revolution. This agitation would take different forms, including aggressive press campaigns directed at both American and Mexican publics, alliances with socialist and anarchist organizations north of the border, and even revolutionary conspiracies and armed incursions into Mexican territory.[409] The trans-nationalization of *antiporfirismo* would lead Díaz to, in turn, resort to additional strategies in order to hinder and neutralize the workings of opposition beyond the Mexican border and repress and prosecute trans-national rebel conspiracies and expeditions. Strategies would include requests for extradition and deportation of alleged rebels before American authorities, negotiations with American judges and prosecutors in order to ensure the criminalization and imprisonment of "dangerous" Mexican exiles, and even "forced deportations" of *antiporfiristas*. These responses would turn Diaz's struggle against internal enmity into a trans-national campaign of law enforcement involving not only

[409] Scholarship on *antiporfirista* agitation in the United States in the 1900s includes: MacLachlan, *Anarchism*; Young, *Catarino Garza's*; and Lomnitz, *The Return*.

Mexican authorities and diplomats but also American judges, prosecutors, and police forces. Such a combination of actors, strategies, and jurisdictions would provoke multiple clashes between Díaz's strategies of legal and judicial repression and American practices of justice administration.

Governmental efforts for repressing Mexican rebels beyond the Mexican border preceded in fact the rise of trans-national *antiporfirismo* in the 1900s. The practice of requesting American authorities the extradition of political criminals exiled north of the border was already common in the early 1880s, as the case of Clodomiro Cota illustrates. The Mexican government requested the extradition of Cota and other two rebels in late 1880. The way in which Mexican authorities made the request and tried to make their extradition possible provides a first example of Díaz's most recurrent strategy for ensuring the return of political exiles to Mexico. A treaty from December 1861 regulated the practice of extradition between Mexico and the United States. Like many extradition treaties of the time, the 1861 treaty prohibited the extradition of political criminals and political refugees, restricting this practice only to common offenders. Mexican authorities, in consequence, faced the challenge of convincing their American counterparts that the people they requested were common criminals and not political offenders. Unable to request the extradition of Cota and his fellows on political grounds, Mexico's government requested them on charges of robbery and kidnapping. The request took effect. The governor of California ordered the arrest of the three individuals and their delivery to Mexico's consul in San Francisco. American authorities could only arrest Costa, who managed to file a writ

of habeas corpus right before his extradition to Mexico. The petition put Costa back under the protection of the American justice system and ultimately frustrated Mexico's plan.[410]

The revolutionary expeditions of Francisco Ruiz Sandoval and Catarino Garza in the early 1890s would force Díaz to refine and strengthen his strategies for prosecuting rebels north of the border. Bernardo Reyes requested Laredo's police the arrest of Ruiz Sandoval's people right after their retreat to American territory in June 1890. Laredo's forces captured and imprisoned them under charges of violation of neutrality laws, and prepared their prompt extradition to Mexico. After knowing that Reyes and Díaz planned on executing Ruiz Sandoval and his fellow rebels once they were in Mexican territory, an American prosecutor halted the process and handed the prisoners over to a tribunal in San Antonio, Texas. Although Ruiz Sandoval would be released on bail, Mexican authorities urged their American counterparts to put him back in jail. This time, the rebel leader would face a trial not only for violation of neutrality laws but also for common crimes including cattle rustling.[411] The Mexican government would pay off a group of false witnesses whose testimonies were supposed to incriminate Ruiz Sandoval in all the crimes he was charged with. The court in charge of the case discovered the ruse and jailed many of the made-up witnesses for perjury. By the end of the trial, charges against Ruiz Sandoval had become completely political. The prosecution accused him of "[raising] a revolution and [plunging]

[410] "Un caso grave de extradición," *El Siglo Diecinueve*, January 4, 1881.

[411] Young, *Catarino Garza's*, 79-81; see also: "El último mensaje presidencial," *El Diario del Hogar*, September 18, 1890. The referred "neutrality laws" prohibited the organization of armed forces in the United States with the purpose of attacking a friendly nation.

the people of Mexico into a horrid war." The jury, nonetheless, found him not guilty, perhaps in consideration of the timid dimensions of his frustrated movement.[412]

Catarino Garza and his people faced a relatively similar experience after their insurrection in September 1891. Soon after Mexican and American troops disbanded the rebel movement on both sides of the border, Porfirian newspapers demanded the extradition of the rebels captured in the United States as common criminals.[413] Claims for extradition did not find an echo, and the prosecution of the rebels in question remained in the hands of a tribunal in Texas. Between 1891 and 1892, about a hundred *Garzistas* would appear before a tribunal in San Antonio, after a federal grand jury accused them of violating neutrality laws. Throughout the process, the prosecution succeeded in proving that Garza and his people had organized a revolution against Mexico on Texas territory. The prosecutor tried to convince the jury to declare the defendants guilty with the argument that if American authorities did not restrain *Garzista* rebels, they would continue to organize similar armed incursions until unleashing a war between Mexico and the United States. The process against Garza's people would extend until 1893, and conclude with prison sentences for all the rebels that authorities had captured by then. Sentences varied according to the involvement of the rebels in the movement, their degrees of criminal responsibility, and their chances of appointing and being able to afford American lawyers. Although prison terms ranged from one days to three years in jail, the average time of conviction for all *Garzistas* was between five and six months.[414]

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[412] Young, *Catarino Garza's*, 82-83.

[413] "La gran revolución," *La Patria*, October 11, 1891.

[414] Young, *Catarino Garza's*, 176-179.

Compared to other past and future experiences, *Garzista* rebels faced a relatively less complicated situation. Mexican authorities did not formally push for extradition, and their trials only involved political charges. From the early twentieth century on, that would not be the case any longer. In 1905, Francisco de Paula Araujo experienced a situation that resembled the case of Ruiz Sandoval and his people. According a note *El Colmillo Público* published in May that year, Araujo was a political prisoner in the United States that Mexico's government had recently targeted for extradition. The Mexican consul in Douglas, Arizona, had filed a first extradition request not long ago, but American authorities had refused to authorize the proceeding by arguing that Araujo was a political offender. Unable to have him back in Mexico on political charges, the Mexican government would come up with a new strategy. This time, they would press charges against Araujo for allegedly scamming a woman from Cananea, Sonora. To *El Colmillo*, this was a second and totally illegal attempt to obtain Araujo's extradition, grounded on trumped up charges aiming to dodge his rights as a political criminal.[415] A year later, Juan Arredondo, a prisoner in Texas involved in the events of September 1906, would face an analogous experience. The Mexican government requested Arredondo's extradition in October that year on charges of murder, robbery, and arson. Aware of his status as a political prisoner, Texas's governor delayed the authorization of the request until a court decided whether or not the offenses in question had a political nature.[416]

[415] *El Colmillo Público*, May 21, 1905.

[416] "Extradition proceedings undertaken in Texas. Austin, TX, Oct. 20," *The Mexican Herald*, October 21, 1906.

The events of September 1906 and the strengthening of U.S.-based *antiporfirismo* during the second half of the decade forced Díaz and his diplomatic agents to strengthen their strategies of trans-national repression. From then on, the central goal of these strategies would be crushing, by all means possible, the leadership Mexican Liberal Party north of the border. The prosecution, extradition, and punishment of low-profile rebels and simple rebellious expeditioners would give way to the persecution and imprisonment of major *antiporfirista* figures including Ricardo Flores Magón, Antonio Villareal, Manuel Sarabia, and Lázaro Gutiérrez de Lara. In correspondence with such goals, the Mexican government would organize an elaborate strategy of information gathering by extending its networks of consulates in the United States. Mexican consuls would lead intelligence and espionage operations against renowned opposition journalists and agitators, often with the help of specialized private services like the Thomas Furlong Detective Company –a close ally of Mexico's consul in St. Louis, Missouri. Consulates would report regularly to Mexico's embassy in Washington and the Minister of Foreign Affairs back in Mexico City.[417]

Intense legal and judicial campaigns to obtain either the extradition or deportation of journalists and agitators or their sentencing and conviction in the United States complemented these intelligence strategies. Díaz and his agents would double their efforts to extradite high-profile dissidents under common charges such as robbery and homicide. That would be the case, among many others, of Ricardo Flores Magón, Manuel Sarabia, Antonio Villareal, Libardo Rivera, Trinidad García, and five other people. The Mexican

[417] MacLachlan, *Anarchism*, 19; and Lomnitz, *The Return*, 208.

government would link them to the uprising of a liberal club in Jiménez, Chihuahua, that had ended up with one murder and the robbery of some funds from the local post office. The timely intervention of American judges that declared the actions in question political crimes would ultimately prevent their extradition.[418] Mexican authorities would also try to convince their American counterparts to deport "dangerous dissidents" to Mexico on charges of being "undesirable immigrants" –a category that involved immigrants linked to anarchist organizations or other criminal activities in the United States. According to the U.S. law, deportations on these grounds were indisputable and only required the approval of an immigration officer. Free from the intervention of American courts and judges, Mexican authorities managed to obtain in late-1906 the deportation of several rebels captured in Arizona, including the already mentioned Lázaro Puente, Abraham Salcedo, and Bruno Triviño.[419]

When neither extradition nor deportation were possible, Mexico's government would push American courts to sentence Mexican rebels to long prison sentences, commonly on charges of violation of neutrality laws. More than two dozen *antiporfiristas* would experience at least one prison sentence in the United States on these charges, including, unsurprisingly, Ricardo Flores Magón, Antonio Villareal, Libardo Rivera, and Manuel Sarabia. Persecution against these "violators of neutrality" concentrated on the cities of San Antonio, Del Rio, and El Paso, Texas; Douglas, Arizona; and, Los Angeles California. Although many of these arrests ended up in acquittals by U.S. courts, Flores Magón, Rivera, and Villareal, together with other six people, would receive prison

[418] Turner, *México*, 121.

[419] Turner, *México*, 122.

sentences between 18- and 30-months-long.[420] Reflecting in 1909 on the impact of all these legal strategies, John K. Turner would maintain that, for the last years, the only law applicable to Mexicans living in bordering states had been, not the U.S. law, but Diaz's one. As a result of this, the author complained, American authorities had taken away from Mexican citizens not only their right to asylum but also the basic protections they should enjoy under the nation's laws.[421]

The persecution, arrest, and trial of Ricardo Flores Magón in California offers an illustrative example of how Díaz's government deployed and combined these legal strategies. Flores Magón arrived to Los Angeles in 1907, after fleeing from St. Louis and clandestinely roaming the country for a few months. In Missouri, the Liberal leader and his paper *Regeneración* had fallen victim of the harassment of the Furlong agency and its people, a persecution that ended up with the shutting down of the publication and the temporary imprisonment of its editors, Flores Magón included. Years earlier, he had fled San Antonio, Texas, for analogous reasons. Once in Los Angeles, with the collaboration of Libardo Rivera and Antonio Villareal, Flores Magón reopened his newspaper, this time with the title of *Revolución*. By then, American authorities had offered a great reward for his capture (20 thousand dollars, according to Turner), so Flores Magón and his people opted to resume their journalistic activities in the underground. By August 1907, nonetheless, members of the Furlong agency succeeded in tracking the journalists down and proceeded to their arrest. As the same Thomas Furlong would declare before a L.A. tribunal, he and his people carried out the arrest with no judicial order or formal warrant,

[420] Turner, *México*, 121, and 130-131.

[421] Turner, *México*, 120-121.

acting under the orders –and payment– of the Mexican government. Right after the arrest, Mexico's ambassador in Washington, Enrique Creel, travelled to Los Angeles in order to secure the extradition of Flores Magón.[422]

The trial against Flores Magón would be an exemplary display of Díaz's multiple efforts to manipulate the American justice system in order to achieve the punishment of his adversaries. Charges against the three journalists involved resistance to authority, robbery, homicide, criminal libel, and conspiracy for violating neutrality laws. In the case of Flores Magón, these charges made reference to his journalistic activities, his alleged role in the planning of the 1906 rebel expedition, and his presumed links with a recent Liberal uprising in Jiménez, Coahuila. This last incident included the robbery of the city's treasury and the homicide of a person. By linking the Liberal leader with the events in Coahuila, the Mexican government wanted to make a solid case for his extradition. The plan backfired. A federal commissioner in San Antonio, Texas, had previously refused to extradite a group of prisoners involved in the Jiménez uprising based on the fact that they were political criminals. Thus, by involving Flores Magón in the incident, Mexican authorities achieved nothing but ruining their chances of extraditing him.[423]

The failure of its extradition plans forced the Mexican government to resign itself to indict Flores Magón and his people for crimes that could earn them a prison sentence in the United States. After reviewing the available evidence, the Mexican government, in partnership with a judge from Texas and a U.S. attorney from California, decided to link the defendants with an ongoing case in Arizona. It was a process against two Mexicans

[422] MacLachlan, *Anarchism*, 8-9, and 20; and Turner, *México*, 124-127.

[423] MacLachlan, *Anarchism*, 20; and Turner, *México*, 128.

indicted for violation of neutrality laws in Douglas, in December 1906. The alleged connection of the California defendants with the Arizona rebels rested on the accusation that the latter had acted with the encouragement of the former. This new accusation would represent for Flores Magón, Rivera, and Villareal a new charge, this time for conspiracy to initiate a military expedition against Mexico from Arizona. After a first hearing, American authorities ordered their transportation from California to Arizona so they could stand a new trial. It was already March 1909 when a United States marshal delivered the defendants to Arizona. Jurors would reach a guilty verdict by May that year, and the judge in charge of the case sentenced them all to 18 months in prison. The decision pleased the Mexican government, which was ready to indict Flores Magón and the others under a similar charge in Texas, in case they ended up being acquitted. The defendants would remain in an Arizona prison until their release in August 1910.[424]

After the capture of Ricardo Flores Magón, the leadership of the Liberal party in the United States and the publication of *Revolución* remained in the hands of Lázaro Gutiérrez de Lara. It was not long before U.S. and Mexican authorities targeted the new leader and pressed charges against him. Under instructions of Mexico's Attorney General, the Police of Los Angeles arrested Gutiérrez de Lara in September 1907 and charged him with robbery, crime that subjected him to an imminent extradition. The charges in question were full of inconsistencies that ended up benefiting the defendant. Initially, Mexican authorities claimed that he was responsible for a vague, mysterious, and undocumented robbery committed in 1906 somewhere in Mexico, and on these grounds requested his

[424] MacLachlan, *Anarchism*, 21, 25, and 29-30.

extradition. Unable to present solid evidence on this case, the Mexican government had to come up with a new, slightly more precise denunciation for robbery, this time in the state of Sonora. Although this accusation would not have any effect either, it was effective enough to extend Gutiérrez de Lara's imprisonment for over a month. In the meantime, the defendant would file a writ of habeas corpus to no avail.[425]

Authorities in Mexico would not cease in their effort to keep Gutiérrez de Lara out of circulation. By December 1907, they came up with a third accusation regarding the robbery of some firewood in Sonora in August 1903. As in previous cases, the accusation presented serious inconsistencies that made the plan backfire. According to Turner, American authorities soon realized that the defendant had already been processed and acquitted for the crime in question. There were other, more absurd inconsistencies in the case. Back in 1903, a report in Mexico had valued the stolen firewood in an amount equivalent to 8 dollars. Yet, in the 1907 accusation, the sum had experienced a mysterious increase amounting now to 28 dollars. Mexican authorities had inflated the sum to make it fulfill the minimum of $25 that the legislation required for the extradition of a thief. A mistake in the calculation of the exchange value between the Mexican and the American currencies would nonetheless render the accusation useless for extradition purposes. Apparently, authorities in Mexico calculated the sum by using an exchange rate higher than the official, which ultimately made the sum inferior to the minimum prescribed in the legislation. The mistake costed Díaz and his people the freedom of Gutiérrez de Lara, who was able to walk away from prison after 104 days.[426]

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[425] Lomnitz, *The Return*, 181-183; and Turner, *México*, 128-129.

[426] Turner, *México*, 129.

Porfirian authorities did not limit their trans-national repressive strategies to these practices of judicial and diplomatic lobbying. When neither formal deportation, extradition, nor imprisonment in the United States were plausible options, Díaz and his agents still had the option of directly kidnapping their adversaries and shipping them back to Mexico. The "forced deportation" of Manuel Sarabia in June 1907 represents perhaps the most popular example of this alternative practice –it was one of the few kidnapping cases that became public in the U.S. and drew the attention of the nation's authorities. Sarabia worked as a clandestine printer in Douglas, Arizona, until the Mexican consul Antonio Maza discovered him and requested the police his arrest. The police put him in the city prison without having the support of a warrant or any other judicial order. The first night of his imprisonment, a group of American agents working for the Mexican government took him out of his cell, put him in a car, and brought him before a company of *Rurales* south of the border. The *Rurales* delivered Sarabia to a prison in Hermosillo, Sonora, where he remained awaiting trial.[427] Díaz had been planning these procedures since the early 1890s, when he manifested his desire of kidnapping Ruiz Sandoval in case his trial did not come to a satisfactory conclusion. Another Mexican exile, Ignacio Martínez, also made part of Díaz's list of possible victims of kidnapping.[428]

Díaz's trans-national strategies of repression reveal another facet of the dynamics of state retribution in Mexico during the Porfiriato. The regime extended beyond the limits of the Mexican nation its customary use of the judicial system as a mechanism for criminalizing and punishing internal enemies. In doing so, it engaged other, non-Mexican

[427] Turner, *México*, 122-123.

[428] Young, *Catarino Garza's*, 84-85.

jurisdictions and legal regimes, interacting with them in both collaborative and conflictive ways. Rules for extradition between México and the U.S. gave the two nations a common legal ground for joining efforts concerning the legal and judicial treatment of "dangerous" or "undesirable" exiles. Yet, the same prescriptions that made this collaboration possible also marked the limits of what both governments could and could not do with the targeted expats. Such limitations would often prove detrimental to Díaz's strategies of trans-national retribution, and force him to devise alternative approaches in order to ensure the punishment of his adversaries north of the border.

These alternative strategies involved different degrees of compliance with the dynamics of American justice system and entailed diverse degrees of legality. Some of them played straightforwardly by the logics of the U.S. justice, as in the multiple cases in which Porfirian authorities helped American courts to indict actual or alleged Mexican rebels. Other strategies, still within the institutional and normative framework of American justice, entailed illegal practices that dodged basic procedural rules, like the arrests by public or private agents with no previous warrant. There were also additional strategies that involved direct actions of extralegal and extrajudicial retribution, like the attempts at kidnapping or the "forced deportations" of Mexican exiles. These strategies, formal and alternative, often clashed with the decisions of American judges, and even with guarantees and prohibitions from U.S. law. This clash, nonetheless, did not prevent them from ultimately pushing the legal limits of what the American justice could do with exiles and political refugees. Pressed by the Mexican government, U.S. authorities denied petitions of habeas corpus, authorized the extradition and deportation of political criminals, and suspended legal protections that refugees were supposed to enjoy.

On the whole, all these practices show that Díaz's trans-national responses to rebellion did not differ greatly from his reactions to political criminality within the Mexican territory. Both within and outside Mexico, the Porfiriato tried to repress its internal enemies primarily by resorting to judicial mechanisms of criminalization and punishment. The premise in both situations seemed to be the same: ensuring punishment through the control, or at least the manipulation, of the process of justice administration. Strategies of criminalization both at the national and the trans-national level were also analogous. They involved the combination of both common and political charges, as well as the de-politicization of political offenders and their acts, in order to ensure conviction and secure exceptional punishments for political crimes such as extradition or the death penalty. Extralegal and extrajudicial practices of state retribution would also be common in the two cases. The combination of legality and illegality in the repression of "dangerous" dissidents was at no point exclusive of Diaz's trans-national strategies.

Punishment and Retribution Outside the Judicial Sphere

Governmental responses to political criminality within Mexican territory went way beyond the logics of judicial punishment against rebels. Like Díaz's strategies against his internal enemies north of the border, Porfirian repressive tactics in Mexico also combined the use of law with the use of force. Mexican authorities combined judicial resources against the regime's enemies with indiscriminate use of military power, extrajudicial and summary executions, and other sorts of extralegal practices of retribution. As strategies of repression and state retribution, these "other" practices involved diverse political and military purposes. They were means for suffocating and neutralizing potentially dangerous

insurrections, and "exemplary" punishments aiming to terrorize and intimidate internal enemies. Similarly, they represented ways of repressing rebels without the formalities, guarantees, and delays of the justice system, as well as displays of state sovereignty aiming to underscore Díaz's power *vis-à-vis* his political and armed contenders. Extrajudicial practices of punishment and retribution accompanied the Porfiriato since its early stages and extended all the way into the 1900s.

The Veracruz Massacre, in Late-June 1879, was perhaps the most dramatic manifestation of these extrajudicial practices during the early Porfiriato. The massacre put a quick and abrupt end to a military insurrection plotted and led by former supporters of the overthrown Sebastián Lerdo. Lerdista rebels declared their disobedience to Díaz's regime and seized two warships in the port city of Veracruz. Díaz, who apparently had previous knowledge about the revolutionary plot, ordered the state governor, General Luis Mier y Terán, to capture all insurrectionists and execute their leaders as offenders caught in flagrante –*"aprehendidos infraganti, mátelos en caliente,"* said Díaz's order to the governor. Mier y Terán's forces shot nine people before the rebel ships went back to the government's obedience. The victims included two medium-rank officers and seven civilians. The main leaders of the movement, a small group of generals and high-rank officers from the Mexican army, managed to flee.[429] According to some denunciations, none of the people shot had direct and proven links to the insurrectionist movement, let alone were part of its ringleaders. In the words of the *antiporfirista* Ramón Prida, the execution of the two officers had no other purpose than intimidating the rest of the troops

[429] Prida, *De la dictadura*, 63-64, and 68; and Di Fornaro, *Díaz*, 41-43.

stationed in the city, while the seven civilians were merely distant supporters of the plot. Other reports would point out that no actual inquiries on the victim's culpability preceded their execution and that authorities had denied their request for a formal trial.[430]

Not all authorities in Veracruz agreed with Díaz's proceedings. A few days after the executions, Federal Judge Rafael Zayas Enríquez requested the Supreme Court to intervene on behalf of the remaining prisoners. According to Zayas's request, it was imperative that Mier y Terán's people submitted all the rebels before the ordinary justice so they could stand a regular trial. The idea was not only to avoid a second wave of shootings, but also to act in correspondence with the *ius gentium*, the Federal Constitution, and the "basic humanitarian principles." Zayas had decided to resort to the high tribunal after failing at negotiating the prisoner's judgement with different state authorities. Neither the state governor nor the Navy's main commander had been willing to assist him in his recurrent requests, the judge complained. The reluctance of the authorities of Veracruz to help Zayas Enríquez went to the point of prohibiting him from practicing an autopsy on the nine victims.[431]

Zayas's request would end up provoking a clash between the Executive and the Judicial powers in early July. Alarmed by the judge's complains, the Supreme Court exhorted President Díaz to order the governor and his people to cooperate with Zayas and stop hindering his constitutional functions. The exhortation did not please Díaz, who

[430] Prida, *De la dictadura*, 64-65; and Di Fornaro, *Díaz*, 44-46. Di Fornaro's account includes an excerpt from a newspaper in Guadalajara that summarized the incident in an article entiled "A bacchanalia of blood. Murders committed by Terán. Nine assasinations. Eight widows. Thirty-seven orphans."

[431] AGNM, Secretaría de Justicia, Caja 83, Expediente 95: "Informe a propósito del pronunciamiento de dos vapores de guerra." See especially the correspondence from June 30 and July 1st between Zayas and the Supreme Court.

responded to the Court by arguing that it had no faculty or authorization whatsoever to give the Executive that kind of orders. The high tribunal would respond Díaz that they both represented equal powers before the Constitution, and berated him for not following the constitutional charter's prescriptions regarding the Executive's duty to assist the Judicial branch in its functions. The argument between the two powers did nothing for furthering Zayas's cause. Three weeks after the executions, the *juez de distrito* still reported that state authorities were reluctant to let him proceed with the autopsies.[432] Apparently, Mier y Terán's orders to his people included maintaining both prisoners and corpses outside the reach of the justice system for as long as possible.

The early 1890s would give Díaz and his representatives at the regional and local levels several opportunities to execute new acts of punishment and retribution outside the legal and judicial spheres. The hunt and subsequent arrest of Juan Galeana in late 1890 offers a first example in this regard. Both federal and state troops participated in his chase, which by November that year was coming to an end. By the end of the month, an army officer informed Acapulco's political chief that his men were close to finding Galeana's hideout and requested instructions. Instructions, in this case, were simple: they should arrest Galeana and apply him the *ley de fuga*.[433] Weeks later, nonetheless, authorities had not been able to find the rebel leader. On December 27, Prefect Francisco Leyva wrote the governor of Guerrero requesting his authorization to execute some of Galeana's

[432] AGNM, Secretaría de Justicia, Caja 83, Expediente 95. See in particular the collection of telegrams from July 2, 3, 4, 5, 7, and 9.

[433] "Letter from Porfirio Fornés to Acapulco's political chief. Las Cruces, November 24, 1890," in Salazar Adame, "Movimientos," 174.

accomplices as a way of forcing them to reveal the exact location of his hideout.[434] There is no record of the governor's response, but by the next day Galeana was already in the hands of the federal army, who sent him to a military barrack in San Diego.

Following the orders from Acapulco, authorities from Guerrero immediately tried to subtract Galeana from federal custody and take him to a local prison. None of their efforts succeeded. Apparently, the federal forces in charge of the rebel had orders to deliver him before the ordinary justice and were aware of the intentions of Guerrero's prefects and local political chiefs. On December 30, a frustrated Francisco Leyva would write Acapulco's chief that it had been impossible to retrieve Galeana from his prison in San Diego.[435] Leyva's final attempt at seizing the prisoner included the dispatch of an emissary to the San Diego barracks with the mission of requesting Galeana to undertake a highly important legal procedure ("*para la práctica de una diligencia importantísima"*) in Acapulco. The emissary went back empty-handed, since people in the barracks had orders of delivering the rebel only by request of the federal army's general command.[436] Galeana's protection by the federal army did not save him from those who wanted him dead, as his first-instance sentence demonstrates. It only bought him some time for appearing before a judge and standing a formal trial. His case, nevertheless, illustrates how local authorities in Mexico resorted to extrajudicial executions as a way of intimidating enemies and

[434] "Letter from Francisco Leyva to the Governor of Guerrero. Papayo, December 27, 1890," in Salazar Adame, "Movimientos," 176.

[435] "Letter from Fancisco Leyva to the Governor of Guerrero. Acapulco. December 30, 1890" in Salazar Adame, "Movimientos," 178.

[436] "Letter from Francisco Leyva to the guard officer in San Diego Fortress. Acapulco, December 30, 1890;" and "Letter from Leutenant Juan P. Monyoya to Acapulco's political chief. Acapulco, December 30, 1890." All documents in Salazar Adame, "Movimientos," 178.

punishing rebels without the inconvenience of observing due process and abiding by the justice system.

Díaz's response to a millenarian insurrectionist movement in Tomochic, Chihuahua, sheds light on additional dynamics of state repression that had little to do with legal or judicial initiatives. The insurrection started and developed as a local peasant uprising of heavy religious overtones. In December 1891, villagers from Tomochic declared themselves in disobedience to the Mexican authorities and claimed exclusive obedience to their god. Although the insurrection did not pose any serious military challenge to the state government, it certainly affected the image and political carrier of Chihuahua's current governor, Lauro Carrillo. Standing for a reelection that he was unsure to win, Carrillo perceived the local movement as a situation that his rivals could use to question his capacity of maintaining public order in the state. In consequence, he opted to downgrade its significance and presented it as an irrelevant protest by a few fanatic Indians. The movement, nevertheless, called the attention of the federal government, already concerned with the recent rebellion of Catarino Garza and unwilling to ignore another insurrection in northern Mexico. Díaz ordered the federal army to intervene and crush the rebellious peasants in the quickest and most discreet way. His orders would emphasize time and again the verb frighten or *escarmentar*: punishment should be exemplary and work as an example –an intimidating one– to the offenders.[437]

The military offensive against the rebels from Tomochic met an unexpected resistance that would extend hostilities between the army and the insurrectionists until

[437] Vanderwood, *The Power*, 1, 13, 135-136, 151, and 153.

October 1902. During that time, Díaz's troops would experience a few stunning defeats, including a rebel ambush in December 1901, and a failed incursion on Tomochic next September. Despite such drawbacks, by the end of October the army had managed to lay siege to the town with more than a thousand men, determined to crush the rebellion once and for all. After six days of combats, the army succeeded in raiding the town. According to military reports, the offensive eliminated the enemy "to the last man." The army completely wiped out Tomochic, captured six survivors and shot them without any judicial formality. On October 27, once the carnage was over, the state governor issued a circular warning people from the region that anyone "who directly or indirectly assists the rebels of Tomochic or their accomplices or sympathizers, or offers them any sort of protection […] will be punished." The threat would provoke a wave of denunciations, many of them product of personal grudges and local political rivalries. As a result, and despite the fact that the military took no captives during the raid, authorities would still report the dispatching of alleged "Tomochic indians" to Mexico City even two months after the attack. According to an American newspaper, prisoners went to the capital only to find their death after a brief interrogation regarding the uprising.[438]

The "invention" of war prisoners and the extrajudicial execution of alleged rebels were also common practices in Díaz's war against the people of Ruiz Sandoval and Garza between 1890 and 1891. According to Duclós-Salinas's memoir, Bernardo Reyes responded to Ruiz Sandoval's incursion with a huge military display that achieved barely nothing. After all, the rebels had retreated back to the United States right after their first

[438] Vanderwood, *The Power*, 209-210, 234-237, 275-277, and 285-286.

and only engagement with Mexican troops. Determined to show some results, Duclós-Salinas maintains, Díaz's strongman had no option but arresting a handful of "made-up revolutionaries," many of whom experienced the *ley fuga*.[439] Reyes's reaction to the Garza movement would claim a more drastic toll. Ramón Prida's account denounced, for instance, that the General's struggle against Garzistas south of the border included the execution of over 80 people, all of them without any formal trial or any sort of judicial intervention.[440] Within the first month of the rebellion alone, denunciations of official abuses mentioned the shooting with no previous trial of at least 25 rebellion suspects. As part of his measures against the 1891 expeditioners, Reyes ordered his officials to "execute without a great display" all suspects he got to arrest, no matter if they were actual armed insurgents or just sympathizers distributing revolutionary manifestos.[441]

Reyes's wave of executions against alleged Garzistas terrorized the U.S.-Mexico border. It provoked the flight of many Mexican families to Texas, and even claimed the lives of a few American citizens with no clear links to the rebel movement. The assassination of the first two Americans, Juan Bazán and José Ángel Vera, forced Reyes to warn his officers "to be careful not to execute prisoners if they turned out to be U.S. citizens." According to Elliot Young's monograph on the Garza rebellion, Reyes regularly informed Díaz about the extrajudicial executions his men practiced in the north. His reports offered the President details about the name of the victims, their alleged charges, and the execution methods applied in each case. To Young, "the casual tone with which eight of

[439] Duclós-Salinas, *México*, 154-155.

[440] Prida, *De la dictadura*, 89.

[441] Young, *Catarino Garza's*, 103 and 105.

these murders were recounted to Díaz indicates that these sorts of killings were not surprising or shocking for Reyes or for the President."[442] Several years later, after the frustrated rebellion of September 1906, authorities in northern Mexico unleashed a similar wave of extrajudicial executions that allegedly ended up with a great number of summary assassinations.[443]

These other, extrajudicial modalities of repression reveal that state retribution in Porfirian Mexico unfolded in different ways and in correspondence with multiple logics. Law and justice mattered, of course, and law enforcement and justice administration represented in fact important instruments of punishment against the regime's internal enemies. They also served as recurrent arenas for the performance of ritualized displays of state power and sovereignty. Yet, law and "lawfulness" at no point encompassed the totality of the logics of state repression *vis-à-vis* rebellion in the Porfiriato. State retribution unfolded as well beyond the limits of the law and away from the reach of formal justice, shaping punitive practices unrestrained by the law and unhindered by judicial rules and proceedings. These extralegal practices allowed authorities to dodge constitutional prohibitions regarding the application of the death penalty for political crimes, and to punish internal enemies with a promptness and severity that no ordinary trial could grant. They also represented informal, less public, non-institutionalized demonstrations of state power that, just like their legal and judicial counterparts, aimed at underscoring and reestablishing governmental sovereignty against those who had challenged or defied it. In Porfirian Mexico, state retribution against internal enemies operated thus in two parallel

[442] Young, *Catarino Garza's*, 104-105.

[443] Turner, *México*, 73.

levels. While one was formal, institutionalized, self-restricted, and legalized, the other was informal, commonly unrestricted and extralegal.

What does this parallelism suggest about the nature and workings of state retribution in the Porfiriato? Overall, it reveals that Porfirian practices of repression were not unidimensional. They relied on the law and the justice system, but not exclusively. Likewise, they entailed extralegal and extrajudicial punishment practices, but at no point were reduced to them exclusively. Analyzing the Porfirian experience in terms of either "legality" or "extra-legality," understood as absolute, mutually exclusive notions, entails the risk of addressing only a portion of the problem. As the Colombian case would suggest, "the legal" and "the extralegal," "the judicial" and "the extrajudicial" were not contradictory categories but notions of reference for understanding complex repertoires of retribution practices with more or less reliance on the law. Both sorts of practices worked in the same direction, pursued analogous purposes, and represented equivalent practices of state retribution as well as similar manifestations of state sovereignty.

Governmental Responses to Rebellion in Colombia: Legislation, Justice Administration, and State Retribution during the Thousand Days

As in Mexico, responses to rebellion in Colombia involved a combination of legal and judicial practices with extralegal and extrajudicial strategies. Nevertheless, while Díaz and his people grounded a great deal of their legal treatment of rebellion on the Criminal Code and the ordinary justice system, Colombian governments relied heavily on extraordinary legislation –emergency executive decrees– and court-martials to repress their rebels. The extraordinary nature of this treatment and its heavy inclination towards the logics and

procedures of the military justice was particularly evident in the context of the Thousand Days' war.

Responding to Rebellion through Legislation.

Governmental responses to rebellion during the Thousand Days were highly legalistic. From the start of the war until the signing of the Wisconsin Treaty, Colombian governments attempted to manage the conflict primarily through legislation. Both Presidents Sanclemente and Marroquín would enact hundreds of executive decrees dealing with all sort of matters, from appointments of public servants and adjustments in the salary of military officers to issues of taxation and administration of mines. This rich and varied legislation had, nonetheless, an extraordinary nature, for it stemmed from the emergency powers that the Constitution granted the government in cases of disruption of public order. Its many decrees were part of a legal regime of exceptionality whose foundations dated back to the declaration of the state of siege in July 1899, and that would extend way beyond the formal end of the war.[444]

This intense legal production involved, of course, the punishment and repression of rebels and other armed and unarmed internal enemies. Legislation in this case drew upon a series of decrees and administrative orders grounded on prescriptions from the Criminal and Military codes. These legal acts redefined legal jurisdictions and juridical proceedings, established and transformed penalties, imposed different measures tending to hinder the activities of rebels, and reinvented notions of internal enmity. Such changes would bring

[444] President Marroquín did not declare the public order completely restablished until March 1904, when he lifted the state of siege in all the Colombian territory with the exception of Panama.

about important redefinitions, not only in terms of the notions, criminal categories, and penalties included in both codes, but also regarding the organization and functioning of Colombia's judicial system. These transformations would engender tensions between constitutional precepts and limits, on the one hand, and the state's powers of legislation and retribution, on the other hand.

Some of these extraordinary decrees combined the purposes of broadening the reach of military justice, establishing more expedite ways of judging political and military crimes, and creating more severe and exemplary ways of punishing such offenses. Reforms in these regard started almost as soon as the rebellion erupted, as illustrated by a decree from October 20, 1899. The decree put outside the jurisdiction of the ordinary justice a series of heinous crimes associated to actual or potential war actions, and made military tribunals competent to prosecute and judge them. Crimes included serious cases of homicide, poisoning, attacks against public authorities and servants, use of explosives outside war maneuvers, and damages against telegraphs and roads.[445] About two years later, in February 1901, a second decree would extend even more the jurisdiction of these tribunals, allowing them to judge though verbal court-martials an additional series of common crimes. Offenses in this occasion included a very telling series—namely, arson; *asalto en cuadrilla de malhechores*; all sorts of homicide; robbery with violence; castration; mutilation; injuries against sick or defenseless people; attacks against catholic priests; kidnapping; and property damage. The decree also established that sentences issued by military tribunals were irrevocable and should be carried out immediately, unless they

[445] Decreto número 484 de 1899 (20 de octubre): "Que contiene disposiciones en materia penal y de organización y procedimiento judicial," in Guzmán, *Decretos*.

involved the death penalty. In that case, the decree gave military authorities a 48-hour term to confirm the decision with the corresponding department's governor.[446] An additional decree from July that year added treason to the list of crimes subject to verbal court-martial.[447]

The jurisdictional changes that the 1901 decrees brought about responded to the conflict's evolution. Regular rebel armies were scarce by 1901. In most of the country, the continuation of the movement relied on the operation of liberal guerrillas that, at least to the government's eyes, were devoted to the execution of all sorts of crimes. In correspondence with such consideration, the February decree stated that "many individuals, taking advantage of their condition of rebel guerrilla members, [committed] serious offenses that demanded immediate punishment." They required a quick, effective, and exemplary punishment that ordinary justice, with its "lengthy proceedings," was unable to grant, maintained the same decree. Considering the inefficacy of the formal justice system to "remedying the war's exceptional evils," it was necessary that the military justice, with its simpler and more expedient procedures, took up its place.[448]

Transformations in the military jurisdiction not only concerned the treatment of crimes committed by Liberal rebels, but also the punishment of serious military crimes. In May 1900, for instance, a decree ordered the establishment of a permanent and mobile verbal court-martial for the crimes of treason, cowardice, desertion, and insubordination

[446] Decreto número 212 de 1901 (18 de febrero): "Por el cual se introducen reformas en los procedimientos judiciales en material criminal," in Guzmán, *Decretos*.

[447] Decreto número 855 de 1901 (17 de julio): "Por el cual se castiga el delito de traición a la patria," in Guzmán, *Decretos*.

[448] Decreto número 212 de 1901 (18 de febrero).

committed by members of the military. The measure was grounded on the idea that the current state of war demanded the maintenance of the military's "discipline" and "morality," and that the offenses in question represented serious threats against such principles.[449] The subjection of these crimes to a more severe treatment within the military sphere illustrates how the Sanclemente administration understood internal enmity during the first year of the war. To the government, cowards, deserters, and traitors were as dangerous as armed Liberals, for their actions directly harmed the state's legitimate cause and indirectly benefited rebels. They were thus, in their own way, enemies of the government.

War legislation on military justice remained in force until mid-1903. A law from August that year derogated, among others, the decrees from October 1899 and February 1901. The law also reestablished the jurisdiction of ordinary tribunals over the non-military crimes included in the previous decrees, and reestablished the authority of the formal justice system in the resolution of ongoing processes linked to such offenses. People serving sentences imposed by military tribunals for these crimes could request a second trial by an ordinary court.[450] The restoration of the ordinary justice's jurisdiction nine months after the end of the war suggests that the transition to "judicial normality" after the Wisconsin Treaty was gradual and did not have automatic effects on the treatment of processed rebels.

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[449] Decreto número… de 1900 (19 de mayo): "Orgánico de un consejo de guerra permanente," in Guzmán, *Decretos*.

[450] Ley 6 de 1903 (26 de agosto): "Por la cual se derogan algunos decretos de carácter legislativo sobre el juzgamiento y castigo de ciertos delitos comunes y se establece un recurso preparatorio," In *Leyes colombianas expedidas por el Congreso en sus sesiones extraordinarias de 1903: Edición oficial hecha bajo la dirección del consejo de estado* (Bogotá: Imprenta Nacional, 1903).

Extraordinary war decrees also gave place to significant redefinitions in matters of crime and punishment. The most important transformation in this regard had to do with the conversion of guerrilla members into "culprits of assault by a gang of thugs" (*reos de asalto en cuadrilla de malhechores*) during the Marroquín administration. This conversion, allowed by both the Criminal and the Military Codes (Articles 178 and 1099, respectively), materialized itself in a decree from January 1901. The decree established, among other provisions, that all guerrilla leaders that refused to surrender within a 30-days term would be considered as authors of robbery in *cuadrilla de malhechores*. Marroquín's decision relied on two major considerations. He maintained, first, that Liberals did not count any longer with regular armies and only had "guerrillas incapable of fighting formal battles." He claimed, additionally, that those irregular troops "live[d] off pillaging […] and [were] incapable to triumph over the government."[451] Later that year, the governor of the province named Bolívar would enact a similar decree, this time against the remnants of Rafael Uribe Uribe's Liberal troops that operated in the department. The governor's order not only declared the remaining rebels *cuadrillas de malhechores*, but also threatened with their immediate execution if they refused to surrender.[452]

The decree by the governor of Bolívar sheds light on the legal and juridical consequences of this conversion. By turning rebels into *malhechores*, authorities were able to subject them to the military justice and process them through verbal courts martial. More importantly, they were able to charge rebels with one of the few crimes that the Constitution

[451] Decreto número… de 1901 (14 de enero): "Por el cual se dictan varias disposiciones," in Guzmán, *Decretos*.

[452] Villegas and Yunis, *La Guerra de los Mil Días*, 78.

and the Criminal Code punished with the death penalty. It was, in sum, a conversion that turned political criminals into common offenders and put them outside the reach of the formal justice system. It was also a legal maneuver that denied the political nature of the rebellion and the rebels' acts, and allowed the government to dodge constitutional restrictions regarding the punishment of political offenses.

Transformations in terms of crime and criminality also included a progressive extension of the repertoire of actions that the government considered acts of internal enmity. As the conflict unfolded and intensified, national and regional authorities expanded the conditions under which a person could be subject to punishment for political and war-related reasons. Right after the beginning of the hostilities, for instance, a prefect from the Department of Cauca enacted a decree declaring "enemy" all people that refused to offer their services in defense of the government and punishing them with conscription. People who refused to give their war weapons to the provincial authorities should also be considered and punished as "disrupters of public order."[453] In an analogous way, a decree from December 1899, this time from the national government, established a series of pecuniary penalties that should fall on "sympathizers, authors, accomplices, and accessories (*auxiliadores*) of the crime of rebellion."[454]

This vague differentiation, that authorized the government to act indistinctly against both armed rebels and simple liberal sympathizers, had its legal grounds in the Military Code. Article 1344 of the Codification established that, in a "war of rebellion," the

[453] Decreto número 1 (bis): "Asunto de guerra," *El Ferrocarril*, October 20, 1899. The order corresponded to the prefect of the Province of Cali.

[454] Decreto número 582 de 1899 (1 de diciembre): "Por el cual se establece una contribución de guerra," in Guzmán, *Decretos*.

legitimate government should distinguish, outside the battlefields, between "loyal" and "disloyal" citizens. "Disloyal" individuals were those that, without being involved in the hostilities, manifested some degree of sympathy towards the rebel movement or actively supported it. Article 1246 allowed military authorities to act against "disloyal" citizens and other "*desafectos*" (opponents, malcontents) anytime the war's needs demanded it.[455] The article was an extension that made internal enmity in contexts of civil war not only a matter of military confrontation, but also an issue of mere political affiliation and ideological dissidence. The possibility of punishing unarmed Liberals as internal enemies led to the enactment of measures like the one from 1901 that authorized the government armies deployed in rebel provinces to "live off the assets of the *desafectos al gobierno.*"[456]

Legal understandings of internal enmity continued evolving during 1900 and 1901 In February 1900, another presidential decree considered "enemy" not only armed liberals or Liberal sympathizers, but also all public servants whose compromise with the government proved dubious. The decree ordered the removal of all official employees "that by word or deed manifest[ed] hostile to the government, that refuse[d] to cooperate in the defense of the institution, or that sympathize[d] in any way with the rebel cause." The order considered that all these actions not only harmed the government but also fostered "the spirit of rebellion that maintain[ed] the nation in alarm."[457] Official notions of enmity continued expanding during the Marroquín administration. In October 1900, a provincial

[455] See also: Aguilera Peña, "Canje o fusilamiento," 39.

[456] See: Decreto número… de 1901 (14 de enero).

[457] Decreto número 677 de 1900 (28 de febrero): "Sobre empleados públicos hostiles al gobierno," in Guzmán, *Decretos*.

decree ordered a pecuniary penalty against all the "government's enemies" in Cundinamarca. The decree considered enemies "all those whose political opinions gave authorities motives to consider them as such."[458] The levels of discretion involved in this order remind of the vagueness of much of the legislation on press and public order from the first decade of the Regeneration. In January 1901, the same decree that turned guerrilla leaders into *malhechores* also prescribed the imprisonment of all people that spread "fake news" encouraging rebels to persist in their effort or people who helped them with any sort of resources.[459]

An analogous extension took place with the enactment of the decree from July 1901 that established verbal courts martial for traitors. The decree declared traitors all Colombians that invaded the national territory as parts of foreign or partially-foreign armed expeditions. It was a response to the intensification, by early 1901, of the movement of rebel troops back and forth along the border between Colombia and Venezuela, and to the alleged existence of rebel armies composed of citizens of both countries.[460] The decree's notion of treason also involved foreigners taking part in these expeditions; Colombians and foreigners that worked as "revolutionary agents" promoting invasions before other nation's governments; and Colombians that helped both rebels and foreigners invade the national territory. All these modalities of treason, with the exception of the last one, were subject to

[458] Tamayo, *La Revolución*, 136.

[459] Decreto número… de 1901 (14 de enero).

[460] On the movement of liberal troops along the Colombian-Venezuelan border, see: Ministerio de Relaciones Exteriores, *Correspondencia diplomática sobre violaciones de la neutralidad por las autoridades de Venezuela y sobre otros asuntos relacionados con el orden público de Colombia* (Bogotá: Imprenta Nacional, 1902).

the death penalty.[461] The decree also gave authorities the opportunity to punish with death the several rebel leaders that between 1900 and 1901 had visited Venezuela, Ecuador, México and various Central American countries in search of international support for the rebellion. The list of potential victims of this measure included prominent rebel leaders such as Avelino Rosas, Rafael Uribe-Uribe, Foción Soto, and Benjamín Herrera.[462]

Penalties for rebellion and other modalities of internal enmity also experienced similar transformations. Some of these war decrees diversified the conditions for the application of the death penalty and made it a possibility for crimes others than the ones originally included in the Constitution. The conversion of rebels into *malhechores* in January 1901 offers a first example in this regard. Transformations concerning the application of capital punishment, nonetheless, dated back to the beginning of the conflict. The decree from October 20, 1899, that extended the jurisdiction of the military justice also established the death penalty as a punishment for cases of "espionage and treason in civil war," arson, and use of explosives outside war operations.[463] These prescriptions pushed the limits of the constitutional mandate that restricted the application of capital punishment for treason to contexts of foreign war (Art. 29). It was a measure that, at least in terms of penalties, made "states of internal conflict" and "states of international war" equivalent. The decree from July, 1901, on treason would give new life to this equivalence, punishing rebels as if they were part of a conflict of international dimensions.

[461] Decreto número 855 de 1901 (17 de julio).

[462] On these international visits, see: Caballero, *Memorias*, especially its seventh chapter: "Una correría por el exterior," 83-95.

[463] Decreto número 484 de 1899 (20 de octubre).

Outside the sphere of the death penalty, changes in punishment focused primarily on pecuniary penalties such as "war taxes" and "forced contributions." Although monetary punishments for political crimes in the Criminal Code only included fines, the codification still offered authorities the possibility of making people accountable for the expenses occasioned by the repression of episodes of sedition, mutiny, and *asonada*. Articles 231, 232, and 233 of the Code established that these expenses should fall not only on the leaders and participants of the movements in question, but also on the inhabitants of the locality in which they took place. This, nevertheless, was not a generalized punishment. The articles differentiated between "active and direct opponents" of the insurgent episodes and "active" or "passive" supporters, and limited the application of the penalty only to the latter. Right after the outbreak of the war, President Sanclemente decreed the extension of this possibility to the crime of rebellion, making all Liberals, armed and unarmed, subject from then on to the eventual imposition of "war taxes."[464] During most of the conflict, both national and provincial authorities used these pecuniary penalties in order to raise money to support conservative troops and punish Liberals outside tribunals, prisons, and battlefields.

Sanclemente ordered a first round of "forced contributions" in December 1899. The president explained the measure by arguing that it was a principle of justice to make the calamities of war fall on "all those who have contributed to promote it or have supported it with their sympathies, their interests, of their involvement." The decree imposing the contribution ordered the collection of five million pesos, and distributed the sum among

[464] Decreto número 484 de 1899 (20 de octubre).

the nine departments or provinces in a way that paralleled their presumed degrees of political and military dangerousness. More than a half of this amount corresponded to the departments of Santander and Cundinamarca, where the rebellion had originally started.[465] Almost two years later, in 1901, a decree by President Marroquín threatened Liberals from all departments with the collection of a sum of eleven and a half million pesos if the rebellion did not come to an end. The regional distribution of the 1901 contribution illustrated the regional evolution of the conflict since late 1899. More than half of the sum corresponded to the departments of Cundinamarca (four million pesos), Santander (a million and a half), Bolívar (a million, two hundred fifty thousand pesos), and Tolima and Boyacá (a million each).[466] Bolivar and Santander were by then the theaters of operation of the last regular forces of the Liberal Party, while Cundinamarca, Tolima, and Boyacá concentrated the bulk of the rebel guerrilla activity. Marroquín justified the measure with the same arguments that Sanclemente used back in 1899.

Regional authorities would follow the President's example and impose similar contributions in their departments, as happened for instance in Cundinamarca and Tolima in October 1900. That month, authorities from Cundinamarca issued a decree that punished all "enemies of the government" with a "contribution" that should equal the sum of their corresponding property taxes.[467] Almost simultaneously, Tolima's government ordered the collection, until the end of the war, of a weekly sum of fifty thousand pesos. The order

[465] Decreto número 582 de 1899 (1 de diciembre).

[466] Decreto número 1299 de 1901 (21 de noviembre), "Por el cual se establece una contribución de guerra," in: Guzmán, *Decretos*.

[467] Tamayo, *La Revolución*, 136.

encouraged local authorities and collectors "to use all available means" to apply the measure. It also established that authorities would confiscate the property of all individuals that fled the department in order to avoid the collection. To the department's governor, this was a response to the rebels' obstinacy in "continuing a war that is causing the nation's ruin," and a punishment against those "unarmed revolutionaries" that encouraged the prolongation of the conflict.[468] The imposition of these additional contributions in Cundinamarca and Tolima proves unsurprising considering that both departments suffered the most from the intensification of guerrilla warfare after Palonegro.

What do these decrees reveal about the legal responses to rebellion during the Thousand Days and the workings of repression during the administrations of Sanclemente and Marroquín? The first and most evident conclusion in this regard has to do with the highly legalistic nature of the government's repressive responses to the rebellion. Colombian authorities reacted to the rebellion not only with weapons and armies, but also with legislation. Executive decrees like the ones reviewed here allowed the government not only to strengthen their reactions to armed liberals, but also to punish and repress the rebel movement outside the battlefields. They also made possible the inclusion of unarmed Liberals and other "potentially dangerous" opponents as subjects of state retribution during the war. Armed with both weapons and decrees, the Colombian government managed to generalize the state of war throughout the entire society.

This generalization of state retribution had major legal and political consequences. The decrees in question redefined the boundaries between common and political offenders;

[468] Decreto número 287 de 1900 (18 de octubre), "Sobre contibución de guerra," *La Justicia*, October 18, 1900.

challenged the distinction between "armed" and "unarmed" opponents; and made the separation between combatants and civilians blurry. Also, by reinventing the distinctions between "the rebel" and the "traitor in foreign war," this legislation made "civil war" and "international warfare" almost equivalent notions. In its effort to craft legal responses against armed and unarmed liberals, the Colombian governments of the Thousand Days ended up redefining the legal nature of the conflict itself and the parameters regulating its treatment. These legal reinventions, nonetheless, did not correspond to a legislative will that reinterpreted crimes and imposed penalties out of the blue. Regardless of the apparent acts of arbitrariness that many of these measures seemed to involve and the unconstitutional nature of a few of them, all the responses in question were solidly grounded in previous legal and constitutional prescriptions. They were nothing but re-interpretations of current legislation that elaborated on –and took advantage of– its many grey areas –those that subtly allowed the government to strengthen its power of retribution without directly violating any legal or constitutional limitation. Liberals, as expected, would disagree with the legality of these reinterpretations and the measures and legal responses they shaped.

Liberals' criticism of the measures in question revolved around a variety of issues. Political prisoners from Bogotá's *Panóptico* complained that the conversion of rebels into *malhechores* and their judgement by verbal courts martial was both unfair and unconstitutional. These measures criminalized actions that, to the Criminal Code, were not criminal, and made liberals victim of *"severísimas penas*" that did not even exist in the codification.[469] Liberals also criticized the government's decision of treating rebels as

[469] "Letter to General Marceliano Vélez. Panóptico de Bogotá, marzo 3 de 1901," in Adolfo León Gómez, *Secretos del Panóptico* (Bogotá: Imprenta de Medardo Rivas, 1905), 314.

"bandits" and "traitors." Earlier that year, in a letter to President Marroquín, Rafael Uribe Uribe had also contested the accusation that he and his people were traitors working for Venezuela. The letter criticized the 1901 decree on treason by claiming that it established penalties created *a posteriori*, manufactured on purpose ("*forjadas adrede*"), and of a retroactive nature. In addition, the rebel leader claimed, none of the "new" or "reinterpreted" crimes addressed in the decree stemmed from formal, legitimate laws. They were simply imposition of an executive decree that the government had issued in exercise of "a dictatorial power that no one had granted it." Finally, the General argued, there was no reason for speaking of "treason in foreign war," for there had never existed a declared state of international warfare.[470] Later that year, in October 1902, officials from the Liberal army in Panamá published a document protesting "against the false imposture that we are instruments of foreign governments to dismember the country. We say here to the entire world that Colombian Liberalism has pacts with no one. Colombia's honor is our life."[471]

Other liberals, like José María Quijano Wallis, criticized the forced contributions system. These contributions, the Liberal writer maintained, represented arbitrary confiscations that the government imposed to a particular political collectivity as a punishment against "a determinate number of citizens that are not criminals whatsoever."[472] As acts of confiscation, they represented a punitive practice that the

[470] "Carta de Rafael Uribe Uribe al Vicepresidente José M. Marroquín. Curazao, Julio 1 de 1902," in Uribe Uribe, *La regeneración*, 420-422. To Uribe Uribe, although it was true that some liberal troops in Santander had, at some point, included Venezuelan combatants, those "foreign elements" had been nothing but "auxiliary forces" under the orders of Colombian officials.

[471] Caballero, *Memorias*, 225-226.

[472] José M. Quijano Wallis, *Estudios, discursos y escritos varios* (Paris: R. Roger & F. Chernoviz, 1908), 245.

Constitution had banned. As punishments, they were illegal and illegitimate, since there was no previous formal law that establish them as a possible penalty for the crime of rebellion. Additionally, Quijano Wallis concluded, it entailed the absurd injustice of treating mere sympathizers as criminals.[473] Criticism of the decrees in question also came from the Conservative side. Moderate conservatives were particularly critical of the decree from January 1901, whose prescriptions, as they claimed in August 1902, had provoked a regrettable wave of executions. According to conservative critics, the decree had implicitly formalized the application of the death penalty for political crimes, which clearly violated the Constitution. Applying this punishment through the conversion of rebels into *malhechores* and their consequent judgement by verbal courts martial posed additional legal and judicial predicaments, they claimed. Either the rebels were political criminals, and therefore were exempted from capital punishment, or they were common offenders, and in that case their judgement should correspond to the ordinary justice. At no point any military tribunal should claim jurisdiction over crimes in *cuadrilla de malhechores*, for they were offenses properly defined in the Criminal Code that had nothing to do with acts of war.[474]

Criminalize or De-criminalize? Conversations on Civil Warfare and Belligerence.

Concerns about the legal treatment of rebels during the Thousand Days were not limited to questions about the fairness and constitutionality of presidential war decrees. There was an additional matter of contention that concentrated the attention of both government and

[473] Quijano Wallis, *Estudios*, 240-241, and 244-245.

[474] "Memorial. Bogotá, Agosto 25 de 1902," in: Gómez, *Secretos*, 277-282.

rebels during most of the war: the recognition, on the part of the state, of Liberal combatants as belligerents. The question of whether or not the state should recognize and treat armed liberals as belligerents had serious legal and political implications. Treating rebels as belligerents implied recognizing that the rebellion had escalated into a generalized state of civil war in the terms and conditions of the International Law. Such a recognition implied, among other things, that the government should treat rebels as combatants and not as criminals. It also meant that governmental responses to the rebellion should rely on the rules of the International Law instead of on the prescriptions of the Criminal Code. It was a recognition that, additionally, turned rebels and government into "relative enemies": counterparts that, despite their "legal asymmetry," agreed to recognize each other as "morally symmetrical" and, therefore, were able to reach legal and political agreements. Recognizing the belligerence of a party in an internal conflict meant, in practical terms, adopting strategies for the "regularization" and "humanization" of the confrontation, preventing the criminalization of armed opponents, and establishing mechanisms of political transaction between rebels and the government.[475]

Conversations about civil warfare and belligerence were common in almost all internal conflicts in nineteenth-century Colombia. Colombian governments of the period, nonetheless, were always reluctant to give their armed opponents full recognition as belligerents, and the Sanclemente and Marroquín administrations were no exceptions.[476] Almost since the beginning of the war, Sanclemente rejected all liberal attempts at finding

[475] Iván Orozco Abad, *Combatientes, rebeldes y terroristas: Guerra y derecho en Colombia* (Bogotá: Universidad Nacional – IEPRI, 1992), 3, 19-20, and 31.

[476] Aguilera Peña, "Canje o fusilamiento," 44 and 47.

a negotiated solution to the conflict, and insisted on subjecting rebels to the prescriptions and penalties of the Criminal Code. Sanclemente's position on matters of criminality, belligerence, and political negotiation became evident since November 1899, when he rejected a petition by a group of pacifist Liberals to propose the rebels a truce. To the president, it was unthinkable that the government proposed any sort of agreement in this regard, even more considering that the rebels were the ones that insisted on keeping the conflict alive. A truce in those conditions not only would give the impression that the government was weak, Sanclemente maintained, but also involved the implicit recognition of the rebels as "belligerents in civil war." That, the president underscore, was an impossible option, for Liberals in arms were "nothing but rebels according to the Criminal Code."[477]

A second letter, also from November 1899, offers additional details about Sanclemente's position. Responding to a second group of Liberals that requested him a political pact with the rebels, the president manifested that, while he was willing to respect all rights and guarantees, he would never consider insurrection a right. The rebellion was criminal, illegitimate, and therefore deserved no special treatment. Proceeding otherwise, the President pointed out, implied to tell all criminals, both common and political, that they could demand concessions from the government anytime they wanted.[478] Another letter, this time from February 1900, would reinforce Sanclemente's unwillingness to de-

[477] "Carta de Manuel A. Sanclemente a Santos Acosta, Juan Manuel Rudas y otros. Anapoima, Noviembre 8 de 1899," in José María Vesga y Ávila, *La guerra de tres años: primera parte* (Bogotá: Imprenta eléctrica, 1914), 46.

[478] "Carta de Manuel A. Sanclemente a Juan E. Manrique, Venancio Rueda y José Benito Gaitán. Anapoima, Noviembre 9 de 1899," in Vesga y Ávila, *La guerra*, 47.

criminalize the rebellion. The letter was a response to a recent proposition for an exchange of prisoners between the Liberal and Conservative armies. Sanclemente rejected the proposal on the grounds that accepting it would imply admitting that the conflict was a formal civil war, "which is a far cry from reality." "What I see," argued the President, "is the nation's legitimate government, on the one hand, and a group of insurrectionists that with no reason have taken up arms in order to seize power, on the other hand." Rebels, in this light, had no right to take prisoners, while imprisoned rebels were nothing but criminals subject to punishment according to the Criminal Code, Sanclemente concluded.[479]

Conservative newspapers would back Sanclemente's decisions. In December 1899, the paper *El Orden Público*, quite a telling name, manifested that it was unrealistic for Liberals to expect the government to consider rebels "equals" and accept to negotiate with them. It was as unrealistic as pretending to convince the government that the rebellion was a right and not a crime. Drawing on an essay from 1862 by the Liberal Felipe Pérez, the paper maintained that political crimes were the most serious crimes there were and deserved a punishment that corresponded to their seriousness. Political crimes affected society as a whole and thwarted morals, law, and reason alike, "giving robbery and murder deceitful and forgiving forms." The practices of treating rebel leaders as "equals" to the government and granting them pardons that brought nothing but impunity was, in this light, more than paradoxical.[480] By bringing up the words of a liberal, *El Orden Público* aimed

[479] "Carta de Manuel A. Sanclemente a Rafael Uribe Uribe. Febrero 22 de 1900," in Alejandro Valencia Villa, *La humanización de la guerra: Derecho Internacional Humanitario y conflicto armado en Colombia* (Bogotá: Tercer Mundo - Uniandes, 1991), 179.

[480] *El Orden Público*, December 30, 1899.

to underscore the lack of moral and legal grounds of the rebel's claims for a negotiated solution to the conflict.

Sanclemente would insist on his position until the end of his administration. Soon before the coup of July 1900, a group of liberals sent him a petition asking for both the regularization of the conflict under the terms of International Law and the subsequent recognition of the rebels as belligerents. Sanclemente, once again, denied the petition by arguing that it was necessary to respond to the rebellion with the Criminal Code and that any other treatment would grant armed liberals nothing but impunity. To the President, revolutions would be less common in Colombia if governments put a halt to the deep-rooted practice of granting rebels "guarantees and impunities of all sorts."[481]

The events of July 1900, a coup staged by a member of the President's own party, did not bring any change regarding the government's opinion on the legal and political status of Liberal rebels. Soon after his possession, Marroquín declared that, while he was willing to treat with leniency all rebels that surrendered, he would not grant the rebellion any political concession. A political, non-criminal recognition of the rebels, in the President's opinion, would do nothing but encouraging them to continue the rebellion in order to push for more political compromises.[482] A year later, Marroquín would discredit a series of recent petitions asking him to give the conflict a negotiated solution. He claimed that Liberals requested "concessions that neither the law nor the government's decorum allow me to grant." Acceding to the rebels' claims and demands implied to subvert the

[481] "Informe del comandante general de las fuerzas en operaciones sobre Villeta al señor Ministro de Guerra," *La Opinión*, August 20, 1900.

[482] Tamayo, *La Revolución*, 122-123.

nation's entire legal and political order. In the same light, the government could not negotiate with its armed opponents without abdicating its constitutional duty of repressing them as disturbers of public order. Similarly, the state could not allow that a group of people, by "violent" and "criminal" means, succeeded in fostering any legal, constitutional, or political reform. Agreeing to both things meant to admit the possibility that any alteration of public order could lead to the annulment of all legitimate institutions and the derogation of all laws. "Maintaining the opposite is like affirming that the commission of a crime implied the immediate derogation of the Criminal Code," Marroquín concluded.[483]

Marroquín was not alone in his decision of not granting rebels any sort of political recognition or treatment. That was also the position of his War Minister, José Vicente Concha. In November 1901, Concha would reject a petition by the rebel General Foción Soto requesting the application of the international law to the conflict in order to humanize it. In his petition, General Soto maintained that the hostilities had reached alarming levels of barbarity and the conflict seemed to drift away from the limits that civilized nations recognized in cases of international or civil warfare. To Soto, the government was at least partially responsible for this situation, since its obstinacy in treating rebels as criminals had ended up damaging the common sense of all its representatives and officials.[484] The Minister's response was no different from what Marroquín and Sanclemente had stated before: the conflict was a mere insurrection and not a civil war and, therefore, should

[483] José Manuel Marroquín, *El Vicepresidente de la República a los colombianos, Julio 1 de 1901* (Bogotá: Imprenta Nacional, 1901), 13-15.

[484] "Carta de Foción Soto a José Vicente Concha. Noviembre 28 de 1901," in Gonzalo Sánchez and Mario Aguilera Peña, eds., *Memoria de un país en guerra: los Mil Días, 1899-1902* (Bogotá: Planeta - IEPRI, 2001), 409-410.

remain subjected to the Criminal Code. To Concha, the rebellion did not deserve a treatment according to international law because it did not have the features that, according to this legislation, characterized "formal" civil wars. The rebels, the minister argued, did not count on an established government, did not permanently control a portion of the territory, and neither administered justice nor exercised sovereignty in the areas where they operated. In these circumstances, there was no legal obligation to recognize Liberal armies as belligerent, let alone to declare the nation in a state of civil war.[485]

Foción Soto's petition was not the only request that Liberals made in this regard during the Marroquín administration. More than a year earlier, in July 1900, José M. Quijano Wallis and eleven more people had written the Minister of War a lengthy manifesto requesting the recognition of Liberal rebels as belligerents. The manifesto's arguments were similar to those from Soto's petition. Almost a year of war had brought nothing but destruction and barbarity: "twenty thousand men dead in the battlefields […] Thousands of injured and mutilated people; [and] lots of women and children engulfed in orphanage and misery."[486] The humanization and regularization of the conflict were, in these circumstances, more than urgent. Its regularization did not require major legal or political sacrifices, the manifesto maintained. It only took the state to recognize the rebels as "armed enemies against the government" and not as offenders subject to the Criminal Code. The idea, simply, was that the relationship between state and rebels followed the practices and principles of "good war" established by international law for these kind of

[485] "Carta de José Vicente Concha a Foción Soto. Diciembre 1 de 1901," in Sánchez and Aguilera Peña, *Memoria*, 410-412.

[486] "Memorial sobre la regularización de la guerra. Bogotá, 10 de julio de 1900," in Quijano Wallis, *Estudios*, 190-191.

conflicts.[487] To the petitioners, all these requests were in tune with the Constitution, which encouraged the government to use the *ius gentium* in cases of "internal commotion." Furthermore, they were grounded on the nation's past, full of precedents of political transaction between governments and rebels.[488] Quijano's petition sums up many of the questions and claims that made up the debates about belligerence during the Thousand Days.

Conversations about belligerence and International Law tackled important matters regarding the workings of law and state retribution during the Thousand Days. Questions about the validity of the *ius gentium* in the context of the war entailed deeper preoccupations about the limits, scope, and authority of Colombian law regarding the punishment of the country's internal enemies. It was, also, a concern about the tensions between state and international law concerning the legal status and treatment of rebels and other political offenders. Regardless what Regenerationist authorities decided in that regard, what is clear is that the legal treatment of political criminality during the conflict – as it had happened in previous civil wars– was a question that extended beyond the limits of Colombia's state law. The definition of the legal status of rebels, together with their legal treatment, did not depend exclusively on provisions from Colombian law, and somehow involved a legal and legislative sphere that existed way beyond the limits of the state. Like in Porfirian Mexico, the fate of political criminals was a matter that surpassed –at least at a discursive level– the power and authority of state law.

[487] "Memorial sobre la regularización," 192.

[488] "Memorial sobre la regularización," 193, and 196-197.

Debates about the recognition of rebels as "relative enemies" of the government also involved questions about the political and legal nature of the rebellion, and about the ways in which Sanclemente and Marroquín perceived armed liberals as internal enemies. Discussions on the recognition of the conflict as a civil war involved concerns about the legitimacy of the armed movement and the state's right to react to it through its criminalization. They also entailed queries about how the government understood "internal enmity," "political crimes," and "common criminality" in the context of the rebellion, and how authorities could –and should– react to them. All these issues also raised questions about the normative framework that should guide and limit state retribution against liberal rebels, as well as the adequacy of the nation's criminal code to underpin legal practices of state retribution. The government's position in these regards evidences a perception of the conflict not only in terms of an unquestionable criminalization, but also in terms of a threat deserving retributive responses free from political considerations and concerns about the "good war." These responses, as arbitrary and unfair as they might have seemed to some, still maintained a legal nature and relied on complementary judicial practices that would give state repression some degree of "procedural formality."

Rebels on Trial: Administering Justice in Times of War

Judicial practices during the Thousand Days differed from the dynamics of "preventive justice" that characterized the Regeneration between the 1880s and 1890s. Although during the war there were no formal ordinary tribunals for the judgement of rebels and other armed Liberals, political and military authorities still made an effort to give repression and punishment a façade of judicial formality, rationality, and security. Whether by

administrative judicial procedures or by courts martial, authorities during the war attempted to administer punishment primarily through judicial ways. Multiple purposes converged in this judicialization of punishment. There was, for instance, the purpose of applying, in a strict and unquestionable fashion, the prescriptions from the Criminal Code regarding the treatment of rebellion and other political crimes. There was also the intention to reinforce state sovereignty through a strong reliance on its mechanisms for the prosecution and punishment of criminality and internal enmity. Finally, there was the purpose of buttressing state power by underscoring the ritual ways in which it operates. The regular functioning of a justice system during the war could have represented, in this regard, an effort on the state's part to reinforce its sovereignty through the accentuation of its ritual displays of power and retribution.

The judicialization of state punishment during the war fell on multiple modalities of crime and criminality, involved diverse modalities of internal enmity, and extended to both rebels and members of the Conservative armies. Trials against rebels commonly involved political crimes like rebellion, sedition, and treason; common offenses such as homicide, arson, and robbery; and "mixed" crimes like the ambivalent offense of *asalto en cuadrilla de malhechores*. The results of these trials tended to depend more on the characteristics of the defendants than on the nature and severity of the crimes involved. Rebel officials of medium- and high-rank were more likely to receive death sentences than their subalterns. That was the case, for instance, of the rebel chiefs Antonio Suárez Lacroix, Juan Vidal, and Julián Lezama, executed in July 1902, or the liberal officials Cesáreo Pulido, Gabriel María Calderón, and Anatol Barrios, executed in September that year. Different courts martial sentenced them to death under charges of "rebellion in *cuadrilla*

de malhechores" and treason.[489] That was also the case of the German citizen Otto Hiurichs, a sergeant major charged with rebellion and arson and sentenced by a military tribunal in February 1901.[490]

Minor officials and rank-and-file soldiers often had better luck. In August 1901, a court-martial opted to give a group of minor-rank rebel officials lenient treatment. The tribunal initially charged the officials with rebellion, *asalto en cuadrilla de malhechores*, robbery, and damages to telegraphic lines, crimes that made the defendants subject to an almost a certain death sentence. Nonetheless, after hearing the defense, the tribunal opted to sentence the defendants only for rebellion and considered the rest of crimes simple *delitos conexos*. In addition, the tribunal declared that the officers in question did not play a significant role in their army and could not be considered neither directors, ringleaders, nor promoters of the rebellion. They were, in this light, "petty rebels" that should not receive more than the penalties established for the lesser modalities of rebellion. The tribunal ended up giving the defendants penalties of prison ranging between one to four years.[491] Months later, in April 1902, a court-martial sentenced to prison the soldiers Juan Clímaco Herrán, Gratiniano Sánchez, Pablo Amaya, and Jesús Caro, together with other fellow combatants. The tribunal, in a similarly lenient treatment, only charged them with rebellion, with no supplementary charges of *cuadrilla de malhechores*.[492]

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[489] Tamayo, *La Revolución*, 172, and 174-175. The execution of Pulido, Calderón, and Barrios also included Commander Rogelio Chaves and sergeant majors Benjamín Mañozca, Clímaco Pineda, and Germán Martínez.

[490] "24 de septiembre de 1901," *Gaceta Judicial* 759, February 15, 1902.

[491] "Diligencias sumarias contra los autores de varios delitos cometidos el 3 de febrero de 1901," ACC, República, 1901, Caja 296, Legajo sin número.

[492] "9 de julio de 1902," *Gaceta Judicial* 817, Abril 30, 1904.

"Accomplices" and "*auxiliadores*" of the rebel movement also obtained lesser penalties, as illustrated by the judgement, in November 1901, of five people from Palmira, accused of providing rebels with weapons. The trial was conducted by Palmira's municipal authorities, which decided that the act qualified only as sedition. It had merely been an action of hostility towards the government, which had not implied a direct involvement with the rebellion. Authorities sentenced them all to prison, and imposed one of the defendants –the owner of the house in which the weapons remained stored– an additional forced contribution of five thousand pesos.[493]

Trials against members of the Conservative armies commonly involved offenses of treason and supplementary charges of desertion and/or insurrection. "Traitors" from the military were often responsible for actions or omissions that, to the authorities' eyes, involved some degree of support for or complicity with the rebellion. Some of the people subjected to these trials faced accusations for deserting and switching sides, like it happened to the soldiers Víctor López and Feliciano González, from the southern province of Cauca, in April and May 1901, respectively.[494] The trial of the soldier Manuel Esteban Camacho in October that year sheds light on another modality of military treason. A court-martial sentenced Camacho to 40 years of prison in Panamá for stealing five rifles and selling four of them to the rebels of the Cauca Valley. After a first revision, a military judge

[493] "Proceso contra varias personas por dar armas a los rebeldes. Carta desde Cali, 13 de Noviembre de 1901," ACC, República, 1901, Caja 296, Legajo sin número.

[494] "Causa contra Víctor López por doble delito de deserción y traición," and "Sumario contra Feliciano González por deserción y traición," ACC, República, 1901, Caja 290, Legajo 31.

reduced the sentence to 20 years in the prison of Palmira, considering that the defendant was a minor and deserved a less strict penalty.[495]

The case of the prison guard Gregorio Sánchez offers additional details on the government's understanding and criminalization of military treason during the war. Sánchez had to appear before a court-martial in August 1901, after apparently being involved in a prison mutiny and a jailbreak while he was on duty. The tribunal charged him with "triple treason." To the court, Sánchez had committed treason by not giving alarm when the mutiny started, by joining the runaways in their escape, and by deserting from his post as a prison guard. His desertion was aggravated by the fact that, by escaping with the runaways, he had implicitly joined the rebels and therefore the rebellion. The prosecution requested that the court punished the guard "to the full extent of the law." Yet, a medical examination proved that Sánchez was mentally handicapped and therefore unable to commit a crime in the terms of the Criminal Code. The trial resulted in an acquittal and a call to the government to improve its system of recruitment.[496] Sánchez was not the only soldier that authorities charged for treason after a jailbreak. That was also the case of a captain and three soldiers in Cartago, court-martialed for treason and desertion in July 1901.[497] An analogous case occurred in Bogotá after a massive escape of Liberal prisoners in November 1901. A verbal court-martial accused the inmate Régulo Ramírez

[495] "Causa contra Manuel Esteban Camacho," ACC, República, 1901, Caja 290, Legajo 31.

[496] "Consejo verbal de guerra contra el soldado Gregorio Sánchez por los delitos de traición e insubordinación," ACC, República, 1901, Caja 296, Legajo sin número.

[497] "Sumario por traición y deserción," ACC, República, 1901, Caja 296, Legajo sin número.

of orchestrating the break and, since he was a spy at the government's service, sentenced him to death under charges of treason.[498]

How did verbal courts martial work and what sorts of guarantees and protections did they offer? Military trials were commonly brief and did not last more than a week. Usually, before the installation of the tribunal, a war auditor decided whether or not the case in question corresponded to the military jurisdiction.[499] If his concept was favorable, the court-martial could take place. Despite the trials' short duration, there was a brief space for defense. Time limitations made it difficult to defendants to pick a lawyer of their preference, and most of the time they had to accept an *ad hoc* military lawyer. Once the defense had made its arguments, the tribunal debated whether or not the defendant committed the crimes in question, decided on his degree of criminal responsibility, and inquired about possible "aggravating" or "mitigating" circumstances. Finally, the tribunal issued a sentence.[500] Although the law prescribed that court-martial sentences were undisputable and irrevocable unless they involved the death penalty, sentence revisions and appeals were not uncommon.

In practice, court-martialed rebels and servicemen could request sentence revisions regardless the penalties they faced. Death sentences required the revision and confirmation of a local political and military chief. As illustrated by the case of the rebel Gerardo

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[498] Gómez, *Secretos*, 236-239, and 241-242. The trial also included the prison's director Gustavo Moreno, who faced charges of complicity for apparently concealing information regarding the break plans. Moreno faced a sentence of five years of prison in the same jail he worked.

[499] For an example of how the war auditor worked in this regard, see: "Diligencias sumarias contra los autores de varios delitos;" see also the process against the rebel Jorge Lemos in July 1901: ACC, República, 1901, Caja 296, Legajo sin número.

[500] For an illustration of these steps, see: "Consejo verbal de guerra contra el soldado Gregorio Sánchez."

Vásquez, sentenced to death June 1901 for homicide and robbery in *cuadrilla de malhechores*, the chief in question had two responsibilities. First, he had to inquire if there were procedural reasons that could lead to the annulment of the sentence. Second, he had to decide whether or not there were motives for either reaffirming or commuting the penalty. In the case of Vásquez, the chief confirmed the legality of the sentence and decided that there was no place for commutation. The prompt "reparation of society's moral order" demanded the penalty as "indispensable." Similarly, the chief maintained, the nation's security required "the sacrifice, in the name of the law," of all those that breaking away from any legality had provoked "the most dreadful disorders."[501] It was a decision that seemed to respond more to the "social" and "moral" convenience of the penalty than to the specific circumstances surrounding Vásquez's crimes.

Confirmed death sentences could still be subject to further revisions, as illustrated by the case of Otto Hiurichs. Despite being sentenced to death by a verbal court-martial, Hiurichs managed to take his case to the Supreme Court. The German citizen grounded his appeal on the arguments that the military tribunal that judged him was incompetent to decide on his case, and that his trial involved several procedural inconsistencies – especially, he did not legally receive his *acta de enjuiciamiento*. The high court partially supported Hiurischs's first claim, and considered that while military justice was competent to process him for arson, it had no jurisdiction at all over crimes of rebellion. The Court considered the second claim completely valid as well, and concluded that it entailed a

[501] "Sentencia de la jefatura civil y militar en el juicio seguido contra Gerardo Vásquez y Rogelio Borja, ante el consejo de guerra verbal," ACC, República, 1901, Caja 296, Legajo sin número.

procedural informality that rendered the entire process null. This conclusion would save Hiurischs's life.[502]

Revisions of sentences that did not involve capital punishment also paid special attention to judicial formalities that could potentially annul the decisions of verbal courts martial. After his initial sentence to 40 years in Panamá, Manuel Esteban Camacho appealed and obtained a reduction of half the time in a less hostile place. Camacho, nonetheless, would request a second revision based on procedural inconsistencies. His second attempt proved successful as well, and forced the annulment of the sentence on the grounds that the authority that summoned the court-martial did not have the power to do so.[503] Not all revisions of prison sentences were successful, tough. In June 1902, the rebel Jesús Caro appealed the court-martial decision that put him in jail before the Supreme Court, claiming that his trial had been unfair. The high tribunal considered that, while it had jurisdiction over these sort of claims, the defendant's appeal lacked all formalities that the law required in these cases. According to the Court's concept, Caro had not requested the revision through a representative of the judicial power. Neither had him grounded his claim on any of the causes of revision (*causales de revision*) that the law allowed. The tribunal ended up rejecting the appeal and suggesting the defendant to wait in prison until the Excutive decreed an *indulto*.[504]

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[502] "24 de septiembre de 1901."

[503] "Causa contra Manuel Esteban Camacho." The authority that revoked the sentence also ordered a second, new trial against the soldier.

[504] "9 de julio de 1902," *Gaceta Judicial* 817, April 30, 1904.

On the whole, the functioning of justice during the war aimed to give state repression some sort of ritual formality that reaffirmed the government's power while legitimizing its practices of retribution. Administrative judicial processes and, more often, verbal courts martial represented spaces for administering punishment and retribution in a "regulated," "rational," and "formalized" way. These judicial practices allowed the government to exercise its right to defense and retribution without ignoring or violating, at least formally, the rights and guarantees of its enemies. Administrative and military trials always left place for defense –no matter how minimum or restricted it was–, and their rules and procedures somehow granted defendants a few guarantees and protections. Despite the alleged arbitrariness, discretion, and partiality of these ways of administering justice, the cases reviewed here show that procedural formalities mattered and that courts-martial did not necessarily give the government a *carte blanche* for eliminating enemies. These formalities could also work on the defendants' benefit and give them additional safeguarding against state retribution. The judicialization of punishment, nonetheless, represented only a face of the government's strategies of repression and retribution during the Thousand Days.

Punishment Beyond Courts: The Arbitrary and Extrajudicial Side of State Retribution.

Practices of state punishment and retribution during the Thousand Days went way beyond the proceedings and protections of the judicial sphere. Outside the formalized, regulated, and ritualized field of justice administration, state retribution operated in more direct and straightforward ways, without the mediation of procedural restrictions or legal and constitutional limitations. Arbitrary arrests, extralegal imprisonments, and extrajudicial

executions were part of these "other" displays of state retaliation. As punitive practices, they were common throughout the entire conflict and served multiple purposes. They were public displays of state sovereignty; "exemplary" practices of punishment; means to terrorize and intimidate Liberal rebels; ways of punishing liberals outside the battlefields; and even strategies for "preventing" rebel outbursts in some areas.

Complains about arbitrary, extralegal, and unjustified imprisonments were usual. In Medellín, a conservative town that never experienced a single battle during the war, authorities arrested over 500 Liberals for "preventive purposes."[505] The bulk of these arrests corresponded to Liberals accused of supporting the rebellion with weapons and other materials, local and regional partisan leaders, and plain members of the Liberal party. Sinforiano Arcila, for instance, faced prison between December 1899 and January 1900 after somebody accused him of hiding weapons for the rebels. In his petition, Arcila claimed that the accusations were false and ill-intentioned, that he was a pacific man, and that his imprisonment was nothing but the result of personal animosities.[506] Other town liberals faced prison for no reason other than their political sympathies. Juan Crisóstomo Uribe, a prominent city Liberal, ended up in jail three times despite not having any –proven– direct link with the rebel movement –twice in 1900 and once in 1901.[507] Like him, many other Liberals from Medellín would face consecutive prison sentences merely on

[505] See the list of "fianzas políticas" included in AHM, Alcaldía, Tomo 158, FF, 447-455. The list includes 584 petitions corresponding to 510 petitioners.

[506] AHM, Alcaldía, Tomo 158, FF. 25-27.

[507] On Juan C. Uribe, see: Luis Latorre Mendoza, *Historia e historias de Medellín* (Medellín, Instituto Tecnológico Metropolitano, 2006), 188. On his succesive imprisonments, see the abovementioned list.

grounds of their political affiliation, as they manifested in dozens of complaints before the city authorities.[508]

Liberals in Cauca, south of the country, faced a similar situation. There, hundreds of people would also file complains for unjustified or arbitrary imprisonments.[509] Complainants pointed out that authorities from the Department had sent them to prison with no order of arrest, no proof of their alleged criminality, and no consideration about their pacific behavior and lack of compromise with the movement.[510] Like in Antioquia, several Caucanos ended up in jail due to false accusations product of personal conflicts. That happened, for instance, to Euclides Salcedo, who attributed his arbitrary imprisonment in Pasto to "the *mala voluntad* that the local mayor has towards me."[511] Cauca's authorities also had the habit of arresting Liberals with no other reason than their political sympathies and later processing them as rebels captured in combat. That was the case of Emilio Burgos and his brother Benjamín, Santos Padilla, and Samuel Salazar, arrested during the first days of January 1900 and then presented as prisoners from a combat that took place on January 23rd.[512] Octaviano Caicedo, also from Pasto, had a similar experience at the beginning of the war. He spent about a year in jail as a war prisoner

[508] For a sample of these cases with their respective complains, see AHM, Alcaldía, Tomos 158, 159, and 190 (1899-1901).

[509] For a sample of these complains, see ACC, Republica, 1900, Cajas 281, 283 (Legajo 39), and 286 (Legajo 56); 1901, Caja 295 (Legajo 54); and 1902, Caja 306 (Legajo 20).

[510] See for instance the claims by Secundino Rodríguez, Valentín Basto, and Rogerio Montenegro (ACC, República, 1900, Caja 281, Legajo sin número); as well as by Delfín Cháves (ACC, República, 1900, Caja 282, Legajo 39).

[511] Solicitud de Euclides Caicedo, ACC, República, 1900, Caja 282, Legajo 39.

[512] Solicitudes de Emilio y Benjamín Burgos, y Santos Padilla y Samuel Salazar, ACC, República, 1900, Caja 282, Legajo 39.

despite the fact that no combat had occurred in the region around the time of his arrest. When reviewing Caicedo's request for liberty, Pasto's authorities admitted that once the rebellion had explored in Santander, they had proceeded to arrest as many Liberals as they could in order to prevent an analogous insurrection in the region.[513]

Arbitrary imprisonments intensified as the conflict dragged on. Interested in showing positive results in their war against the liberalism in arms, military authorities resorted to the strategy of arresting farmers and peasants and turning them in as war prisoners. In Cauca, for instance, Conservative General Enrique Palacios sent to a prison in Cali dozens of "humble folk people" disguised as Liberal combatants.[514] In his memoir, a former political prisoner from Bogotá's *Panóptico* recalled that, during the Marroquín administration, authorities imprisoned hundreds of innocent people "unable to tell the differences between the Liberal and the Conservative parties." According to him, the waves of incoming prisoners included several children between eight and ten years old, "completely incapable of understanding politics, let alone of harming the government."[515] During the last stages of the war, the *Panóptico* remained packed with "sympathizers" of the rebellion and civilians that authorities presented as combatants. Some Liberals would even accuse the current Minister of War, Aristides Fernández, of "collecting" political prisoners "with the obsession of a stamp collector."[516]

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[513] Memorial de Octaviano Caicedo, ACC, República, 1900, Caja 286, Legajo 5.

[514] Aguilera Peña, "Canje o fusilamiento," 40.

[515] Gómez, *Secretos*, 2, and 137-138.

[516] Tamayo, *La Revolución*, 123.

Extrajudicial and unlawful executions were also common, especially as a practice of retribution against rebels captured in combat. In December 1899, just a few months after the outbreak of the war, Rafael Uribe Uribe denounced the "inhuman execution" of a group of Liberal war prisoners in Santander.[517] In Tolima, one of the main theaters of the guerrilla warfare between 1900 and 1902, conservative troops executed 14 war prisoners under the argument that taking care of them was a logistic nuisance. Tolima's conservative armies would also be responsible for the beheading of 25 Liberal prisoners by the Magdalena River.[518] The conservative response to the guerrilla warfare in the region included the extrajudicial execution of seven members of Tulio Varón's guerrilla, 18 political prisoners from El Guamo's prison, and 20 officers from Cesareo Pulido's army. According to a contemporary source, conservative troops escorted Pulidos's men to a river, ordered them to take a bath, and then opened fired against them.[519] In his memoire, the liberal Adolfo León Gómez recalled the execution of Colonel Martiniano Arenas, prisoner of Conservative troops in the border between Boyacá and Santander. His guards accused him to try to run away riding a mule, and both prisoner and animal fell victim of a machete charge that reduced them both to pieces.[520]

Perhaps the most polemic Conservative attempt at executing war prisoners during the Thousand Days had to do with the *Prevención* that Minister Aristides Fernández sent

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[517] "Discurso de Pamplona," in Rafael Uribe Uribe, *Historia de la guerra: documentos militares y políticos relativos a las campañas de Rafael Uribe Uribe* (Bogotá: Imprenta de Vapor, 1904), 35.

[518] Aguilera Peña, "Canje o fusilamiento," 48, and 50-51.

[519] Villegas and Yunis, *La Guerra*, 77, 85, and 285.

[520] Gómez, *Secretos*, 122.

to the rebel leader Juan Mac Allister in February 1902. Mac Allister, leader of the Liberal guerrillas in Cundinamarca, had recently ordered the delivery of four high-profile war prisoners to a prison in Pore, a deserted, insalubrious town in the region of Casanare. Minister Fernandez's response came in the form of a manifesto that, under the title of "*Prevención,"* circulated throughout all of Bogotá. In the document, the Minister demanded Mac Allister the liberation of the Conservative prisoners within a 20-days term. Otherwise, Fernández would order the execution of four high-rank rebel officials imprisoned in the *Panóptico*. The manifesto also threatened Mc Allister with executing the principal rebels in the hands of the government if the rebel troops dared to attempt against the lives of the Conservative soldiers they had captured.[521]

The *Prevención* spawned rejection both within Liberals and Conservatives. In a letter from March 1902 to President Marroquín, a group of over 200 political prisoners from the *Panóptico* manifested their concerns about the measure and denounced that it entailed three major injustices. First, it contradicted the constitutional principle that prohibited the application of the death penalty for political crimes. Second, it violated basic procedural guarantees by ordering the execution of people that had not had the chance of being heard and defeated in a trial. Finally, it punished a group of individuals –already subject of punishment– for crimes which they were not responsible for at all. All this, to the eyes of the signatories, involved "something extraordinarily strange, if not extraordinarily monstrous."[522] That was also the opinion of a group of Conservatives that, around the same time, wrote Conservative General Ramón González Valencia a letter

[521] "Prevención. Bogotá, 28 de febrero de 1902," in: Gómez, *Secretos*, 253-254.

[522] "Carta a José Manuel Marroquín. Panóptico de Bogotá, Marzo 7 de 1902," in Gómez, *Secretos*, 266.

rejecting Fernandez's ways. In their opinion, the *Prevención* entailed "an outrageous proceeding" that contradicted "humanity's natural laws." "Since when can a member of the government freely proclaim 'I kill,' 'I execute'?" the letter asked. "Do not we have already courts martial? Did this conflict already derogate all judicial processes?", it continued. To the signatories, Fernández's initiative undermined the basis of the republic, and, even worse, involved the risk of "turning crime into an institution."[523]

A complementary punishment practice, also related to the extralegal application of the death penalty, had to do with the intentional disregarding of both judicial sentences and armistices. Writing to General González Valencia in September 1902, Luis Martínez Silva denounced that Minister Fernández had recently annulled a court-martial sentence that punished a rebel with five years of prison. Wanting a death sentence, Fernández had summoned a second court-martial and forced it to punish the defendant with the desired penalty. By the time Marroquín heard of the double-trial and decided to intervene, the Minister's people had already carried out the new sentence.[524] Something relatively similar would happen later in 1902 after the signing of the Treaty of Neerlandia. The peace treaty did not prevent General Aristóbulo Ibáñez from being hunted down and executed.[525] Neither did it impede Conservative General José Joaquín Casas from ordering a court-martial apply a "suggested" death sentence against Rafael Uribe Uribe in October 30,

[523] "Carta al General Ramón González Valencia. Marzo 1 de 1902," in Gómez, *Secretos*, 267-269.

[524] "Carta de Luis Martínez Silva y Jorge Moya Vásquez al General Ramón González Valencia. Bogotá, Septiembre de 1902," in Aguilera Peña, "Canje o fusilamiento," 286-287.

[525] Aguilera Peña, "Canje o fusilamiento," 51.

1902.[526] Legal agreements and judicial decisions were sometimes insufficient to contain and channel the forces of state retaliation during the Thousand Days.

What do these arbitrary and extrajudicial punishment practices reveal about the workings of state repression and retribution during the war? Overall, they show that it is not possible to reduce the government officials' logic to a simple opposition between "the legal" and "the illegal." State retribution during the Thousand Days was highly legalistic and relied heavily on judicial rituals. Yet, it did not unfold in a complete and absolute "legal" fashion. Arbitrariness was common, as were extrajudicial punishments, and the logics of state repression often dodged –or straightforwardly ignored– existing constitutional, legal, and judicial limitations. This, by no means, can lead to the conclusion that state repression during the war was a simple matter of "illegality" or "legal deformations," as historian Mario Aguilera maintains.[527] State repression was complex and unfolded and manifested in different, even complementary ways, not exclusionary at all. It never had a single, simple goal. On the contrary, it encompassed a panoply of military, political, and legal purposes. The intertwining of "legal" and "extra-legal" responses to the rebellion was nothing but a natural outcome of such complexity. Here, the legal and the illegal, the judicial and the extrajudicial were never absolute, irreconcilable categories. They were just points in a continuum of governmental responses to the rebellion that, according to the purpose in question, could rely more or less on legal practices and judicial resources.

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[526] "Carta de José Joaquín Casas a Juan B. Tovar. Bogotá, Octubre 30 de 1902," in: Tamayo, *La Revolución,* 187.

[527] Aguilera Peña, "Canje o fusilamiento," 67.

The Thousand Days Experience in Context: From 1895 to 1906.

Governmental responses to the liberal rebellion of 1899 did not greatly differ from the repressive practices that marked the reaction of Colombian governments to other episodes of internal turmoil during the period. There were no major differences between the logic of state retribution during the Thousand Days and that from the war of 1895, for instance. Similarly, responses to the plot against Reyes's life in 1906 would build on some of the legal and judicial practices to which the government resorted between 1899 and 1902. On the whole, governmental reactions to insurrections and junctures of civil warfare, during the Regeneration and the Reyes era, did not experience any substantive transformation. After all, they were manifestations of a "culture of governance" consistent with the basic premises of the Regeneration and the principles of the 1886 charter. They reflected a style of government whose fundamental tenets were the maintenance of public order, the sacrifice of individual liberties to "society's welfare," and the prevalence of the Executive over the rest of public powers. It was also a style that relied heavily on the law as an instrument of control and punishment, and on the ritualization of justice and punishment as a means for strengthening and reaffirming state sovereignty.

Legal responses to the war of 1895 included a series of measures that the Sanclemente and Marroquín administrations would replicate years later. Measures included, among others, the imposition of forced contributions, which by the 1890s represented already a customary repressive practice for junctures of civil warfare. These "war taxes" were indeed common during all the civil wars of nineteenth-century Colombia; and, throughout the second half of the century, had evolved into a structured, generalized,

and systematic scheme for the punishment of non-armed dissidents.[528] The Colombian custom of charging dissidents with forced contributions was in fact so particular that it would even call the attention of contemporary experts on international law. That was the case, for instance, of the Peruvian jurist Carlos Wiesse, whose *Reglas de derecho internacional* (1893) criticized this practice as "contrary to the laws of war" and repudiated by all international treaties.[529]

Repressive measures during the 1895 conflict also included the enactment of legislation reorganizing the jurisdiction and attributions of military justice. A decree from January 17 redefined and extended the limits of the military jurisdiction in almost the same terms of Sanclemente's decree from October 20, 1899. This same decree would also extend the repertoire of crimes subject to the death penalty, and formalize the application of forced contributions for the crime of rebellion.[530] A second decree, from March, made legal the celebration of verbal courts martial for the judgement of rebels that were reluctant to surrender. The measure involved rebel ringleaders, officers of all ranks, and even people responsible for "promoting or encouraging the uprising" and "working for the success of the rebellion in any possible way."[531] As during the Thousand Days, defendants had the option of requesting sentence revisions or taking their cases before the Supreme Court. That was the case, for instance, of Domingo Rodríguez, a political prisoner that managed

[528] Aguilera Peña, "Canje o fusilamiento," 41.

[529] Carlos Wiesse, *Reglas de derecho internacional aplicables a las guerras civiles* (Lima: Librería El Siglo, 1893), 101-102.

[530] Decreto 17 de 1895 (enero 29): "Que contiene disposiciones en materia penal y de organización y procedimiento judicial," *Diario Oficial* 9693, January 30, 1895.

[531] Decreto 7 de 1895 (marzo 21): "Del jefe civil y militar del departamento del Tolima," *Diario Oficial* 9718, March 22, 1895.

to obtain the annulment of a court-martial prison sentence by appealing to this high tribunal.[532] Something similar happened to the rebels Juan Bautista Martínez, Miguel Marmolejo, and Fabio Victoria, who faced a court-martial for homicide that concluded with two orders of imprisonment and one death sentence. The defendants appealed before the Supreme Court, which ultimately annulled the sentence on the grounds of procedural irregularities and "jurisdictional incompetence."[533]

The attempt against President Reyes's life on February 10, 1906 also provoked a series of reactions that resembled the legal and judicial practices of the Regeneration. Right after the attack, Reyes ordered the arrest of the conservatives José Joaquín Casas and Aristides Fernández. The President acquitted Casas, kept Fernández in prison, and applied to the former War Minister the formula that he (Fernández) had applied against Juan Mac Allister back in 1902. On February 15, Reyes ordered the publication of a *"Prevención"* in which he threatened Fernández with the death penalty in the case that the President's life were in danger once again.[534] Days later, nonetheless, Reyes retired the threat and, in correspondence with the legislation on *alta policía*, sentenced him and two other high-profile suspects to expatriation.[535] Two days after the publication of the *Prevención*, the President would enact a decree ordering the judgement by a verbal court-martial of all the people captured either as authors or accomplices of the attack. The court-martial issued its

[532] On Domingo Rodríguez's case, see: AGN, Archivo General Manuel Casabianca, Caja 25, Carpeta 3, Folios 23-26.

[533] "28 de mayo de 1896," *Gaceta Judicial* 570 & 571, February 22, 1897.

[534] Villate Santander, "Las conspiraciones," 64.

[535] Pajón, "Policía," 271.

sentence on March 5, a few days after the arrest of the three material authors of the crime. The tribunal sentenced the three attackers to death and gave a dozen more people prison penalties ranging from five to twelve years as accomplices and masking agents (*encubridores*).[536]

According to the terms of the sentence, the court-martial considered the attack against Reyes a common offense and not a political crime. The tribunal charged the defendants with *asalto en cuadrilla de malhechores*, and declared that their actions had no political nature whatsoever. Political crimes, the sentence stated, always pursued an "abstract goal," and what the plotters against Reyes intended was very specific. The crime in question, in addition, was a heinous, monstrous one, with no precedents in the nation's history. It was an act that had profoundly moved the nation, entailed all the perils of anarchism, and reflected a criminal impulse that required urgent and energetic extirpation. The "extirpation" of the threat materialized in a death sentence that authorities carried out as an organized, almost ritualized public display of state retribution. In correspondence with the sentence, the execution took place in the same spot that the attack against Reyes had occurred –a public road in the center of Bogotá–, and counted with the presence of the rest of the defendants.[537] The shooting of the three attackers in March 6, 1906, marked the last time that a Colombian government applied the death penalty.

[536] Villate Santander, "Las conspiraciones," 67; and Pajón, "Policía," 273 and 275.

[537] Pajón, "Policía," 275.

Conclusions: Legality, Extra-legality, and the Legal Treatment of Political Crimes in Mexico and Colombia

The responses analyzed in the previous sections do not comprise the totality of repressive initiatives to which the Porfiriato and the Regeneration resorted in times of rebellion and internal turmoil. Yet, they certainly include the most recurrent ones. Additional measures in the Colombian case included, among many others, restrictions to the mobility and circulation of rebels and other "dangerous" people both in the cities and in the countryside. In Barranquilla, for instance, a decree from late 1901 established that "no Liberal [could] transit the city's streets, squares, and public places after 7 p.m.," and prohibited the public reunion of more than two "enemies of the government" during daytime.[538] In México, punishments for rebellion and insurrection also included conscription in the federal forces stationed in Yucatán and Quintana Roo with the mission of fighting the Mayas.[539]

Repertoires of governmental responses to rebellion in Mexico and Colombia were rich, diverse, and complex. They encompassed multiple, often parallel legalities, jurisdictions, and legal authorities, as well as both national and international legal domains. The Mexican case, for instance, involved jurisdictional tensions between state and federal judicial authorities regarding the judgement of political criminals, as well as a difficult interplay between Mexican and American law concerning the punishment of "dangerous" political exiles. Analogously, the Colombian experience entailed conflicts between ordinary and military tribunals, as well as multiple preoccupations about the role of international –or extra-national– legislation in the criminalization and treatment of rebels

[538] Tamayo, *La Revolución*, 161-162.

[539] Salazar Adame, "Movimientos," 117. Also: Di Fornaro, *Díaz*, 88-89; and Turner, *México Bárbaro*, 62.

and other political offenders. As in the case of the preventive management of political criminality (see previous chapter), responses to actual episodes of rebellion emerged out of a plurality of legal authorities and jurisdictional spheres. Even within the domains of the state and state law, legal logics of repression were fragmented and did not exclusively rely on a monopolistic authority or institution. State law concerning the treatment of political criminality was, then, neither monolithic nor unrivaled by other international or extra-national legal spheres.

These responses also involved elaborated combinations of of legal and extralegal initiatives, judicial and extrajudicial punishment practices, and formal and informal measures. These combinations were neither paradoxical nor contradictory. Here, "the legal" and the "extra-legal" did not function as absolute and mutually exclusive categories. "Legality" and "extra-legality" coexisted as complementary notions –and spheres– as governments devised different strategies to tackle the many political, legal, and military requirements of their war against rebellion. Responses to political crimes and criminals were as legal as they were extralegal, and as judicial as they were extrajudicial. Their different degrees of "legality" or reliance on the judicial sphere depended primarily on their purposes, from underscoring state power and authority through the justice system and its rituals to intimidating and crushing rebels through unbridled displays of state violence. As illegal, unconstitutional, and arbitrary these extrajudicial practices might have seemed to many, they were an integral part of the government's repertoire of responses to insurrection, rebellion, and civil warfare. They accompanied and complemented its roles as law enforcer, administrator of justice, and guardian of public order. As practices of retribution and displays of sovereignty, these "other" responses were in tune with the type

of government –and governance– that both the Regeneration and the Porfiriato tried to shape –one whose fundamental tenets were the maintenance of public order, the sacrifice of individual rights to the society's welfare, and the prevalence of the Executive over the rest of the public powers.

Despite these basic similarities between the Mexican and Colombian experiences, there were important differences between one country and another. In matters of law and legislation, for instance, Colombian authorities relied primarily on extraordinary and emergency decrees, shaping "new," "alternative" legalities for the criminalization and punishment of rebellion and other modalities of internal enmity. Mexican authorities, on the contrary, drew predominantly on their regular legislation, charging and punishing rebels in correspondence to their Criminal Code. This difference between "ordinary" and "extraordinary" legalities is also manifested in the ways in which both countries administered justice in cases of rebellion. While in Mexico the judgement of most rebels remained in the hands of ordinary tribunals, in Colombia the government tended to make it a matter of administrative proceedings and military tribunals. This characteristic contributed even more to the "exceptional" nature of the legal and judicial treatment of Colombian rebels. A third difference in this regard has to do with the nature of people subject to punishment according to each country's legislation and judicial practices. In Mexico, legal and judicial punishment tended to fall on people directly and indirectly involved in rebel movements or episodes of rebellion. In Colombia, on the contrary, punishment involved, besides rebels and individuals with actual or alleged connections with them, non-combatants and people with no links at all with a revolutionary movement. Although both Mexican and Colombian governments recognized certain equivalence

between dissent and criminality, it was in Colombia where authorities legally declared dissent a subject of punishment.

The nature and evolution of rebellions and rebel movements in each country help explain many of these differences. In Colombia, the conflicts of 1895 and 1899-1902 were generalized civil wars that shook most of the country and put a big portion of the nation on a war footing. In México, on the contrary, the reviewed rebellions and expeditions did not evolve into nation-wide confrontations –these larger conflicts would correspond to the era of the Mexican Revolution. Legal and judicial responses to rebellion in Colombia entailed such levels of exceptionality mostly because they were reactions to generalized states of emergency and nation-wide disruptions of public order. Governments perceived them as serious threats against the nation that demanded quick, efficient, and energetic responses that neither the ordinary justice system nor the current Criminal Code were able to offer. The resulting exceptionality was not the product of a capricious, over-authoritarian power placed above the constitution and the rule of law. Despite their undeniable traces of authoritarianism, these "exceptional legalities" were deeply-rooted in prescriptions of the Constitution and the Criminal Code regarding the management of public order. They also drew heavily on the many grey areas that marked the 1886 Charter concerning the faculties and limits of the Executive power.

Regardless of the degrees of exceptionality and alternative legality present in both experiences, responses to rebellion in Mexico and Colombia subjected political crimes and criminals to analogous processes of legal reinvention. Reinventions affected the logics of state punishment and the sphere of crime and criminality alike. Penalties for rebellion in the two countries were not reduced to the punishments that their respective legislations

prescribed for it. Whether by charging rebels with both common and political offenses, or by straightforwardly indicting them as common criminals, Mexican and Colombian authorities managed to redefine what the law allowed and forbade in terms of penalties against internal enemies. It was a reinvention of the limits and differences between common and political crimes that allowed governments to repress their rebels in ways that dodged the limits that constitutions and criminal codes established for the punishment of political offenders. The imposition of forced contributions to rebels and Liberal sympathizers in Colombia, the extradition of rebels and Liberal agitators in Mexico, and the imposition of the death penalty to political offenders in both countries illustrate the result of these reinventions.

Reinventions on the sphere of offenses, offenders, and criminal categories had analogous legal implications. When responding to rebellion through legal and judicial means, Mexican and Colombian governments criminalized a particularly diverse set of people and actions. It was a set of crimes and criminals much wider and varied than those that the respective criminal codes delimited in their definitions of treason, rebellion, and sedition. Legal and judicial responses to insurrection and civil warfare extended and redefined existing notions of rebellion to the point of criminalizing, besides actual rebels and active supporters and advocates of rebellion, several other modalities of alleged or actual internal enmity. "Extended" modalities of rebellion turned criminal the actions of unarmed political agitators; opposition journalists; peaceful, non-combatant dissenters; deserters from governmental forces; "untrustworthy" public servants; and people whose actions or omissions could directly or indirectly benefit a rebel movement. If reinventions in matters of penalties combined common and political crimes as parts of a same set of

actions of internal enmity, reinventions regarding crime and criminalization brought together, as subjects of punishment, both actual rebels and different sorts of dangerous "non-rebels."

Taken together, all these reinventions and extensions reveal that, at least in times of rebellion and political turmoil, political crimes in Mexico and Colombia did not exist as a clear, definite, and stable criminal category. Governments in both countries defined and redefined these crimes –together with the penalties linked to them– in correspondence with the evolution of political conflict and the always changing dynamics and needs of state repression. Reinventions and redefinitions took place in different and simultaneous scenarios. They emerged, first of all, in the legislation, whether through the reinterpretation of current laws or the enactment of new ones. They did, too, in the judicial system, through the combination of common and political charges and the treatment of political offenses as common crimes. Trials and tribunals also played a role in this regard, with the intervention of multiple actors and instances, each one with their specific understandings of what political crimes were and were not. So did legal and judicial practices of punishment, which extended the logics of state retribution against political criminals way beyond the original limits of a political crime. Marked by their diversity, flexibility, and mutability, repressive and punitive reactions to rebellion in Mexico and Colombia did not comprise the totality of governmental responses to political criminality during the period. While punishment and retribution played a major role in this regard, leniency and mercy also had an important part to play.

VII. CHAPTER 6. THE LOGICS OF STATE LENIENCY: THE ADMINISTRATION OF STATE MERCY TO POLITICAL CRIMINALS AND THE POLITICAL USES OF PARDON

Reactions against rebels, conspirators, and political agitators during the Porfiriato and the Regeneration involved a myriad of cases like those of Ricardo Flores Magón, Catarino Garza, or Juan Galeana in Mexico. They also encompass dozens of stories of people that fell victim of political and military repression during the administrations of Marroquín and Reyes in Colombia. Do these experiences of persecution, repression, prison, confinement, and death sum up the bulk of governmental responses to political criminality in both countries during the period? Were there other ways of dealing with actual or potential rebels, or any alternative mechanisms for neutralizing the political and military threats they posed? Was there anything else other than repression and punishment? This final chapter delves into one of the most overlooked aspects in the literature on the Díaz regime and the Regeneration, and in general in the scholarship on civil wars and late-nineteenth century authoritarianism in Latin America: pardon. Both in Mexico and Colombia, the legal treatment of political criminals not only included diverse displays of state retribution. It also involved multiple manifestations of state leniency and many different mechanisms through which political criminals and prisoners could obtain some degree of redress from the, otherwise prevalent, logics of state retribution.

Repression, retribution, and punishment represented just one side of the overall repertoire of governmental responses to political criminality in the Porfiriato and the Regeneration.

Multiple manifestations of state mercy, together with a handful of legal and judicial resources that allowed people to negotiate or terminate their penalties complemented this repertoire. How did these manifestations of mercy operate in both Mexico and Colombia? How and in which conditions did Mexican and Colombian governments used mercy in responding to political criminality? What were the purposes of state mercy for political criminals, as well as their legal and political effects? And, how did political prisoners and criminals take advantage of these options in order to improve their legal and judicial situation? These are some of the main questions structuring this chapter, intended to analyze the logics of state leniency in both countries and explore what they reveal about the workings of state power in the Porfiriato and the Regeneration.

The chapter relies on a diverse series of primary sources. Memoirs, newspapers, and official bulletins shed light on the multiple opportunities in which governments in Mexico and Colombia responded to political criminals with different manifestations of mercy. Constitutions and Criminal Codes account for the legal framework regulating the administration of state leniency. Pardon decrees and amnesty laws offer a glimpse into the effects, conditions, and restrictions of these acts of leniency. Requests for pardon and petitions for other forms of grace illustrate the language of these acts and how people managed to obtain mercy by legal means. Finally, judicial records and other similar sources reveal the ultimate outcomes of such requests, together with other details concerning the interactions between the state and the people requesting mercy. Section one explores the administration of mercy for political crimes in Porfirian Mexico, and pays special attention to the dynamics of state leniency during the conflictive 1890s. Section two focuses on the Colombian case, exploring a series of pardons and amnesties during the Regeneration and

the *Quinquenio*. These sections also address a variety of issues concerning the individual negotiation of mercy, especially during the early 1900s in Mexico and the Thousand Days' war in Colombia. Section three, finally, includes a few reflections on the relationship between retribution and mercy as expressions of state power in both Mexico and Colombia.

Overall, the chapter argues that the logics of state leniency for political crimes in the Porfiriato and the Regeneration did not differ much from the logics of state retribution previously analyzed. Such similarities stem from the fact that they both were parallel and complementary manifestations of state power and sovereignty. State mercy was a powerful tool for bolstering state hegemony, advancing the state's interests in political and military conflicts, stimulating relationships of allegiance, dependence, and patronage, and attempting to turn unruly political dissidents into obedient and submissive citizens. In this light, mercy, like punishment, played a key role in fostering sovereignty, neutralizing internal threats, and helping ensure state hegemony.

Political Crimes and State Mercy in the Porfiriato: The Selective and Uncertain Logics of Porfirian Leniency

The administration of state mercy for political crimes in Porfirian Mexico involved two major mechanisms. On the one hand, there were formal, legal manifestations of state leniency that took the form of amnesty laws or general pardons. These could emanate from different authorities depending on the jurisdiction in question. They could be either federal, granted by the President and the Congress, or provincial, issued by a state's governor or its legislature. It all depended on whether the crimes in question had a federal/national nature

or not.[540] On the other hand, there were multiple practices of individual petitioning and bargaining that aimed to negotiate punishment and obtain redress from the workings and effects of state retribution. Individual requests for presidential pardons represented the most common practice in this regard. Taken together, all these mechanisms reveal important details concerning the nature and functioning of both state power and state mercy during the Porfiriato.

Pardons and Amnesties in the Porfirian Era.

Both the Constitution and the Criminal Code set the basic normative framework for the administration of state leniency in Porfirian Mexico. Amnesties, understood as generalized acts of grace that benefitted an indefinite number of people regardless of the crimes they had committed, were a matter for the Legislative power. Pardons, more restricted in their scope and commonly directed towards a determinate number of individuals, corresponded to the Executive, which according to the Criminal Code had no restrictions for granting this grace to political criminals. The pardoning of political crimes, according to the Code, depended exclusively on the president's "prudence and discretion."

Presidential pardons always had a relative, incomplete effect, tough. According to the law, pardoned criminals still had to remain subjected to the authorities' surveillance, and could face prohibitions regarding where they could go or where they could live. In addition, there were other provisions regulating the request and administration of pardons by the Executive power. Convicted criminals could request the President a pardon the same

[540] *Constitución Federal de los Estados Mexicanos*, Arts. 72, sec. XXI, and 85, sec. XV; and *Código Penal Mexicano*, Arts. 288 and 289.

way they could ask the Supreme Court for an injunction or *amparo*. Requests for pardon, nevertheless, had to count on the approval of the *Junta de Vigilancia de Cárceles* before they could go to the Executive power. The *Junta* was an organism in charge of supervising prisons and monitoring the behavior of their inmates. Anytime prisoners wanted to file for a pardon, they needed to ask the *Junta* for a "certificate of good behavior." According to the organism's regulations, its members could refuse to issue the certificate if they considered the petitioner had not acquired "habits of order, morality, and work." Prisoners also needed to demonstrate the *Junta* that they had performed some sort of work during their time in prison.[541] Such requirements gave this organism and its members a great deal of discretion regarding who could ultimately request a pardon and who could not.

Overall, official manifestations of mercy through legal acts were relatively common during the Porfiriato, especially during the late 1880s and the conflictive first half of the 1890s. Most of the acts of leniency from this period came from state governors and legislatures, and responded to the need to put down local and regional insurrections. In October 1886, for instance, the governor of Sonora decreed a pardon to all people involved in a series of riots that had recently shaken the region. The grace in question was limited, nonetheless. Citizens willing to enjoy the pardon had to appear before the provincial authorities in order to obtain a *salvoconducto* –a safeguard document– that protected them from further official persecution. People that did not appear before the authorities a month after the enactment of the decree would be considered accomplices of the riots and prosecuted as *salteadores*. The decree also excluded from the grace those responsible for

[541] "Sobre denegación de indulto a los reos que no se hayan dedicado a algún trabajo en la cárcel. Julio 7 de 1886," AGNM, Secretaría de Justicia, Caja 184, Expediente 57.

the assassination of a senior executive official (prefect) that apparently had been murdered during the events.[542]

During 1887 and 1888, the governments of Campeche, Veracruz, and Puebla would grant amnesties for episodes of political turmoil that went back to 1882. In May 1887, the governor of Campeche decreed a general amnesty for the benefit of all those involved in an insurrection that took place in June 1886. The decree ordered the suspension of all ongoing processes related to the event that corresponded to the state's judicial power, and requested President Díaz to intervene in favor of those whose cases belonged to the federal military justice. To the state's official newspaper, the grace did not respond to the fact that there were political prisoners after almost a year of the incident, but to the circumstance that there still were handfuls of fugitives running away from justice.[543] Veracruz proclaimed theirs in July 1888, in reference to an uprising that occurred in September 1885 under the leadership of the rebel Faustino Mora. The grace had no restriction or condition, and only left out people that, during the events, had committed crimes unrelated to the movement.[544] Finally, the grace from Puebla came in August 1888, when the state legislature amnestied a group of people charged with rebellion for participating in an insurrection in the town of Itacamaxtitlán in November 1882. Unlike the previous ones,

[542] "Amnistía," *La Patria*, November 12, 1886.

[543] "La amnistía," *Periódico Oficial del Estado de Campeche*, June 3, 1887 ; and "La ley de amnistía," *Periódico Oficial del Estado de Campeche*, June 7, 1887.

[544] *La Voz de México*, June 15, 1888.

this amnesty included no restrictions, probably as a result of the long time that had elapsed between the events and the granting of the grace.[545]

The states of Coahuila, Nuevo León, and Guerrero would grant analogous graces throughout 1893. In September, Coahuila's legislature granted an amnesty for all political crimes committed in the state up to the date of the legislative act. The grace implied the suspension of all ongoing process for political offenses, the release of all political prisoners, and the restoration of their civil and political rights.[546] The amnesty took place soon after the insurrection of Emilio Carranza in August that year. The movement was a result of the tensions between Carranza and the current governor, José M. Garza Galán, for the control of the state Executive. Díaz would mediate in this conflict of regional strongmen by ordering the replacement of Garza Galán and encouraging the state legislature to treat Carranza and his people with leniency.[547] A month later, the legislature of Nuevo León would amnesty the participants in Monterrey's April revolt. The grace left out all people charged with homicide and injuries, as well as the authors of a publication from April 29 that, allegedly, attacked and slandered the state governor.[548]

Guerrero's amnesty, proclaimed by the state legislature on November 1893, followed the surrendering of the rebel general Canuto Neri after an insurrection against the Governor Francisco Arce a month earlier. Neri's conflict with Arce resembled, to a great extent, the rivalry between Carranza and Garza Galán in Coahuila. It was also a struggle

[545] *La Voz de México*, August 9, 1888.

[546] "Amnistía," *La Patria*, September 14, 1893.

[547] Falcón, "La desaparición," 439-440; and Prida, *De la dictadura*, 147-148.

[548] "Amnistía," *La Voz de México*, October 20, 1903.

between two regional strongmen over the control of the state's Executive. As in Coahuila, the insurrection counted on the mediation of Díaz, who pressed not only for Neri's surrender but also for Arce's resignation. Both moves proved successful, and the conflict concluded soon. The grace in question would mark the end of the conflict, granting "the widest and most complete amnesty" to all people involved in the movement, regardless of the crimes they had committed. As in previous cases, there were some conditions. The legislative act gave Neri's people a 15-day term to appear before the state authorities and turn their weapons in. Authorities also had to keep a record with the names of all surrendering rebels, the date and hour of their surrender, and the number and type of weapons they turned in.[549] The amnesty certainly benefited Neri, but for many of his men it did not bring about the promised effect. Many of Neri's subalterns and soldiers would fall victim of the federal army soon after the enactment of the grace.[550]

The initiatives of the government of Chihuahua during and after the rebellion in Tomochic offer a last example of these provincial acts of grace during the convoluted 1890s. In June 1892, months before the government's final strike against the indigenous rebels, the state legislature studied a draft of an amnesty law that aimed to benefit people involved in the demonstrations and attacks of December 1891 and January 1892.[551] There is no further evidence regarding the fate of this draft. Chihuahua's government would not

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[549] *Memoria que presenta al Congreso de la Unión el General Manuel González Cosio, Secretario de Estado y del Despacho de Gobernación* (México: Imprenta del Gobierno Federal, 1900), 31-32, and 272.

[550] "Amnistía en Chihuahua," *El Monitor Republicano*, March 4, 1894. The newspaper denounced that Neri had been the only beneficiary of the amnesty in question, and that it had proven worthless for the rest of his people, systematically hunted down by the federal army. The same complain is also present in Prida, *De la dictadura*, 150.

[551] "Proyecto de amnistía," *El Partido Liberal*, June 29, 1892.

give rebels a formal offer of leniency until March 1894, when the state governor issued a decree granting them a conditioned pardon. The grace involved "all Mexican citizens that since September 1892 to today have taken up arms against the legitimate authorities," and only covered political crimes.[552] In order to enjoy the effects of the pardon, rebels had to present themselves before the state authorities within a two-month term. Once there, they had to manifest "their submission to the supreme powers of the federation and the state," as well as their compromise to surrender any weapons and ammunition in their possession. All rebels that failed to comply this requirement would be excluded from the grace and subjected to prosecution as "disturbers of public order."[553] A second amnesty decree, this time from January 1895, would offer a complementary and non-restricted grace to the rebels involved in the events of January 1892.[554]

Formal acts of grace at the federal level were, in comparison, scarce. During the 1880s and the 1890s, Mexico's Congress enacted only one amnesty law, involving a rebellion that took place in Zacatecas during September to November 1886. Like many other amnesty acts from the period, this law represented a grace for political crimes, ordering the release of all political prisoners, and authorizing the suspension of all ongoing judicial processes concerning the events.[555] According to the legislative debates prior to the law's enactment, the amnesty had the primary goal of benefitting the prisoners who

[552] This timeframe included the last two months of the Tomochic rebellion, from the arrival of federal troops to the town on September 1st, 1892, to the end of the ride against its people on October 27 that year. See: Vanderwood, *The Power*.

[553] "Amnistía a los revolucionarios de la frontera," *La Voz de México*, March 8, 1894.

[554] "Decreto de amnistía," *El Siglo Diecinueve*, January 4, 1895.

[555] *La Voz de México*, June 9, 1887.

remained in the prisons of both Zacatecas and Mexico City. The rebellion had concluded with the death of its ringleaders, and the rebels that authorities had sent to prison had neither political importance nor a criminal background. Their release, therefore, would not put the public order at risk. In addition, the authors of the amnesty project maintained, the Zacatecas movement did not have the characteristics of other revolutions. Neither did it cause the evils that civil wars commonly brought. As per the legislators it was, in sum, nothing but "a revolutionary creature (*engendro revolucionario*) that died right after it was born, leaving no other consequences but twelve graves and a handful of prisoners for whom we request mercy."[556]

Individual presidential pardons seemed to be slightly more common than federal amnesties. Between the late 1880s and mid-1890s, Porfirio Díaz would pardon at least three political criminals, one in May 1887, another in April 1894, and one more in June that year. The first of these pardons corresponded to general Miguel Negrete, prisoner in Tlatelolco "for political reasons."[557] The second one benefited a Colonel Marín, also prisoner in Tlatelolco under similar charges.[558] The last pardon, finally, involved a journalist from one of the many newspapers that the government suspended in the 1890s, who remained an inmate in the prison of Belém.[559] Although individual petitions for pardon by political criminals were common, Díaz was not always willing to grant former rebels

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[556] *Diario de los debates de la Cámara de Diputados, 13ª legislatura constitucional de la Unión (1887)*. Tomo II (México: Imprenta de J. V. Villada, 1889), 733, and 777-778.

[557] "Magnanimidad," *La Convención Radical Obrera*, May 8, 1887.

[558] "Cosas de la cafrería," *La Voz de México*, April 6, 1894.

[559] "Otro preso político indultado," *El Siglo Diecinueve*, June 13, 1894; and "Otro preso político indultado," *El Tiempo*, June 14, 1894.

mercy. When informing about the pardoning of Colonel Marín, the newspaper *La Voz de México* wondered why the President did not treat the political prisoners from Belém with the same leniency he had treated the rebellious colonel. Díaz selectivity in matters of pardon was striking, the paper suggested. While in many cases he would deny petitions for pardon with the argument that the law made him unable to intervene in the course of judicial processes, in others he seemed to have no problem at all in pardoning political criminals. It was curious, then, that political prisoners whose charges were similar to Marin's –and ever less serious– could not enjoy the same sort of grace he had been granted.[560]

La Voz de México was not alone in his criticism of Díaz's selective mercy and overall disregard for political prisoners. In May 1894, the paper *El Tiempo* published a note denouncing that, while common prisoners in Mexico City were able to receive daily visits, political prisoners were not able to see any visitors at all. To *El Tiempo*, it was also unfair that the President actively mediated in the granting of amnesties to regional strongmen like Canuto Neri, while he did nothing to better the situation of the many journalists imprisoned in the capital for political crimes. It seemed that Díaz considered Neri and other "estimable rebels" "very respectable and worthy of consideration," and deemed their insurrections as mere results of their "bad mood." In any case, the paper pointed out, Díaz did not seem to be resentful towards armed strongmen, contrary to the way he felt about dissident journalists.[561]

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[560] "Cosas de la cafrería."

[561] "Las visitas a los presos políticos," *El Tiempo*, May 17, 1894.

The complains of *El Tiempo* and *La Voz de México* were not unfounded. Díaz's manifestations of mercy were not only selective but also strategic, as his mediation in the insurrections of Neri and Carranza suggests. In both cases, the President's managed to appease the underlying power struggles by replacing the challenged governors and granting amnesty to their respective challengers. The opportune replacement of governors in the states allowed Díaz to strategically distribute regional power among the different strongmen of every province, securing their submission and allegiance. The administration of leniency to rebel regional leaders also played a part in this mechanism of political cooptation, as Díaz's tendency to pardon high-profile rebels from the regional elites suggests. Neri and Carranza were not the only recipients of this sort of "strategic grace:" so were people like Diego Álvarez in Guerrero and Luiz Terrazas in Chihuahua, responsible for encouraging uprisings in their respective states during the early 1890s.[562] Díaz's strategic intervention in these regional conflicts would make *antiporfiristas* like Ramón Prida insinuate that, ultimately, all these revolts had been plotted and encouraged by the same President with the interest of safeguarding his interests in the states in question.[563]

Partial, selective, politically instrumental, and even subject of criticism, governmental acts of grace in Porfirian Mexico carried nonetheless the meaning of acts of magnanimity that both expressed and reinforced state sovereignty. Congressmen and newspapers alike tended to present amnesty laws and executive pardons as displays of

[562] Falcón, "La desaparición," 439-440. For a similar argument regarding Díaz's strategic administration of leniency see the introduction of Katz, *Porfirio Díaz*, 17.

[563] Prida, *De la dictadura*, 147-149.

mercy that fostered the government's sovereignty and reinforced the President's authority. While discussing the amnesty law regarding the insurrection in Zacatecas, the project's supporters defended the importance of the grace in question by using arguments of this sort. To them, "[state] authority [was] never stronger than when it [displayed] itself as magnanimous, through the exercise of the *derecho de gracia* and the granting of pardons." "Forgiving the guilty," the congressmen explained, "is one of the greatest attributes of sovereignty," as well as a "humanitarian right" that the Congress should exercise anytime required.[564]

Analogous arguments guided the paper *La Convención Radical Obrera* when it informed about the presidential pardon of General Miguel Negrete in May 1887. The note, titled "*Magnanimidad*," maintained that with the pardoning of the rebel official Díaz had "given a demonstration of his greatness of spirit." "The current government, strong, respected, and loved, knows to defeat its adversaries with displays of generosity," the paper explained. "And we are positive that the brave General Negrete will know to appreciate and value the magnanimous action of his former brother-in-arms," they concluded.[565] Later that year, the official newspaper of the state of Campeche used analogous terms in reference to two recent acts of governmental mercy. The first one was the federal amnesty for the people involved in the Zacatecas rebellion, which the paper considered "an example of magnanimity from the federal powers." The second one was the recent amnesty that the state governor had declared for the participants in the uprising of June 1886. With this act, the newspaper claimed, the governor "had given the ultimate proof of magnanimity and

[564] *Diario de los debates de la Cámara de Diputados, 13ª legislatura*, 734, and 777-778.

[565] "Magnanimidad"

clemency." Both amnesties suggested that the current policy towards political criminals throughout the country privileged pardon and leniency over "political resentments," they concluded.[566]

The interpretation of governmental leniency as manifestations of state magnanimity and government sovereignty reveals an interesting detail regarding the workings of and discourses about state power in late-nineteenth century Mexico. Arguments linking mercy, authority, and magnanimity, as well as discourses emphasizing mercy as a demonstration of the Díaz's "greatness of spirit" –or presenting mercy as "one of the greatest attributes of sovereignty"– had a striking similarity with colonial discourses about mercy and royal sovereignty. These notions about authority, governance, and mercy in the late 1880s seemed to present Díaz as a paternal figure of power modelled –at least partially– after the image of a king. In the colonial Spanish Atlantic, the king was a sort of father whose majesty and authority manifested both through acts of punishment and retribution and through displays of leniency, kindness, and forgiveness. The dispensation of leniency, indeed, was considered a prerogative of the king, who was expected to forgive criminals regardless the severity of their actions. Royal mercy played multiple roles in the colonial era. It helped instill obedience and loyalty in the crown's subjects, strengthened the legitimacy of the king and the monarchy, and fostered royal hegemony by promoting gratitude.[567] There are no major differences between these colonial discourses and the idea

[566] "La amnistía" and "La ley de amnistía," *Periódico Oficial del Estado de Campeche*. June 3 and 7, 1887, respectively.

[567] See: Víctor Uribe-Urán, *Fatal Love: Spousal Killers, Law, and Punishment in the Late Colonial Spanish Atlantic* (Stanford: Stanford University Press, 2015), 103-104. The book's thirds chapter offers a detailed account of the multiple ways in which Royal mercy manifested and unfolded during the late-eighteenth and early-nineteenth centuries.

that Díaz's manifestations of mercy were displays of generosity on the part of a "strong, respected, and loved government."

The critical decade of the 1900s closes with the outbreak of the Mexican Revolution in November 1910, the exile of Porfirio Díaz in May 1911, and, curiously, a generous amnesty following Díaz's departure. The amnesty seemed to bring closure to a complex decade of failed insurrections, frustrated conspiracies, and strong repression against *antiporfiristas* both in Mexico and abroad. Enacted by the interim president Francisco de la Barra on May 27, the grace granted an unrestricted amnesty for political crimes and *actos conexos* committed up to the date of the decree's expedition. As in previous cases, the amnesty ordered the release of all political prisoners and the suspension of all ongoing processes. In addition, it established that no further criminal process could invoke or take into account the crimes subjected to the grace. It was a long series of crimes including, among others, rebellion; sedition; conspiracy; hiding or helping spies; providing rebels with supplies, weapons, and means of transportation; recruitment rebels; helping revolts, seditions, and rebellions to succeed; and even encouraging people to commit any of these offenses. The amnesty also involved any military crime that the rebels had committed as part of their other offenses, as well as any gathering of funds to finance insurgent enterprises –as long as it did not correspond to acts of plunder, robbery, kidnapping, and homicide.[568] No formal act of leniency during the Porfiriato had been as generous, comprehensive and detailed as the amnesty that marked the end of Díaz's regime was.

[568] See the attached documents in SCJ, 1910, Expediente 3: "Toca al incidente de libertad preparatoria promovido por Aarón López Manzano." The amnesty law was originally published in the *Diario Oficial* on May 27, 1911.

What does this overview of formal acts of leniency reveal about the workings, purposes, and understandings of state mercy in Porfirian Mexico? A first aspect has to do with the political uses of mercy and the importance of leniency as a mechanism to ensure allegiance, submission, and obedience. At a discursive level, mercy was both an attribute and an expression of state sovereignty; a practice that reflected the paternal magnanimity of the sovereign and reinforced both his authority and people's respect and love towards him. These understandings of mercy, authority, and sovereignty drew upon a discursive legacy from colonial times, which accounts for the survival of pre-independence notions of governance and state legitimacy even by the end of the nineteenth century. At a more practical level, the administration of mercy made possible the consolidation of political relationships of dependence, negotiation, cooptation, and conflict resolution that helped consolidate Díaz's hegemony throughout Mexico in the 1880s and 1890s. This also helps explain the concentration of pardons and amnesties in these two decades, in comparison with the equally convoluted but –apparently– less merciful 1900s. The selectivity of presidential pardons and the strategic uses of mercy as a mediation tool in conflicts about regional power during these years illustrate this political instrumentalization of state mercy during the first part of the Porfiriato.

A second aspect in this regard has to do with the decentralized nature of state mercy. Amnesties and official acts of grace seemed to be more common at the regional level than at the federal one. Although most regional insurrections during the Porfiriato counted on the intervention of the federal military, the pardoning of the political crimes committed during these episodes tended to remain a matter of provincial politics and legislation. A third element concerns the restricted, conditional nature of most of the amnesties reviewed.

Some of these acts of grace had a limited application and seemed to leave out some crimes and criminals on purpose, as happened with the amnesty decreed in Nuevo León, in response to the events of April 1903 in the state's capital, Monterrey. Others simply did not come fully into effect, as occurred with the amnesty for Canuto Neri and his people that same year. Also, the willingness of state governors and the legislature to treat rebels with leniency often contrasted with the many conditions established for the enjoyment of the grace. Leniency was commonly conditioned by the legal and symbolic submission of rebels to the authorities, their acceptance of the government's legitimacy, and their reconversion from unruly dissidents into obedient, submissive citizens. In Porfirian Mexico, mercy had a political price that primarily benefited the government and its authority.

The Nature and Fate of Individual Negotiations of Mercy in the Porfiriato.

Political prisoners in Porfirian Mexico did not necessarily had to wait for amnesties or similar acts of leniency in order to achieve some sort of grace from the government. They could also find their own ways to obtain a presidential pardon or a prison release by directly negotiating their legal situation with the corresponding authorities. As mentioned in previous chapters, appeals and *amparos* were always available options for walking out of prison, and the law allowed prisoners to request presidential pardons as long as they met the requirements of their respective *juntas de vigilancia*. Prisoners also had the option to negotiate a conditioned release under the figure of "preparatory liberty" (See Chapter 2), and even could negotiate a judicial bond (*caución judicial*). Commonly used in cases of threats against individuals, judicial bonds were a mechanism that allowed criminals to walk

out of jail after signing a compromise of not committing the crime or crimes they were supposed to commit. A specific amount of money that the offender had to pay in case he failed to keep his word reinforced the compromise in question. It was, in sum, a mechanism for the prevention of certain crimes that authorities could use in order to secure the good behavior of an actual or potential criminal.[569]

Common and political criminals during the Porfiriato seemed to be particularly aware of the multiplicity of mechanisms they could use in order to negotiate their penalties or walk out of jail. Many of them would even try to combine several of these resources as part of their overall strategies to obtain a grace. As some of the examined cases illustrate, this last strategy did not always lead to positive outcomes for the petitioners. Despite the diversity of options available for negotiating punishment and mercy in Porfirian Mexico, individual requests for pardon were often complicated processes that demanded a careful navigation through a complex array of legal options and requirements.

The cases of Antonio Bustamante in 1894 and Aarón López Manzano in 1910 shed light on the workings of judicial cautions during the period. Authorities from Nuevo Laredo, Tamaulipas, arrested Bustamante and two other people at the beginning of May 1894, all of them under charges of rebellion. After just a few days in prison, Bustamante succeeded in requesting a judicial caution that allowed him to walk out of jail.[570] López Manzano's case was much more complicated. Arrested for his alleged participation in the failed revolutionary plot of 1906, López Manzano still remained a prisoner in 1910. In

[569] *Código Penal Mexicano*, Arts. 166, 167, and 453.

[570] "Siguen las prisiones," *La Voz de México*, May 13, 1894; and "En libertad," *El Tiempo*, May 30, 1894.

April that year, a judge finally sentenced him to 6 years in prison. Two months after receiving the sentence, the prisoner filed a petition for a judicial caution. Several months later, in February 1911, the corresponding authorities let him know that they had denied his request, with no further explanations. López Manzano appealed the decision before the Supreme Court, but the high tribunal backed the original decision.[571]

It was not the first time that López Manzano requested his release from prison. After receiving a first sentence in 1910, he had filed a petition of release under the mechanism of preparatory liberty. The prisoner supported his second request with a document from his *Junta de Vigilancia* certifying his good behavior. The certificate stated that, during his years in prison, the petitioner had neither infringed the establishment's rules nor been subject of any sanction or reprimand. The response to the petition came a month before the denial of his judicial bond: the authorities in charge of reviewing his case had decided to reject the petition because the certificate of good behavior was not convincing enough. According to them, the fact that López Manzano had had a "good negative behavior" in prison –meaning not doing anything against the institution's rules– did not automatically make him worthy to obtain preparatory liberty. It was also necessary that the petitioner demonstrated "positive facts" proving that he "had dominated the vicious passion or inclination that led him into the criminal path." Preparatory liberty required not only respecting the prison's rules, but also acquiring "habits of order, work, and morality," authorities explained. Since López Manzano had been unable to prove the acquisition of such habits during his time in prison, he could not enjoy the benefit in question. It was the

[571] SCJ, 1910, Expediente 1: "Toca al incidente de libertad bajo caución promovido por Aarón López Manzano;" see also: "El Juez Pérez de León sentencia a unos revoltosos," *El Tiempo*, May 2, 1910.

same response that, a short while before, authorities had given his fellow political prisoner Juan Sarabia when he tried to request his preparatory liberty.[572]

The experiences of Agustín Villaraus, José Sagardi and Silvestre F., imprisoned for their participation in an uprising in Jalapa, Veracruz, in August 1878, offer additional examples regarding people filing simultaneous petitions for grace. Between September and October that year, after spending no more than a couple months in prison, the four prisoners decided to request a presidential pardon. In his petition, signed on September 26, Silvestre F. argued that his participation in the movement had been involuntary and therefore he had surrendered at the first opportunity. Sagardi filed his petition on the same day, mentioning similar arguments concerning his involuntary involvement in the uprising. Villaraus's petition came a few days later, on October 1. Besides mentioning that his family was poor and depended on him for their subsistence, the petitioner also argued that the uprising in question had been insignificant. It had been a short-lived movement with no major actions of war and no regrettable consequences. Furthermore, it had concluded with the prompt and voluntary surrender of all insurrectionists.[573]

The petitions had different outcomes. A couple of reports from October 10 reported that President Díaz had pardoned Silvestre F. and Sagardi. Two weeks later, a third report mentioned that it was possible that Villaraus did not share his fellow's fate, since he had served the insurrection as a captain. The President also accepted the request of a fourth prisoner, Vicente Zarelo, who had filed an analogous petition around the same time.

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[572] SCJ, 1910, Expediente 3: "Toca al incidente de libertad preparatoria promovido por Aarón López Manzano."

[573] "Relativo al levantamiento ocurrido en Jalapa el 16 de agosto," AGNM, Secretaría de Justicia, Caja 85, Expediente 350.

Sagardi and Zarelo, nonetheless, had gone further than their fellow prisoners in their requests for pardon, submitting not one but two individual petitions to the President. Either because of their insistence or because their little value as political prisoners, both petitioners managed to obtain a grace that seemed elusive to others.[574]

The simultaneous combination of strategies for the negotiation of penalties not always worked in benefit of the petitioners. In October 1909, Bernardo Bargo Gómez, prisoner in Yucatán under charges of sedition, tried to walk out of jail by requesting an *amparo* from the Supreme Court. The reasons for the *amparo* had to do with irregularities concerning his capture and subsequent imprisonment. The tribunal denied the request, not because his complain was unfounded, but because of a technical reason. Bargo Gómez not only had requested an *amparo*, but also had appealed the judicial sentence that put him in jail, which complicated the situation and blocked any possibility of an immediate intervention by the Supreme Court. Facing this situation, the high tribunal decided that it could not annul the sentence before the appeal process came to a full resolution. Bargo Gomez, in consequence, had to remain in jail.[575] His case is just an example of several other cases involving both political and common criminals whose simultaneous requests for freedom or pardon ended up working against them for technical reasons. The case of a prisoner sentenced to death, that in 1910 managed to obtain a presidential pardon but could not enjoy the grace because he had an ongoing appeal process, offers a dramatic illustration of the consequences of such technicalities. Apparently, this situation was so recurrent by

[574] Relativo al levantamiento."

[575] SCJ, 1909, Expediente 2275: "Toca al juicio de amparo promovido ante el juzgado de distrito de Yucatán por Bernardo B. Gómez contra el juez menor de Isla Mujeres."

then that the Secretary of Justice issued a recommendation to all public defenders telling them to file requests for pardon exclusively after exhausting all other available legal means.[576]

How did state mercy work at the less solemn, more quotidian level of the individual negotiation of penalties? The reviewed cases, as diverse as they are, reveal that although state punishment was often subject of revision and bargaining, leniency was an elusive outcome. The existence of a variety of legal and judicial mechanisms for requesting and obtaining some sort of grace did not necessary mean that mercy was an easily attainable goal. None of these mechanisms could grant it automatically or guarantee it beforehand. Similarly, no argument seemed to have unequivocal effects concerning the granting of denying of mercy. It did not matter that such arguments invoked the violation of constitutional rights, "good behavior" in prison, a prompt surrender to the government, or the lack of political and military significance of a given uprising. Mercy for political crimes, in short, was always a possibility, but sometimes a remote one. It depended on many factors including the legal strategies employed (case Bargo Gómez); the qualities and background of petitioners or their value as political prisoners (case Villaraus); and even the discretion of the authorities in case of reviewing the petitions (case López Manzano). The uncertainty surrounding these individual requests shows again that, in the Mexico of Porfirio Díaz, leniency for political crimes was commonly selective and a matter of legal and political strategy.

[576] "Circular sobre la solicitud de indulto en casos de pena capital," AGNM, Secretaría de Justicia, Caja 716, Expediente 894.

Mercy, Rebellion, and Regeneration: Political Crimes and the Administration of State Leniency in Colombia

The administration of state mercy for political crimes in Colombia had several points in common with the Mexican experience. Leniency could take the form of official acts of grace like amnesties and pardons, or emerge out of individual negotiations leading to judicial cautions and other classes of benefits and concessions. Regulations regarding amnesties and pardons were relatively similar in both cases, although there were slight differences concerning the definition, nature, and limits of these acts. Other general similarities between the two experiences include the fact that, like in Mexico, leniency in Colombia was also conditioned by the submission of rebels to the authorities, their acceptance of the government's legitimacy, and their conversion from unruly dissidents into obedient, submissive citizens.

Amnesties and Pardons during the Regeneration and the Quinquenio.

The granting of amnesties and pardons during the Regeneration and the *Quinquenio* also depended on a series of constitutional and legal regulations concerning the administration of state mercy by the different public powers. Amnesties, according to these regulations, were general, comprehensive acts of grace whose intentions were to "forget" or "overlook" the criminality of certain acts and exempt criminals from the corresponding penalties. Pardons, like in Mexico, worked in a different way. They did not necessarily have a comprehensive scope and could target either an entire group or a single individual. Pardons did not overlook the criminality of a given offense; they merely forgave the penalty that should correspond to the crime. According to the definitions in the Colombian law, much

more developed than their Mexican counterparts, amnesties "erased" the criminality of a particular action, and their effects turned criminals into "non-criminals." Pardons, on the contrary, recognized such criminality and considered offenders subjects of punishment. Their effects consisted only on forgiving the deserved penalty. According to the Constitution, the administration of amnesties corresponded to the Legislative power, which should grant them only in response to grave motives of public interest (*"graves motivos de conveniencia pública*"), and always for political crimes, which marks another important difference with respect to the Mexican case. Pardons, like in Mexico, were a matter of the Executive power, which could grant them either for common or political offenses.[577]

The political and military turmoil of the 1890s and 1900s would give Colombian governments several opportunities to administer state mercy through amnesties, pardons, and other analogous modalities of grace. These acts of leniency materialized in diverse ways, at different moments during a given conflict, and in response to multiple political, military, and legal interests. Sometimes, a president could offer pardons in the middle of a civil confrontation in order to "encourage" the surrendering of rebels. Analogous acts of mercy commonly followed the end of a civil war and marked its formal end. Pardons, in this case, represented the government's compromise of not prosecuting –or hunting down– its surrendered enemies, and allowed rebels to reincorporate to civil and political life free from legal restrictions and criminal charges. Governments could also enact amnesties or pardon decrees several years after the end of a conflict. These late manifestations of mercy entailed both symbolic and legal purposes. On the one hand, they represented acts of

[577] *Constitución de la República de* Colombia, Articles 76 and 119; also: *Código Penal de la República de Colombia*, Articles 100 and 101.

governmental reconciliation with former internal enemies. On the other hand, they commonly expanded the scope and effects of previous pardons, eliminating many of their –always existing– restrictions and therefore making more people eligible for state mercy. The series of amnesties and pardons for political crimes granted by Colombian governments during the period offers several examples of how these modalities of governmental leniency worked and unfolded.

A first example of these formal manifestations of state mercy comes from 1894. In August that year, the House studied a draft of an amnesty law that aimed to give formal closure to two years of internal turmoil and insurrectionist plots –which included the Bogotá riots of January 1893, the frustrated insurrection of Avelino Rosas seven months later, and a failed revolutionary plan in April 1894. The proposed measure granted a "broad amnesty for crimes and faults of political nature, committed up to the date of the promulgation of this law." It also ordered the cancellation of all ongoing judicial processes for political crimes, and allowed the return to the country of all political exiles and fugitives.[578] Although the project did not prosper, an analogous decree issued that year ended up granting political prisoners a grace that mainly benefited those frustrated April insurrectionists that by mid-year remained in prison.[579]

The civil war of 1895 involved at least two major formal manifestations of state mercy *vis-à-vis* political criminals. In March that year, days after the battle that signed the ultimate defeat of the Liberal forces, Conservative General Manuel Casabianca issued a decree granting rebels some basic guarantees in exchange of their surrender. Casabianca's

[578] "Proyecto de ley sobre amnistía," *Anales de la Cámara de Representantes*, August 17, 1894.

[579] Aguilera Peña, *Insurgencia*, 379.

decree offered rebel ringleaders, officers, and rank-and-file soldiers liberty as long as they laid down their arms and presented themselves before the corresponding authorities in order to negotiate their legal situation. The offer excluded rebels responsible for common crimes. The promised liberty, nonetheless, had significant restrictions. It was subjected to the authorities' surveillance and dependent on judicial bonds, which meant that surrendering rebels still had to regularly present themselves before a local or provincial authority and secure their "good political behavior" with a sum of money. In addition, the Decree gave authorities the power to order the imprisonment of confinement of surrendering officials "for special reasons," and left to their discretion the criteria for deciding what a "special reason" was.[580]

The state of siege that the government had declared by the beginning of the war remained in place until November 1895, when President Caro finally succeeded in pacifying the region of Casanare, southwest of the country. The formal reestablishment of public order that month came together with the enactment of a pardon decree aiming to offer the defeated Liberals better and less restrictive guarantees. The decree declared the conflict terminated and granted pardon to all people involved in the revolution with a few important exceptions. Rebels charged with common crimes, ringleaders accused of organizing armed expeditions outside Colombian territory, and people sentenced in courts-martial for the same offense remained outside the effects of the grace. The decree also allowed political refugees to return to the country, as long as they formally promised "to

[580] Decreto 7 de 1895 (marzo 21): "Del jefe civil y militar del departamento del Tolima," *Diario Oficial* 9718, March 22, 1895.

maintain a peaceful and respectful behavior towards the legitimate authorities."[581] The limitations and conditions in question met with rejection from the Liberal party. To Rafael Uribe Uribe, the decree contained "wretched restrictions" (*mezquinas restricciones*) that narrowed down the effects of the pardon rendering it applicable only to an insignificant number of people. As a congressman in 1896, Uribe Uribe would propose an amnesty law reforming the terms of the 1895 Decree, especially in those points pertaining the exceptions to the pardon and the conditions for the return of Liberal exiles.[582]

Uribe Uribe's project would meet serious resistance from the Conservative bloc in the Senate, which insisted in keeping all Liberals accused of or processed for common crimes outside the reach of the government's mercy. It took the Congress two years to turn Uribe Uribe's project into an actual amnesty law –Law 14, 1898. The new legislative act reformed most of the restrictions that the 1895 Decree had imposed, and made the pardon accessible to all rebels and political prisoners with the exception of those who had already been sentenced for common crimes. It also allowed exiles to return to the country without the requirement of a formal promise of good political behavior.[583]

Pardons during and after the Thousand Days followed a relatively similar pattern. Although both Sanclemente and Marroquín manifested in multiple times their willingness to grant Liberals mercy in exchange of their surrender, an official offer of pardon would not materialize until well into the third year of the conflict. It was already June 1902, when

[581] Decreto 499 de 1895 (noviembre 9): "Por el cual se levanta el estado de sitio y se concede un indulto," *Diario Oficial* 9865, November 9, 1895.

[582] "Discurso sobre la amnistía (1898)," in Uribe Uribe, *La regeneración*, 140-141.

[583] "Ley de amnistía," *El Autonomista*. January 17, 1899.

President Marroquín enacted Decree 933 granting pardon to all rebels that laid down their arms. The offer, according to the President, responded to three circumstances. First, it was a response to the clamor of "several honorable citizens [that have] requested, in lively and patriotic ways, a grace for the revolutionaries still in arms, who are expected to lay them down if the government […] grants them guarantees." Second, it took into consideration the facts that the revolution was virtually defeated and the rebels' situation was "truly deplorable." It was, then, the "most conducive moment" for "experiencing the effects of government's benevolence." Finally, it manifested that the government was "in its best disposition to contribute –as far as its decorum, the nation's laws, and the *ius gentium* allowed–, to the rapid termination of the war."[584]

The terms of the offer did not differ much from the conditions of Casabianca's 1895 Decree. Decree 933 granted a "wide pardon" to all Colombians involved in the revolution that were willing to capitulate and surrender their weapons and war material to the government. If the major revolutionary armies accepted the deal, the Decree also promised the release and pardon of all political prisoners. There were several restrictions and conditions, though. Surrendering Liberals had to declare before the government "their willingness to live subjected to the legitimate authorities and laws," as well as their compromise to "not take up arms against the government once again." Similarly, and like in 1895, the offer left out rebels charged with common crimes, leaders and promoters of

[584] Decreto 933 de 1902 (12 de junio): "Por el cual se concede un indulto y se reforma el artículo 1º del decreto legislativo de 14 de enero de 1901," in Guzmán, *Decretos*.

foreign expeditions against Colombian territory, and people judged in courts-martial for the same offense.[585]

Rebel ringleaders reacted to the Decree the same way their fellow Liberals reacted to Casabianca's offer during the previous war. In a letter from July 1902 to President Marroquín, General Uribe Uribe maintained that the proposed pardon did nothing but requesting from the rebels what the government had been demanding since the beginning of the war: an unconditional surrender. To the General, if the rebel movement had to admit its defeat and plead for state mercy, it would not settle for less than a formal amnesty. Amnesties meant "a reciprocal forgetfulness of all past events, the beginning of a new life, or at least the massive and anonymous remission of guilt." A pardon, on the contrary, meant nothing but simply the forgiveness of a deserved penalty. "Accepting the pardon would amount to confessing that we have committed a crime." Yet, the rebellion had not been a criminal endeavor whatsoever, explained Uribe Uribe. To him, rebels had acted as "defenders of freedom" committed to carry on a "virtuous action" that had no traces of criminality at all. The general's criticism also fell on the many restrictions that the Decree included, which pretty much applied "to all Liberals and even to quite a few Conservatives." "There is no major difference between your Decree and an order to reinitiate hostilities," Uribe Uribe concluded.[586] Ultimately, Decree 933 did not have any relevant impact on the course of the conflict.

[585] Decreto 933 de 1902 (12 de junio), especially Articles 1, 5, 6, and 8.

[586] "Carta de Rafael Uribe Uribe al Vicepresidente José Manuel Marroquín. Curazao, Julio 1 de 1902," in: Uribe Uribe, *La regeneración*, 436-437.

The surrender of Uribe Uribe's troops in the Caribbean region, on October 1902, gave both rebels and government a new opportunity to discuss and negotiate issues of state mercy. This time, the rebels tried to press for an agreement that, instead of granting individual and limited pardons, offered Liberals collective and comprehensive guarantees.[587] Liberal negotiators also sought to eliminate the differentiation between "acts of war" and "common crimes" from the resulting treaty, and to erase from it the terms "pardon" and "amnesty," which they deemed "humiliating."[588] Their efforts proved successful. The Neerlandia Treaty, signed on October 24, gave new life to the July grace by eliminating all its restrictions (Art. 8). It also established that the government could not prosecute, judge, or punish surrendering rebels for any act they had committed as soldiers in active military service (Art. 7). Other compromises included the release of all political prisoners in the departments or provinces of Magdalena and Bolivar (Art. 9), as well as the suspension of all forced contributions against Liberals from both regions (Art. 12). The treaty also offered legal and judicial protection to all political exiles that decided to return to the country (Art. 11). It also exhorted President Marroquín to use of his *derecho de gracia* in benefit of Liberals sentenced by courts-martial and that, for any reason, were unable to enjoy the effects of the treaty (Art. 8).[589]

The Wisconsin Treaty, signed on November 21 after the surrender of Benjamín Herrera's forces in Panama, extended the effects of state leniency over to the rest of the

[587] "Instrucciones al Dr. Urueta. Octubre 20, 1902," in Uribe Uribe, *Historia*, 384.

[588] "Informe del señor Urueta. Octubre 23 de 1902," in Uribe Uribe, *Historia*, 391.

[589] "Tratado de Neerlandia, Octubre 24 de 1902," in Sánchez and Aguilera Peña, *Memoria*, section "Anexo documental."

country. The agreement granted "wide amnesty and complete guarantees for both all people involved in the current revolution and their property," and ordered the immediate suspension of all ongoing processes for political crimes (Art. 4). Following the lines of the previous agreement, the treaty ordered the immediate release of all political prisoners in the country (Art. 2), as well as the suspension of all forced contributions (Art. 3). Finally, the agreement suspended the jurisdiction of military justice over common crimes committed by the rebels, turning their judgement into a matter for the ordinary justice system (Art. 5).[590] A decree issued three days later would ratify and reinforce these compromises by declaring the war terminated and granting Liberals a "general pardon." The decree declared pardoned "all individuals that, as a result of their involvement in the rebellion, have been sentenced to *presidio*, prison, or any other penalty imposed by courts-martial or any other authority." It also ordered the immediate release of all political prisoners remaining in all jails and punishment establishments throughout the country, and stated that all political exiles were free to return.[591]

A couple of laws enacted in October 1903 would give further support to the legal compromises that accompanied the end of the Thousand Days. On October 10, Congress enacted Law 23, which granted common criminals a grace consisting of the reduction of a fifth of their corresponding sentences. According to the Law, the grace responded to extensive pleads for mercy from several places in the country, and represented a sort of "reparation" for the hardships and privations that prisoners experienced during the three

[590] "Tratado del Wisconsin. Noviembre 21 de 1902," in Caballero, *Memorias*, 249-250.

[591] Decreto 1718 de 1902 (24 de noviembre): "Que concede un indulto general a los rebeldes," in Guzmán, *Decretos*.

years of the conflict.[592] A few weeks later, on October 31, a second law proclaimed a new and wider grace for political criminals –Law 57. The Law conferred "wide pardon for the political crimes committed during the time of the last rebellion."[593] These two additional acts of mercy not only benefitted the legal situation of those Liberals formerly charged with political crimes. They also helped alleviate the situation of those rebels that, as a consequence of the legal and judicial reforms that took place during the war, had been judged and punished as common offenders.

Governmental reactions to the plots of 1905 and 1906 against Rafael Reyes's life offer another example of these practices of state mercy during the period. Although the government's response to both plots was energetic and involved strong displays of state retaliation, there was some room for leniency as well. On July 20, 1906, President Reyes would enact a decree pardoning the five people that a court martial had sentenced in February that year for their responsibility in the plot of December 1905. The decree also granted pardon to "all individuals that are currently confined for political crimes." The grace, nonetheless, was limited. It did not apply to people involved in the attack of February, and left out "those individuals that being notoriously dangerous in a particular town had been confined to another place for the sake of public peace." In addition, the pardon in question did not have a general and immediate effect, but depended on special

[592] Ley 23 de 1903 (10 de octubre): "Por la cual se otorga una gracia de carácter general," in *Leyes colombianas expedidas por el Congreso en sus sesiones extraordinarias de 1903*.

[593] Ley 57 de 1903 (31 de octubre): "Por la cual se concede un indulto," in *Leyes colombianas expedidas por el Congreso en sus sesiones extraordinarias de 1903*.

resolutions from the War Minister, who had the power to decide which people could and could not enjoy the grace.[594]

This conditioned and very limited pardon did not represent the only formal act of state mercy during the Reyes administration. In May 1907, the Congress enacted a law ordering the suspension of all penalties against combatants charged with common or political crimes during the last civil wars. The grace did not differentiate between people at the service of the government or combatants enrolled in an insurgent army, and made them both subjects of the pardon. The only people who could not enjoy the grace were those whose crimes involved death sentences according to the Criminal Code.[595] A second law enacted the following year would eliminate this restriction and make the grace accessible to everybody, as long as their respective judicial experiences proved their condition as combatants at the moment of the commission of their crimes. In addition, the law declared under the statute of limitations all penalties imposed –or susceptible to apply– for common crimes committed before 1875.[596]

The different laws and decrees granting some sort of grace for political crimes between the mid-1890s and the first decade of the 1900s reveal a series of important things about the nature of governmental reactions to rebellion in Colombia during the period. The most important aspect in this regard is that, although these reactions involved a great deal of

[594] Decreto 43 de 1906 (20 de julio): "Sobre indulto," in *Decretos Legislativos Expedidos en 1906*.

[595] Ley 27 de 1907 (mayo 25): "Por la cual se declaran prescritas ciertas penas," *Diario Oficial* 12964, June 4, 1907.

[596] Ley 4 de 1908 (10 de agosto): "Por la cual se declaran prescritas ciertas penas y se deroga la Ley 27 de 1907," *Diario Oficial* 13362, August 14, 1908.

repression and manifestations of state retribution, they also entailed significant displays of leniency, mercy, and forgiveness. Legal responses to rebellion and political criminality did much more than allowing the government to punish its internal enemies: they also set the conditions for the negotiation of punishment and even for its eventual suspension or forgiveness. As the experiences of 1895, 1902, 1907, and 1908 show, leniency was always an option within the repertoire of possible governmental responses to episodes or rebellion and civil warfare. Certainly, it was an option limited to specific circumstances and interests. Yet, governments ended up falling back on it sooner or later throughout the course of a given conflict. To forget and forgive criminal accusations and penalties was a means to either encourage the surrender of insurgents or give legal closure to the confrontations, while enhancing the regime's legitimacy.

Legal manifestations of state mercy throughout the period were relatively consistent in their effects but not completely uniform in their nature. Governments administered grace in the form of amnesties, pardons, the releasing of prisoners, and sentence suspensions. Each of these modalities had their own conditions and limitations. Amnesties seemed to be scarce during the period, while pardons and sentence suspensions tended to be more recurrent. To the logic of the Colombian governments of the time, it seemed easier –or more convenient– to forgive the punishment their internal enemies deserved than to forget or "erase" the criminality of their acts. In most of the reviewed cases, pardoned rebels remained as "forgiven offenders," not as "non-criminals." Colombian authorities did not seem prone to perceive and treat their surrender adversaries in a non-criminalizing way.

The contents, restrictions, and limitations of these legal acts of mercy reveal that state leniency during the period was conditional and filled with exceptions. Many of these

laws and decrees distinguished between common and political crimes, and limited the effects of their grace to the latter. Some of them even differentiated between "serious" and "less serious" political offenses, and excluded the former from the benefits in question. Rebel ringleaders tended to have more difficulties than their subalterns for enjoying the effects of state leniency, as illustrated by the pardons enacted during the war of 1895 and the Thousand Days. That was also the case of high-profile rebels charged with treason, as in the case of the same two conflicts, or processed for crimes punished with the death penalty, as happened in 1907. Regardless of these limitations –often overridden by subsequent legislative acts–, all the laws and decrees reviewed here reflect the existence of two basic and fundamental premises regarding the government's reaction to political criminality. The first premise was that it was possible for the government, and even expected from it, to forgive political crimes and criminals, either on the grounds of "generalized pleads for mercy" or for reasons of "public convenience." The second premise was that political crimes could always be the subject of pardon, for they represented a special, "less criminal" kind of criminality. The logics of state leniency, nevertheless, were not limited to these formal manifestations of mercy, as the next section shows.

Negotiating Leniency One Case at a Time: Individual Petitions for Mercy during the Thousand Days.

Like in the Mexican case, Colombian political prisoners were able to request mercy or analogous benefits on their own initiative. As their fellow Mexicans, they could individually negotiate and obtain sentence reductions, prison releases, and reassessment of their penalties by directly negotiating their legal situation with local and provincial

authorities. A series of petitions submitted by Liberals from Cauca and Antioquia during the Thousand Days illustrates the characteristics of these individual negotiations of mercy. What were the goals of these petitions and requests? What were the arguments and discursive strategies that petitioners used in order to strengthen their claims? How did authorities react to these petitions, and how much leniency were they willing to grant in these cases? The examination of these petitions sheds light on how logics of state leniency unfolded outside the formal sphere of legislative acts of mercy.

A first group of these individual requests includes petitions for prison release by political prisoners claiming that their imprisonments were unfounded, unfair, or exaggerated in light of their minimum or nonexistent compromises with the rebellion. Requests of this kind commonly followed a similar pattern. They included the formal petition, an explanation of the reasons why the petitioner considered he should not remain in jail, and the indication of two or three witnesses who could account for the authenticity of such reasons. In order to make a better case for themselves, most petitioners opted to appoint witnesses that were either Conservative or well-known "friends of the government." Commonly, witnesses had to answer to three or four questions regarding the criminal background of the petitioner, his political compromises, or his behavior during the war. After hearing the witnesses, local authorities decided whether or not it was convenient to release the petitioner.[597]

The fate of the requests commonly depended on the political background of the petitioner and the discretion of local and provincial authorities. In November 1900,

[597] See the collection of petitions included in ACC, República, 1901, Caja 295, Legajo 54: "Documentos sobre presos politicos."

Secundino Rodríguez, prisoner in Popayán, requested his release on the ground that he "had not intervened, neither directly nor directly, in the current revolution." After collecting the corresponding testimonies confirming Rodríguez's claim, a war auditor from Cali denied his petition arguing that "while the revolution continued, no political prisoner should walk free." An authority from Popayán would support this decision a few days later, arguing that, since the petitioner was an enemy of the government, he could not walk free until the rebellion ceased to disturb the department. Finally, in December that year, authorities decided to release Rodríguez by confining him to the city and forcing him to secure his good political behavior with a judicial bond.[598] That was also the case of Rafael Ágredo, who requested his release in November 1900 with similar arguments. Authorities from Popayán denied his request by arguing that no enemy of the government could walk free while the rebellion continued. Yet, later on, they would grant him home detention and a bond. This "partial release" responded to the reason that, while it was true that he had not taken up arms against the government, it was also true that he had done nothing to defend it either.[599] The argument that no prisoner should be released while the rebellion persisted also allowed Cauca's authorities to deny the request of Apolinar Santander the same month.[600]

Prisoners accused of playing an active role in the rebellion and their armies commonly had limited possibilities of succeeding with their petitions. In May 1900,

[598] "Solicitud de Secundino Rodríguez, vecino de Túquerres," ACC, República, 1900, Caja 281, Legajo sin número: "Solicitudes de presos políticos."

[599] "Solicitud de Rafael Ágredo," ACC, República, 1900, Caja 281, Legajo sin número.

[600] "Solicitud de Apolinar Santander," ACC, República, 1900, Caja 281, Legajo sin número. Like in the two previous cases, Santander had managed to succesfully prove his non-existent links with the revolution.

authorities rejected José Mera's petition on the ground that he had been part of a rebel company led by Primitivo Solarte, and therefore had taken part in the rebellion in an active and direct way.[601] That would also be the case of Eleuterio Rosero, a caucano prisoner, who requested his release the same month because of his poor health. Authorities from Popayán argued that the fact that Rosero had taken up arms against the government in the town of Patía made him unable to enjoy the requested benefit.[602] The case of Valentín Basto offers a final example in this regard. Basto requested his release in November 1900 arguing, among other things, that the six months he had spent in a Popayán jail had caused him a serious pulmonary disease. Despite counting on the favorable opinion of a medical doctor, Basto's request met the opposition of a war auditor that accused him of leading a rebel squadron that operated in the region of Tambo, Cauca. Since he had been an active combatant, he had to remain in prison. A month later, nonetheless, authorities would grant him home detention while he recovered from his condition.[603]

Non-combatant Liberals tended to have better luck with their petitions and often managed to walk out of prison after their first attempt. That was the case, for instance, of Rogerio Montenegro, who in November 1900, and after two months in prison, was able to prove that he had lent no support to the rebellion at all. In his defense, Montenegro also mentioned that he had paid most of the installments of his corresponding war contribution in a timely manner. Authorities from Popayán accepted the petition and let him walk out

[601] "Solicitud de José E. Mera," ACC, República, 1900, Caja 286, Legajo 56: "Memoriales presos políticos."

[602] "Solicitud de Eleuterio Rosero, vecino de El Bordo," ACC, República, 1900, Caja 283, Legajo 39.

[603] "Solicitud de Valentín Basto," ACC, República, 1900, Caja 281, Legajo sin número.

with a judicial bond.[604] In May 1900, petitioner Euclides Caicedo, from Pasto, obtained his release after five months of imprisonment once he proved not only his lack of political compromises with the rebellion but also his extreme poverty. Caicedo, nonetheless, had to publicly declare his obedience to the government and agreed to a judicial bond before leaving prison.[605] That was also the case of Sergio Parra, who requested his release the same month arguing that he had to take care of his moribund 90-year-old mother. Authorities accepted his petition and let him walk out with the same conditions they had imposed to Caicedo. Parra, nonetheless, had to remain confined within the limits of Popayán.[606]

Judicial bonds represented the standard procedure through which most political prisoners in Cauca and Antioquia walked out of prison after negotiating their case with the corresponding authorities. Originally established in the Colombian Criminal Code for crimes involving threats against people's lives, honor, and property, bonds were supposed to work, like in the Mexican case, as "deterrent" mechanisms against the potential commission of a crime. Bonds in Colombia consisted of a written promise of not committing the crime in question, followed by the stipulation of a given sum of money or *fianza* that the person should pay in case he broke the promise.[607] Sometimes, the process also involved the appointment of a guarantor or *fiador*, a third party in charge of paying

[604] "Solicitud de Rogerio Montenegro," ACC, República, 1900, Caja 281, Legajo sin número.

[605] "Solicitud de Euclies Caicedo, natural y vecino de Pasto," ACC, República, 1900, Caja 283, Legajo 39: "Solicitudes de presos políticos."

[606] "Solicitud de Sergio Parra," ACC, República, 1900, Caja 283, Legajo 39.

[607] See: *Código Penal de la República de Colombia*, Article 767; and Porras, *Proyecto*, ciii.

the sum on behalf of the criminal if needed. As tools for preventing the further commission of political crimes, Colombian bonds required from the subjects in question a promise of "good political behavior," as well as their compromise to appear before the authorities on a regular basis. In Medellín, some people were forced to appear before the city's *alcalde* every single day until the end of the war.[608] Others had to do it at least once every five days.[609] They also had to inform the authorities about their place of residence during their confinement in the city. The breaking up of any of these compromises allowed the government to collect the arranged *fianza*.

According to the language of these promises, maintaining a "good political behavior" meant basically to stay away from any act or manifestation of political or military hostility towards the government. Such a compromise could take many different forms. In Medellín, Antioquia, one prisoner promised for instance that he would "maintain a peaceful behavior both in word and deed," and "would not take up arms against the government or give the rebels any sort of support."[610] A fellow prisoner from the same city assured that, once released, he would abstain from "participating in the revolution against the government and from spreading news that did not appear in official bulletins."[611] A third inmate also from Medellín went even further and declared that he "would not wage war against the government or encourage, support, or recommend the rebellion in any

[608] See, for instance, the case of Sinforiano Arcila: "Fianzas políticas prestadas en la Alcaldía Municipal de Medellín," AHM, Alcaldía, Tomo 158, Folios 25-27.

[609] "Fianzas políticas," Folios 1-4.

[610] "Fianzas políticas," Folio 5.

[611] "Fianzas políticas," Folios 26-27.

way." His commitments also included not criticizing the government's acts, not questioning the orders the authorities dictated, and not spreading news that were prejudicial to the government and its supporters. Finally, the prisoner committed himself to not supporting the revolution neither performing any act that could be construed as subversive and contrary to public order.[612] In Popayán, a prisoner promised, among other things, to remain secluded in his house and refrain from hosting there any "suspicious" or "conspiratorial" political meetings.[613] Similarly, another inmate from the same city undertook to live at his *fiador's* house without receiving any visits from "enemies of the current regime," and to not attend any political meeting of a subversive character.[614]

Authorities kept a close eye on the released prisoners and looked after the fulfillment of their political compromises, as the case of Antioquia illustrates. In April 1900, for instance, the department's authorities asked Medellín's *alcalde* to submit a report about the state of political bonds or *fianzas* in the city. The report had to include detailed information concerning the bonds that had been violated and thosethat had been collected or were awaiting collection.[615] The *alcalde's* response included a series of cases occurred between January and August 1900. There was, for instance, the case of Manuel Echavarría, who not only broke the promise of showing up regularly to the *alcaldia* but also disappeared from the place he had registered as his house. Apparently, Echavarría had fled

[612] "Fianza política de José M. Escalante," AHM, Alcaldía, Tomo 159, Folio 459.

[613] "Acta de compromiso de buen comportamiento político de Manuel M. Velasco, de Caloto," ACC, República, 1900, Caja 281, Legajo sin número.

[614] "Acta de compromiso de Joaquín Cifuentes, vecino de Palmira," ACC, República, 1900, Caja 284, Legajo 44: "Documentos de fianzas."

[615] "Carta al Alcalde de Medellín, Abril 7 de 1900," AHM, Alcaldía, Tomo 160.

the city and enlisted in a rebel camp near Panama.[616] The *alcalde* also mentioned the case of eight political prisoners that, after securing their freedom with a *fianza*, had participated in a skirmish with government's troops somewhere in Antioquia.[617] There was also the case of Liberal colonel Diógenes Zárate, who left his prison in Medellín but was later recaptured for opening fire against Conservative authorities that were hunting down one of his fellow Liberals.[618] The index of political *fianzas* granted in Medellín between 1899 and 1902 shows that, out of the 510 prisoners that –at least once–walked out with a bond, 59 of them ended up returning to jail for recidivism. 48 of them went twice to jail, seven made it three times, and four more people made it four times.[619]

Imprisonments and cautions were not the only penalties subject to negotiation between "criminal" liberals and authorities. A second group of these individual requests for mercy had to do with the revision, remission, and payment of forced contributions. The language of these requests somehow paralleled the terms of the previous petitions. As in the negotiation of prison releases, petitioners commonly stressed their "peaceful," non-belligerent character and their lack of commitment to the rebel movement. Other recurrent arguments included complains about the costs of the contributions, the burdensome nature of their monthly installments, and the overall unfairness of the penalty. Petitions commonly followed a process that tended to vary from province to province. In Antioquia, for

[616] On the case of Manuel Echavarría, see AHM, Alcaldía, Tomo 160, Folios 222-224.

[617] AHM, Alcaldía, Tomo 160, Folio 227.

[618] AHM, Alcaldía, Tomo 160, Folio 234.

[619] On the index, see: "Fianzas Políticas – Índice," AHM, Alcaldía, Tomo 158, Folios 447-455. The index includes 584 cases corresponding to 510 people, covering from October 1899 to August 1902.

instance, petitioners commonly sent their requests to specific public servants that acted as "state collectors." In Cauca, people had to submit their petitions to a *Junta Calificadora*, a group of local and provincial authorities in charge of assigning liberals in the region their corresponding contribution, the number of installments, and their respective amounts. Cauca's *Junta* had its own rules for the filing and processing of these sorts of petitions, including the principle that no request should be considered unless the claimant had not paid at least the first installment of his contribution.[620] In Antioquia, state collectors often ignored first-time petitioners, and sometimes even disregarded any reduction or discount they might have gotten from the authorities.[621] In both regions, collectors and members of the *Junta* could also force claimants to support their requests with witness testimonies.

Petitions grounded on financial arguments were relatively similar from one case to the next. Petitioners often described themselves as poor people with minimal incomes and meager assets, and in consequence claimed that the government reduced their installments to a "fair and equitable" amount. In his petition from October 1901, the *antioqueño* Rafael Ángel expressed that although he was willing to submit to the government's will and pay his contribution, the elevated amount of its monthly installments made it impossible. If the government reduced the fine, he would pay it with no problem. Otherwise, Angel lamented, his only possible option would be to stop paying and go to jail.[622] That same month, Valerio Sierra, from Medellín, requested a reduction of his monthly installments to an amount he

[620] ACC, República, 1899, Caja 268, Legajo 2: "Memoriales sobre rebaja de contribución."

[621] For an illustration of this process in the case of Antioquia, see AHM, Alcaldía, Tomo 160, Folios 288 and subsequent.

[622] "Solicitud de Rafael Ángel. Octubre 8 de 1901," AHM, Alcaldía, Tomo 160, Folio 288.

could afford. After filing an unsuccessful petition months before, he filed a second request accompanied by a series of letters from different people mentioning that he was the head of a numerous family and had huge financial responsibilities.[623]

The cases of the *antioqueño* Rafael Lema and the *caucanos* Leandro Cuevas and Fidel Ordóñez offer additional examples in this regard. In October 1901, Lema asked Medellín's collectors for a reduction of half his monthly installment. His petition included a complaint against the unfairness of the way in which the local authorities had distributed the contribution. Contributions, he maintained, had to be collected among wealthy Liberals that supported the rebellion, not among poor people –like him– who could not pay their fines without depriving their families of food, regardless of whether they were hostile to the government or not.[624] Around the same time, Cuevas demanded from the *Junta* in Cauca the complete remission of his $100 contribution. His request included the appointment of a few witnesses that should prove that he had maintained a pacific behavior during the war, and that he had not moved from his hometown since the conflict started. Cuevas's witnesses also had to prove that he was a poor bricklayer completely incapable of paying the mentioned sum. His petition succeeded partially. Although authorities did not exonerate him from the war tax, they reduced his contribution to only $30.[625] Ordoñez, finally, had better luck with his petition, in which he explained that he was a poor saddler unable to pay his $50 contribution. Authorities decided to exonerate him after confirming

[623] "Solicitud de Valerio Sierra. Octubre 23 de 1901," AHM, Alcaldía, Tomo 160, Folio 291.

[624] "Solicitud de Rafael Lema. Octubre de 1901," AHM, Alcaldía, Tomo 160, Folio 292.

[625] "Solicitud de Leandro Cuevas. Septiembre/Octubre de 1901," ACC, República, 1901, Caja 296, Legajo 55.

that since the beginning of the war he had not left his workshop and that there were no criminal charges against him.[626]

Arguments of a political nature commonly accompanied petitions grounded on financial reasons. Compared to these, political arguments tended to be more diverse. Some people merely stated that they had remained neutral during the war, and had lent no support to the rebel movement whatsoever. The petition of exoneration of the *caucano* Hilario Escobar, in late 1901, included the testimonies of a group of "friends of the government" accounting for his "peaceful behavior" and non-existent compromises with the rebellion. Authorities denied his request with the argument that "it was impossible to exonerate any disaffected person," but still granted him a substantial reduction of his monthly installments.[627] That was also the case of José Isidro Victoria, also from Cauca, who based his petition on the argument that he had remained neutral during the war and accompanied his request with recommendation letters from two Conservative generals. He would also obtain a reduction of a third of his original contribution.[628]

Other petitions involved more complex political arguments. In his request, the mentioned Rafael Ángel admitted that, as a Liberal, he had to deal with the tax, and understood that contributions had the purpose of punishing rebel activity in the department. He had not taken any part at all in the movement, Ángel explained, and yet the government had sent him once to jail and then charged him with a contribution. Although he understood

[626] "Solicitud de Fidel Ordóñez. Septiembre/Octubre de 1901," ACC, República, Caja 296, Legajo 55.

[627] "Solicitud de Hilario Escobar. Septiembre/Octubre de 1901," ACC, República, Caja 296, Legajo 55.

[628] "Solicitud de José Isidro Victoria. Septiembre/Octubre de 1901," ACC, República, Caja 296, Legajo 55.

that his imprisonment was "preventive," for he was not charged with any crime at all, his petition stressed time and again the fact that he had no compromise at all with the rebellion.[629] Similar arguments accompanied Valerio Sierra's request, in which he maintained that, besides his economic problems, he was completely uninterested in political matters.[630]

Others, particularly in Antioquia, attempted to counter-balance their condition of Liberals –and therefore alleged enemies of the government– with their past experiences at the service of Conservative authorities. Miguel Navarro, for instance, requested a revision of his contribution by arguing that since the beginning of the war he had provided supplies for the Conservative troops, and that he currently worked for the government as a telegraphist. In his opinion, authorities should not charge "helpful" Liberals –like him– with contributions. They should be reserved for those "other" Liberals that, regardless of their attitude towards de rebellion, did not provide the government with any service at all.[631] The petition of Tomás Zapata in October 1901 offers a similar case. In his request, Zapata presented himself as a "friend of the government" and a "Liberal in name only," with no political compromises at all and no feelings of hostility towards the government. He also was careful enough to mention that, at the beginning of the conflict, he had lent Antioquia's government 16 thousand pesos for supplying conservative troops.[632] Agapito Vargas, another petitioner from October 1901, mentioned that he was not only a peaceful

[629] "Solicitud de Rafael Ángel. Octubre 8 de 1901"

[630] "Solicitud de Valerio Sierra. Octubre 23 de 1901"

[631] "Solicitud de Miguel Navarro. Septiembre 26 de 1900," AHM, Alcaldía, Tomo 160, Folio 235.

[632] "Solicitud de Tomás Zapata. Octubre 13 de 1901," AHM, Alcaldía, Tomo 160, Folio 289.

Liberal with no trace of political compromise, but also had helped supply Conservative troops in previous civil wars. Moreover, Vargas pointed out, his son was currently enrolled in the Conservative army.[633]

Some petitioners went even further at the moment of supporting their requests with political arguments. In his petition, the mentioned Rafael Lema maintained that he did not question neither the legality nor the legitimacy of the contributions, but he did question the assumption that every Liberal was an enemy of the government by default. To Lema, the fact that a person had a given political ideology did not make him automatically an enemy or a rebel, especially when ideas were devoid of any subversive aspiration. He was a convinced Liberal, certainly, but he did not cause –or had caused– the government any harm.[634] In a similar light, the *antioqueño* Libardo López claimed in his request that the government had wrongfully overestimated his political compromises. Political compromises, explained the petitioner, were relative by nature, ranking from mere "evil thoughts" to the actual action of taking up arms against the government. López had not been in any rebel camp, was not a party leader, and had no had any contact at all with the military elements of the party. His political allegiances, then, were closer to mere "evil thoughts," the lowest, less significant, and less harmful modality of political dissidence.[635]

[633] "Solicitud de Agapito Vargas. Octubre 190 de 1901," AHM, Alcaldía, Tomo 160, Folio 296.

[634] "Solicitud de Rafael Lema. Octubre de 1901."

[635] "Solicitud de Libardo López. Octubre 23 de 1901," AHM, Alcaldía, Tomo 160, Folio 293.

The negotiation of political imprisonment and forced contributions during the Thousand Days sheds light on an often overlooked aspect of the logic of state mercy *vis-à-vis* political criminality in Colombia: the individual, bottom-up bargaining of punishment and leniency. Governmental offers of grace did not represent the only ways in which actual or alleged political criminals could enjoy the effects of state leniency. Individual petitioning in search of lesser penalties was as important as pardon decrees and amnesty laws were. It was a widespread, recurrent practice that gave several people opportunities to search and obtain redress from the severity –and often arbitrariness– of state retribution. Moreover, it was a process that allowed the government to unfold its dynamics of state mercy outside the immediacy of the battlefields, the formality of the legal acts, and the exceptionality of its generalized manifestations of leniency. By allowing the people to personally request a prison release, a judicial bond, or a lower contribution, the government was able to include in its dynamics of mercy noncombatant dissidents, "peaceful" Liberals, and harmless political adversaries –people who, despite their non-belligerent position, still were the subject of state punishment. These intense yet discreet and somewhat hidden negotiations helped, thus, to extend state mercy throughout the bulk of Colombian society. It was a process that not only involved liberal petitioners and local and provincial authorities, but also people from the two political parties acting both as bondsmen or *fiadores* and as witnesses or recommenders.

What was the kind of mercy at stake in these individual yet generalized negotiations? These were not great and solemn displays of mercy like those that pardons and amnesties used to involve. They were much more modest, commonly partial acts of leniency, conditioned not only by the qualities and background of the individual petitioner

but also by the discretion of local and provincial authorities. Yet, they mattered to both the people that requested them and the authorities in charge of administering them. For a person charged with political crimes or simply punished for being a Liberal, for instance, these small negotiations could make the difference between remaining in or walking out of prison. Individual negotiations also bolstered the power of local and provincial authorities by letting them act as dispensers of mercy in the name of the government, able to decide who deserved mercy and who did not. Furthermore, they gave authorities a unique opportunity to contact, measure, organize, classify, monitor, and control political dissidence within the territories under their control.

This last effect deserves special attention, for it reveals important aspects of the ultimate goals of state mercy in contexts of internal conflict and civil warfare. Leniency benefited both the recipients of the graces in question and the government that granted them. Requests of judicial cautions and petitions concerning forced contribution forced Liberals to appear time and again before the authorities. This interaction gave authorities the chance of gathering information about how many Liberals were in their respective jurisdictions, their residence, their backgrounds, their actions, their connections, and their whereabouts. Bonds put released prisoners under the direct and constant monitoring of authorities, and the promises of "good political behavior" that accompanied them worked as a ritualized practice through which dissidents re-submitted themselves to the government. Such promises forced Liberals to redefine their roles as dissenters and members of the Liberal party, and to rethink what they could and could not do as political agents and members of a political faction. They also represented an attempt to turn malcontents and potential rebels into submissive, harmless dissidents. Petitions concerning

forced contributions, with their reiterative arguments of "good political behavior," neutrality, and disdain for the rebellion also worked in the same direction.

Taken together, all these practices of bargaining had similar effects. They forced Liberals to recognize the legitimacy and authority of the government –as pardons and amnesties did as well–, and to negotiate with authorities the terms, conditions, and meanings of their political subjection. State leniency, either in the form of legal acts of grace or expressed through of individual concessions, always had a cost for its recipients. For pardoned and amnestied combatants, it was the recognition of their defeat and the acknowledgement of the government's legitimacy. For liberal dissidents and others, it was the resignification of their political allegiances and their transformation into harmless political subjects. Either way, the administration of state mercy always ended up with the re-submission of the internal enemy to the government and the strengthening of the authority and legitimacy of the state. The Mexican experience was not that different in this regard.

Conclusions: Towards a Characterization of the Logics of State Leniency in the Porfiriato and the Regeneration

Overall, the logics of state leniency for political crimes in the Porfiriato and the Regeneration did not differ much from the logics of state retribution analyzed in the last two chapters. The dynamics of both retribution and mercy relied on a wide set of formal and informal practices, encompassed a very diverse set of political, legal, and judicial actors, and unfolded simultaneously in multiple spaces. Even more importantly, they both were parallel and complementary manifestations of state power and sovereignty. While one

represented the state's right to punish those who disturbed public order and took up arms against it, the other manifested its prerogative to forgive them. Facing rebellion and other modalities of political criminality, state power did not exclusively operate through displays of force, repression and retaliation: it also unfolded and worked through demonstrations of clemency, compassion, and mercy. By forgiving its internal enemies or allowing them to negotiate their penalties, the state did not necessarily lose power or diminish its attributes of sovereignty and legitimacy. The effect was, indeed, the contrary. State mercy was a powerful tool for bolstering state hegemony, advancing the state's interests in political and military conflicts, stimulating relationships of allegiance, dependence, and patronage, and turning unruly political dissidents into obedient and submissive citizens. Both punishment and mercy were, in sum, expressions of state power that fostered sovereignty, neutralized internal threats, and helped ensure political hegemony.

The logics of state leniency had their own particularities, though. Unlike the workings of state repression, which tended to unfold in a vertical, univocal way, the dynamics of state mercy often functioned in two directions. Political criminals could obtain mercy whether through formal acts of state magnanimity or through individual petitions of pardon or release. While the first mechanism involved a top-down dynamics whereby the state reached its citizens, the second one implied a bottom-up approach where citizens reached the state. It was a two-way relationship that in part relied on the premises that political crimes could be pardoned, that it was expected from the state to forgive political offenders, and that penalties for political crimes could be subject to negotiation and bargaining. As some of the reviewed cases illustrate, negotiation of both punishment and mercy was frequent. It was present, for instance, in the treaties that gave wars closure, in

the political *fianzas* and judicial bonds that allowed political prisoners walk out of jail, and in the petitions concerning forced contributions. Mercy, in this light, fostered interactions between political criminals and the government that, at the same time, stimulated and made possible the exercise and administration of state leniency. It was a cycle of legal and political interactions whose outcomes included, besides the granting of different forms of grace, the emergence of new relational arrangements between state and criminals – arrangements of submission, good political behavior, and similar.

Many different actors intervened in these interactions and made the administration of leniency possible. Rebels in arms; political prisoners; civilians charged with political penalties; public defenders; political and military authorities of different sorts; legislators and congressmen; judges, and even presidents. Not all of them intervened simultaneously, but they all played a part in the overall process of requesting and granting mercy –a process that, directly and indirectly, fostered multiple connections not only among the three public powers but also between them and citizens. Almost as diverse as this network of legal and political actors –and maybe more– were the arguments mediating in this process, encompassing legal, procedural, political, military, and even economic reasons. Political arguments were particularly important at the moment of requesting mercy both in Mexico and Colombia. They reflected in many different ways the petitioners' acceptance of state authority as the primary condition for obtaining pardon, as well as their conversion from dangerous or threatening dissidents into obedient, "well-behaved" citizens. Legal arguments were equally important, especially to determine whether or not authorities should grant mercy and who could or could not enjoy it. These arguments had to do not only with the fulfillment of a number of legal, judicial, and technical steps and

requirements, but also with the existence of conditions and restrictions that could make mercy inapplicable to some offenses or criminals.

This last consideration sheds light on another important characteristic of the administration mercy in the Porfiriato and the Regeneration. State leniency for political crimes was commonly limited and full of restrictions. Pardons and even amnesties in Mexico depended, to a large extent, on Díaz's willingness and on how much the graces could further the President's position in the many political conflicts taking place during the Porfiriato. Similarly, the success of individual requests for mercy in Mexico was often unpredictable and conditioned by circumstances of all sorts. The situation in Colombia was not any different. Treaties and pardons used to leave people out for legal and political reasons, acts of leniency tended to include some crimes and exclude others, and authorities had the power of denying mercy requests on the basis of political and military considerations. Restrictions and conditions tended to vary depending on the circumstances that motivated the graces in question and their ultimate goals. As the Colombian case illustrates, restrictions tended to be wider in pardons decreed in the midst of an armed conflict and relatively minimal in amnesties enacted years after the end of a confrontation. Similarly, acts of mercy aiming to force the rendition of rebels or the termination of a conflict tended to include more restrictions than those that gave a war formal closure or granted pardons for past conflagrations.

Acts of state leniency were diverse both in form and effect. There were important differences between the kind of grace that pardons and amnesties entailed, for instance. Likewise, there was a significant distance between these and other modalities including judicial bonds, petitions of prison release, or any other form of negotiating a given penalty.

While some of them represented formal manifestations of state mercy –amnesties and pardons–, others were legal and judicial mechanisms through which criminals could obtain some sort of redress from the punitive logics of state punishment. Although these forms of redress did not properly represent formal, official acts of mercy, the logics of state benevolence still played a role in them, and their effects somehow pointed in the same direction that amnesties and pardons did. The Mexican case shows that, in some cases, people combined these direct and indirect modalities of leniency with requests of preparatory freedom or *judicial amparos*, merging the logics of state mercy with additional strategies of legal and constitutional protection against state retribution.

There were important differences between the workings of state leniency in the Mexican and Colombian experiences, as well. The Mexican case shows a decentralization of state mercy that, for obvious reasons, did not exist in Colombia. Pardons in Mexico remained a prerogative of the federal Executive, while amnesties were more frequent at the provincial level. This particularity not only accounts for the regional nature of the uprisings of the Porfirian era. It also reveals that, even when these events involved crimes against the federal order, their management in terms of mercy tended to remain in the hands of state legislatures. Another major difference between the Mexican and the Colombian cases had to do with the political uses of mercy. Governments from both countries used amnesties and pardons to force the termination of armed conflicts and the surrender of rebels, and even to grant political prisoners and fugitives leniency after the end of a confrontation. Yet, in the Mexican case, formal acts of leniency seemed to respond as well to greater dynamics of political transaction and cooptation. Díaz administered mercy not only because it was his duty as President, but also because it allowed him to mediate in conflicts over regional

power and tilt the balance in his favor. It was an instrumentalization of mercy that seemed to be much more evident in the Porfirian experience than in the logics of leniency of the Regeneration.

A final difference between Mexico and Colombia refers to the language surrounding the administration of state mercy and what it suggests about understandings of state power in the two cases. In both countries, the figure of presidential pardon had its roots on colonial conceptions of monarchical power and sovereignty, surviving as a reinvention, with modern overtones, of the idea that the sovereign, as father of his people, had the prerogative to forgive them. The singularity in the Mexican case in this regard lies in the fact that its languages of mercy tended to accentuate these colonial legacies in order to uphold the image of Porfirio Díaz as a traditional, patriarchal figure of power. By framing leniency as an expression of Díaz's generosity and sovereignty, languages of mercy in Mexico reveal an understanding of state power in which the relationship between state and citizens seemed modelled after the relationship between a monarch and his subjects. Colonial notions of power and sovereignty still had an echo in late-nineteenth century Mexico –and echo that had major political and legal effects.

CONCLUSIONS: CHARACTERIZING GOVERNMENTAL RESPONSES TO POLITICAL CRIMES AND CRIMINALITY IN THE PORFIRIATO AND THE REGENERATION

Several commonalities linked the experiences of opposition journalists, political agitators, dissident leaders, conspirators, armed and unarmed dissenters, rebels, and other insurrectionists in the Mexican Porfiriato and the Colombian Regeneration. For one thing, they were all stories of political dissidents that dared to challenge by different means the political exclusion, the concentration of power, and the traces of authoritarianism that characterized both regimes. They were also stories of individuals whose political stances and actions made them targets of surveillance, persecution, and repression by the state; experiences of people that paid with their freedom and lives the price of their political challenges. On a more personal level, all these cases tell stories of shut-down newspapers, journalists and partisan leaders forced into exile, writers and common people imprisoned for political reasons, and political prisoners often deprived from basic legal and judicial guarantees. They were, too, stories of uprisings repressed by fire and sword; and rebels hunted down within and outside battlefields; legal and extrajudicial executions, of striking episodes of blood and violence, and even constant and consistent manifestations of mercy and pardon.

Beyond the sphere of direct personal experiences, these cases tell many other stories concerning the functioning of the Mexican and Colombian societies of their time. There is, for instance, the story of the relationships between state and citizens in the Porfiriato and the Regeneration, or the story of how state power worked and manifested in contexts of

intense political conflict and internal turmoil. Other stories concern the evolution of legislation on public order in a climate of almost constant political unrest, as well as the tensions between the protection of individual rights and the safeguarding of order and peace. That is also the case of the changing balance between public powers that marked the evolution of both regimes, and the tensions between these changes and the constitutional and legal frameworks structuring the political life in both countries. Furthermore, there were the stories of constitutions, laws, and a wide array of legislative and executive acts regulating all sorts of conducts and matters; and of their conception, creation and enactment. The stories of how governments and political authorities interpreted, applied, and enforced these laws, and how they affected the experiences and expectations of rebels, dissidents, and other political actors are also fundamental parts of this broader narrative. Repression against rebels and political dissidents in the Porfiriato and the Regeneration offers a window into a wide variety of features characterizing politics, law, and society in Mexico and Colombia.

Questions about the definition and treatment of political crimes and criminals were present in all these stories, either directly or indirectly. Concerns about the meanings of political criminality, its legal and political implications, its differences with other modalities of crime, and the most appropriate ways to respond to it were everywhere in these experiences. What were the differences between criminal and non-criminal dissidence? What were the legal boundaries separating both types of dissidence? Was the criminality of dissent exclusively and purely political? How many forms or modalities of criminal dissent were there? Was the criminalization of dissent a legal, legitimate, and efficient way of keeping political dissidence in check? What were the limits among

criminal dissent, subversion, and overt rebellion? These and many other similar questions link these experiences to the broader matter of political crimes and political criminality. Were all those crimes political? What made them political, in that case? Were they purely political? Which attributes differentiated it from common, ordinary crimes? Did that difference exist beyond the spheres of law, legislation, and legal doctrine? The way in which Mexican and Colombian governments during the Porfiriato and the Regeneration addressed and tried to solve these questions represented the main subject of this study.

Defining and Punishing Political Crimes: A General Overview

Judging from the dozens of cases examined throughout the previous chapters, what were Mexican and Colombian laws, governments, legal experts, and rebels talking about when they talked about political crimes? There was no single, uniform notion defining what these offenses were. Constitutions and criminal codes understood political crimes in an ambiguous way. On the one hand, they conceived political offenses in terms of an abstract criminal category deserving special treatment due to their political nature. On the other hand, they defined a series of offenses of a political nature including a variety of acts and behaviors against the nation, the constitution, the government, and public order. These offenses, nonetheless, did not strictly had a "political" label, and remained associated to a variety of other criminal categories.

Governments, political, military, and judicial authorities, also worked with ambiguous, imprecise notions political criminality. To them, acts against the government, the authorities, and public peace could be sometimes political, sometimes common, and sometimes of a mixed nature. It all depended of the actions included, the people involved,

and even the discretion of the authorities in question. Legislators, legal experts, lawyers, and even rebels often equated political crimes with offenses such as treason, rebellion, sedition, and other similar acts of collective political violence. Laws and executive decrees entailed mutable notions of political criminality, switching from small series of offenses involving different manifestations of collective violence, to large lists of crimes incorporating a variety of "threatening" or "offensive" expressions of individual or collective dissent. The fact that legal definitions of political crimes depended as well on a variety of legal jurisdictions and authorities with different understandings of what political crimes were and what made them criminal rendered this framework even more complex. This plurality of jurisdictions accounts not only for a panoply of different, often rival, legal regimes and authorities within the fragmented sphere of state law. It also accounts for complex interplays between national and foreign legal regimes and legislations, and even between state and "extra-national" legal spheres.

Regardless the scope, ambiguity, or vagueness of the definitions they involved, all these notions and understandings agreed on a few basic ideas about what political crimes were. First and foremost, they were actions and expressions of political dissent, violent or non-violent, collective or individual, and clearly established in the law or not. Secondly, they all had a criminal nature. Legislation, state authorities, and government officials considered them criminal regardless their real nature and the original motivation of their perpetrators. Third, their criminal nature stemmed from the fact that they entailed more or less severe threats to the established structure of the government, governmental institutions and their representatives, state authorities, and public order and peace. These fundamental agreements conditioned a legal and political framework in which authorities could target

almost any manifestation of dissidence as criminal, and where the label "political criminal" could refer to both a simple opposition journalist and a major rebel ringleader. In the Mexican Porfiriato and the Colombian Regeneration, political crimes were not a clear, definite, and stable series of actions straightforwardly defined in a Code or in a specific set of norms. Rather, they represented an abstract criminal category whose contents mutated time and again both in the sphere of law and legislation and in the context of every day politics. Political crimes were flexible and subject of constant redefinitions and reinventions, in correspondence with changing legal, political, judicial, and even military circumstances and interests.

Flexibility and mutability characterized not only the definition but also the treatment of political crimes. Repertoires of governmental responses to political criminality were not restricted to a particular, predictable set of penalties established in a Code. Although these "codified" penalties certainly existed, governments and authorities often broadened and reinvented them either through complementary laws and decrees or through administrative acts and decisions. Under certain circumstances of intense political conflict or severe internal turmoil, such reinventions could go far enough to clash with constitutional and criminal law precepts concerning the treatment of both political offenses and crimes in general. The judgement of political criminals by the military justice, their subjection to court martials with no procedural guarantees, the extradition of political offenders, and the establishment of the death penalty for political crimes illustrate the ultimate consequences of such reinventions. These legal reactions by no means comprised the totality of governmental responses to political crimes. Both in Mexico and Colombia, governments resorted as well to extralegal and extrajudicial practices of punishment in

order to deal with rebels and other "dangerous" political dissidents. It was a way of acting against political criminals without the restrains and limitations established in the Constitution and the law. These extralegal practices included, among others, extrajudicial executions, uses of paramilitary forces against rebel suspects and dissidents, and even political kidnapping.

Overall, what the Mexican and Colombian experiences reveal in this regard is a slight yet significant change over time in the ways in which governments responded to the threats and challenges that political criminals posed. From the late 1870s to the early 1890s, responses to political criminality tended to involve energetic displays of state violence and practices of repression and punishment that commonly challenged existing legal and constitutional parameters. Here, both "legality" and "extra-legality" characterized official reactions to rebels, political agitators, and other troublesome dissidents. Nonetheless, between the late 1890s and the following decade, these responses, at least in their most formal and "official" manifestations, tended to become less violent, less "extra-legal," and more legalistic and reliant on the workings of legislation and judicial authorities. This progressive "legalization" of state repression did not put an end to other extralegal or extrajudicial practices of retribution, though. They still existed, but not as part of those "official" displays of state punishment. They unfolded in the shadows, like a parallel sphere informally linked to the government but still serving its interests, as the Mexican case illustrates.

This general overview raises a series of questions regarding the legal and political workings of state repression *vis-à-vis* political crimes during the Porfiriato and the Regeneration and their transformations over time. Some of these questions have to do with

the political logics behind the definition and criminalization of political offenses. Others refer to the many complexities that characterized the legal treatment of political crimes and criminals. A final set of questions asks about the nature and functioning of a series of apparent dichotomies that were present in the ways in which both Mexican and Colombian governments responded to political criminality. These dichotomies included "the ordinary" and "the extraordinary," "the constitutional" and "the unconstitutional," and "the legal" and "the extralegal." The relationship between "punishment" and "mercy" as possible responses to political crimes also makes part of this set of alleged oppositions under scrutiny.

The Mutable Nature of Political Crimes and the Many Faces of Internal Enmity

Political crimes in the Porfiriato and the Regeneration described a criminal category whose contents were always imprecise and fluid. Barely defined in constitutions and criminal codes, they took form and content over time through a complex series of legal developments, judicial decisions, and reinterpretations of current legislation. Their contents and scope were not only mutable, but also dependent on specific –and always changing– political and military circumstances. These attributes of fluidity and contingency, nevertheless, did not prevent historical definitions of political crimes in Mexico and Colombia from having some degree of consistency. Regardless the multiple forms and contents they took, political crimes always made reference to "criminal" manifestations of political dissent. Understandings about what this criminality was or entailed were also mutable and changed in each country in response to the evolution of their respective political conflicts.

Political criminality, thus, was first and foremost a matter of political dissent. Governments and authorities labeled dissenters criminal anytime they perceived their actions or intentions as "dangerous" or as "threats" against the constitution, the public order, or the legitimate authorities and institutions. Such threats, real or not, turned political criminals into enemies of the government and the larger political community it represented. Their actions were, in this light, acts of internal enmity: political offenders were internal enemies of the nation that threatened to undermine it with their threats against the government and the public order. By labelling them as political criminals, governments and authorities in Mexico and Colombia turned "dangerous" dissenters not into "troublesome" political rivals, but directly into internal enemies of the nation.

Modalities of internal enmity were particularly diverse. Besides the typical acts of treason, rebellion, sedition, riot, and *asonada* and their several gradations defined in the criminal codes, internal enmity also involved a variety of actions whose criminal nature did not depend on any code. The criminalization of these "other" actions emerged from governmental responses to specific conjunctures of political conflict or internal turmoil. Governmental campaigns against opposition press in Mexico and Colombia, for instance, extended current notions of political criminality into the field of journalism and turned dissident journalists into internal enemies. Counter-insurgent endeavors in Mexico during the 1900s practically labelled as "enemy" all people belonging to or sympathizing with the *Partido Liberal Mexicano*. Porfirian repression after the expeditions of Ruiz Sandoval and Garza in the early 1890s fell not only on people that had been actually involved in the movements, but also on a large number of dissidents with no clear links with them. The logics of punishment and retribution in Colombia during the Thousand Days involved

much more than rebel ringleaders, officers, and combatants. It also extended to non-armed liberals that paid with imprisonment, *fianzas*, and forced contributions their political inclinations. At some critical moments, notions of internal enmity in both countries also involved people accused of providing rebels with any kind of support, and even citizens that "did not do enough" in defense of their governments. Regional and national partisan leaders, electoral contestants, and potential military adversaries were subject of political criminalization at some point as well.

Both the Mexican and Colombian experiences show a diversification of political crimes that increased over time. Between the late 1870s to the late 1900s, legal definitions of political criminality became more and more encompassing. This diversification, although simultaneous, had different sources in one case and another. In Mexico, for instance, it emerged out of the judicial sphere, where judicial decisions and interpretations produced a systematic extension of the crimes considered "political." In Colombia, it was primarily the result of legislation and lawmaking. It stemmed from a panoply of consecutive laws and decrees expanding not only the scope of political crimes but also the reasons according to which authorities could label somebody as internal enemy or criminal dissenter. All in all, the systematic extension of political crimes in Mexico and Colombia produced a series of "extended," non-previously codified modalities of internal enmity that had major repercussions on the exercise of political dissidence in both countries.

These other, "extended" modalities of internal enmity deserve attention not only because of what they say about how far governments in Mexico and Colombia went in their efforts to neutralize political dissidence through its criminalization. They also matter because of the political and legal consequences they had. By targeting internal enemies

outside the sphere of actual insurgent movements and beyond battlefields, these "extended" understandings of political criminality generalized internal enmity and state repression throughout the bulk of society. This generalization, nonetheless, had different manifestations and effects in Mexico and Colombia. In Mexico, it covered opposition journalists, rebellion suspects, and other people actually or allegedly linked to the subversive endeavors of the Mexican Liberal Party. In Colombia, it fell at different times on "subversive" writers, political malcontents, "disobedient" public employees, and unarmed liberals with no links at all with any rebel or insurgent movement. This last feature was a striking particularity of the Colombian experience. Unlike the regime of Porfirio Díaz, which criminalized its internal enemies on the grounds of actual or alleged charges of subversion, the Regeneration criminalized not only "subversive" political dissidence but also political affiliation as a whole. As the case of the Thousand Days illustrates, liberals charged with forced contributions were subject to punishment not because they were part of the rebellion, but merely because they belonged to the Liberal Party.

This distinction between the criminalization of certain acts of dissent and the criminalization of political affiliations as a whole marks a substantial difference between the Mexican and the Colombian experiences. Mexican notions of internal enmity, as widespread as they were, maintained the logics of state retribution relatively circumscribed to people directly or indirectly linked to subversive acts, materialized whether though the press or through armed plots. On the contrary, Colombian conceptions of internal enmity fostered an unrestricted dynamic of state punishment that made no major distinctions neither between armed and unarmed dissidents nor between "dangerous" and "non-dangerous" dissenters as targets of repression. The Porfiriato, with its high levels of

authoritarianism and presidentialism and its infamous strategies of political repression and persecution, still involved more contained displays of state retribution than the Colombian case. As the reflections in the next section show, this would not be the only striking difference between Mexico and Colombia in this regard.

Political Crimes and the Law: Between Legal Exceptionalities and Parallel Legal Regimes

Legislation on matters of political criminality during the Porfiriato and the Regeneration was neither uniform nor straightforward. It remained dispersed in constitutions, criminal and military codes, and dozens of laws and legislative decrees. Similarly, it was a changing legislation created and reinvented in different scenarios and through the intervention of a variety of actors. Part of it emerged from congresses and analogous corporations, as the result of legislative debates and agreements and doctrinal conversations. Part of it stemmed from the Executive power and its interpretations and reinventions of current legislation in the midst of specific political and military conjunctures. Some portions of it emanated from the ordinary law, while others did from the parallel sphere of the military legislation. Additional parts of it were merely the creation of diverse local and regional authorities. On the whole, it was a non-systematic and mutable legislation gathering a wide array of voices and emerging out of several places and contexts.

The complexity of this legislation goes way beyond these characteristics, though. It also has to do with the conformation of a series of regimes of exceptionality concerning the criminalization and punishment of political crimes. By defining a series of conditions and limitations for the repression and punishment of political criminality, constitutions and

criminal codes in Mexico and Colombia turned political offenses into a special criminal category whose treatment depended on exceptional rules. As a consequence, political and common criminals were subject to different laws, different punishments, and even different carceral regimes. The exceptional nature of political crimes, together with the distinction between common and political offenses, proved more than problematic issues, though. At a theoretical and doctrinal level, this differentiation was never exempt from questioning, and there were no clear agreements about what exactly separated these two criminal modalities. At a more practical level, the exceptionality of political crimes often clashed with the common practice of indicting rebels on both common and political charges. This combination of charges forced a convergence, in the prosecution and judgement of many political criminals in Mexico and Colombia, of the ordinary legal regime of common criminality and the extraordinary regime of political crimes. These exceptionalities illustrate what was one of the most striking characteristics of the legal treatment of political criminality in both countries: the fragmented, "pluralistic" nature of state law regarding the definition and punishment of political offenses.

The exceptionalities surrounding the legal treatment of political criminality went beyond the "exceptional nature" of political offenses. They also had to do with the fact that, unlike common offenses, political crimes did not necessarily depend on ordinary laws or on the ordinary justice system. Both the Mexican and the Colombian constitutions put the management of public order in the hands of the Executive power, and therefore allowed governments and political authorities to freely legislate on matters of political criminality. As a consequence, the legal treatment of political crimes depended not only on fixed and stable codified precepts, but also on the will of an extraordinary legislative agent able to

reinvent time and again what political crimes were and what sort of punishments they deserved. It is yet another indicator of the aforementioned fragmentation of the sphere of state law *vis-à-vis* political crimes –a de-centralized sphere that involved parallel legal regimes, authorities, and jurisdictions. This particular characteristic was specially notorious in the Colombian case, where legislation on public order and political criminality became practically a monopoly of the Executive and unfolded almost completely outside the spheres of the ordinary law and the formal justice system. It was a monopoly that gave regenerationist governments powerful legal tools for acting against unarmed and armed dissidents, and that submitted Colombian dissenters to a legal regime marked by the lack of legal, constitutional, and judicial protections and guarantees.

Besides establishing a regime of exceptionalities for the treatment of political crimes, and adding to the complexities already mentioned, criminal codes in Mexico and Colombia shaped two different regimes for the penalization of these offenses. On the one hand, there was an abstract regime of political crimes, involving penalties and procedures but no concrete offenses. As a criminal category, political crimes existed in the codes only in abstract –a notion that had legal effects but no specific crimes associated to it. On the other hand, there was a series of crimes that had a clear political nature but no direct recognition as political offenses. The differences and limits between one regime and another were never clear, and therefore the recognition –and punishment– of specific offenses as political crimes depended on the discretion of the authorities in charge of applying and enforcing the codes. This parallelism and the uncertainties that came with it shaped a series of legal grey areas that allowed governments and authorities to define and redefine, at their convenience, what a political crime was and was not. Both the Mexican

and the Colombian experiences offer multiple examples in which authorities denied, on purpose, the political nature of some political offenses or retraced the boundaries between common and political criminalities. It was a common strategy that allowed authorities to repress political criminals without the restrictions that constitutions and criminal codes established for the treatment of their crimes –a strategy that had serious legal and political consequences, as well as elevated costs in terms of lives.

The practices of turning the management of public order an administrative matter and leaving the punishment of rebels to the military justice made the situation even more complex. Both strategies were particularly common in Colombia, and left an imprint of uncertainty and legal insecurity on the legal and judicial experiences of armed and unarmed dissidents alike. There, the "administrative turn" put the definition and punishment of political crimes in a legal sphere separated from other offenses and outside the reach of the Judicial and Legislative powers. It was a parallel, alternative sphere that depended exclusively on the Executive and where the rules regulating the treatment of ordinary offenses barely applied. Analogous effects had the intervention of the military justice in the prosecution and punishment of rebels in contexts of civil warfare, which added another dimension to the already complex panoply of alternative spheres and jurisdictions shaping the legal treatment of political crimes. Involving its own set of rules and provisions, its own system of penalties, and its own judicial procedures, the military justice put the punishment of political crimes even further from the reach of the formal judicial power. Trapped between two legal spheres that granted no legal security and had little regard for constitutional procedural guarantees, political criminals in Colombia were, most of the time, at the mercy of the government and its unbridled manifestations of retribution.

The Colombian and Mexican experiences contrast significantly in this regard. Certainly, the exceptionalities surrounding the treatment of political crimes, together with the existence of parallelisms and grey areas concerning the definition and punishments of these offenses were common to the two cases. So was the intervention of the Executive in the management of public order at the expense of the independence and autonomy of the Legislative and Judicial powers. Yet, the Mexican case shows a more centralized, less complex legal context that relied less on extraordinary, alternative legislation and more on the provisions of the criminal code and the proceedings and decisions of the ordinary justice. Regardless the actual levels of independence and autonomy of Mexico's justice system, it still monopolized the prosecution and judgement of political offenders. This difference is crucial for a variety of reasons. First, it suggests that there was a major difference in the number of jurisdictional spheres that intervened in the treatment of political criminality in one country and another. Second, it implies that the administration of justice *vis-à-vis* political offenders in Mexico was much more centralized and rationalized than it was in Colombia. Third, it demonstrates that political criminals in Mexico, compared with their Colombian counterparts, enjoyed greater degrees of judicial protection and greater procedural guarantees. As personalistic, centralized, and authoritarian as the Porfirian regime might have seemed to its contemporaries, it still granted its dissidents protections that dissenters in Colombia would never be able to fully enjoy –at least not on a regular, systematic basis.

The Fluid, Non-binary Nature of State Power and Punishment in the Porfiriato and the Regeneration

What does the relationship between "the ordinary" and "the extraordinary" in the legal treatment of political crimes in Mexico and Colombia reveal about the nature of the logics of state power and punishment in the Porfiriato and the Regeneration? Above all, it shows that, although there was conflict between "ordinary" and "extraordinary" ways of dealing with political crimes through the law, such ways did not necessarily contradict or exclude one another. The treatment of political criminals was at no point an exclusive matter of either "ordinary" or "extraordinary" legal means. Regardless the conceptual differences separating common and political crimes, "pure" political crimes barely existed in real life. In practice, the treatment of political criminality combined things from the theoretically extraordinary regime of political crimes with things from the ordinary realm of common offenses. This does not mean that authorities, judges, and other political and legal actors considered that political crimes had no special nature at all and therefore treated them as yet another modality of common criminality. It simply means that, even though they recognized and believed in the special nature of political offenses–and they certainly did–, they commonly treated and addressed them in conjunction with other, less exceptional crimes. In practice, "the ordinary" and "the extraordinary" were not mutually exclusive notions. Instead, they marked two possible ways of action that usually complemented each other as part of a major legal strategy concerning the criminalization and punishments of certain actions of political dissidence.

It is possible to develop analogous reflections concerning the nature and workings of the constitutional regimes that in Mexico and Colombia regulated the management of

public order –and therefore the treatment of political criminality. Both the Mexican and the Colombian charters allowed the Executive power to suspend or modify the force of the constitutional rule in cases of internal turmoil, either by allowing it to suspend specific rights or by providing it with almost unrestricted –and certainly undefined– legislative faculties. Was there an actual contradiction between the normal, ordinary regime of the Constitution, on the one hand, and the extraordinary legal regime emanating from these emergency powers? On a superficial level, contradictions seem evident. The suspension of certain individual rights in cases of emergency clearly contradicted basic constitutional principles. So did many of the laws that the Executive enacted in use of these extraordinary powers, as the establishment of the death penalty for political crimes illustrates. Yet, even when these provisions seemed to contradict or annul the spirit of their respective constitutions, they ultimately had a constitutional nature. They emanated from constitutional precepts, and unfolded as part of a constitutional strategy for dealing with actual or potential threats against public order. A significant portion of the logics of state retribution against political criminals in Mexico and Colombia had solid constitutional grounds, regardless how arbitrary –or even illegal– their repressive measures might have seemed.

From this perspective, asking whether or not the logics shaping the legal treatment of political crimes in Mexico and Colombia were constitutional becomes a misleading, imprecise question. Certainly, these logics contradicted and entailed the suspension of several constitutional principles. Yet, their foundations were primarily constitutional. In both cases, constitutions made them possible and gave them force and legitimacy. In this light, what would be a more appropriate way of assessing the constitutional character of

these measures and capturing their historical specificity? An approach that does not conceive "the constitutional" and "the unconstitutional" as absolute, exclusionary notions could be useful in this regard. In Mexico and Colombia alike, the legal management of public order, as well as the legal treatment of political crimes, involved attributes of constitutionality and unconstitutionality at the same time. For the most part, they functioned as the two sides of a same coin: behind the apparent unconstitutional nature of a given measure, there were solid constitutional precepts backing it. Both in Mexico and Colombia, legal and political authoritarianism did not necessarily mean "illegality" or "unconstitutionality." After all, both countries relied on constitutional frameworks that overemphasized the role of the government in the prevention and repression of attacks against public order, and that gave their respective Executives the required constitutional tools for acting in that direction.

Similar considerations apply to the combination, in both Mexico and Colombia, of legal and extralegal responses against political criminality. "Legality" and "extra-legality" were not absolute and mutually exclusive notions. Responses to political crimes in Mexico and Colombia were diverse, complex, and fluid, and entailed both formal and informal, legal and extra-legal practices of punishment and retribution –and even state and private, non-state practices of repression, at least in the Mexican case. Here, "the legal" and "the extralegal" were basically points of reference in a continuum of punitive actions and measures that, depending on their specific purposes, could lean more towards one extreme or the other.

The explanation to this non-exclusive continuity between "legal" and "extralegal" practices of repression lies on the fact that, both in the Porfiriato and the Regeneration,

punishment and retribution did not work in a univocal, straightforward way. They entailed multiple responses to a variety of legal, political, and military challenges. Likewise, they unfolded in reaction to diverse circumstances and aimed towards a diversity of goals. In some contexts, repression was nothing but a matter of law enforcement. In other situations, it was just a political strategy that governments and authorities deployed against "problematic" dissenters. Sometimes, repression had the primary goal of upholding state sovereignty and legitimacy against political challenges that rebels and other "unruly" dissidents posed. In some cases, governments used repression as an intimidation tool tending to discourage the workings of both unarmed and armed dissidents. In other circumstances, repression had no other goal than neutralizing such workings through unbridled displays of retribution aiming to crush and defeat the dissidents in question. It was a variety of factors, purposes, and situations that demanded an analogous diversity in the ways in which governments responded to them. The merging of legal and extralegal strategies in the repression of rebels and other dissidents emerged precisely out of this demand. More than opposite, irreconcilable extremes, "the legal" and "the extralegal" acted here primarily as complementary strategies serving an overall purpose.

A final dichotomy concerning the logics of state power and retribution in Mexico and Colombia that deserves an analogous reconsideration has to do with the notions of "repression" and "pardon" –or "punishment" and "leniency." As concepts referring to specific ways of treating political criminals, repression and pardon did not represent exclusive options. Mexican and Colombian governments alike responded to rebellion and other modalities of political criminality with a strategic combination of punishment and mercy. Here, neither repression implied a total absence of leniency nor mercy entailed a

complete abandonment of punishment as a possible response to political crimes. Instead, they both worked and complemented each other as manifestations of state power and sovereignty. State power in the Porfiriato and the Regeneration not only operated through displays of force, repression, and retaliation. It also unfolded and worked through demonstrations of clemency, compassion, and mercy. Mercy was, indeed, a powerful and effective tool for bolstering state hegemony, fostering political obedience, and even neutralizing "dangerous" manifestations of dissidence –just as repression and punishment were. Both in Mexico and Colombia, the inclination of governments towards a more repressive or a more lenient treatment of political criminals within specific circumstances depended, in every case, on a series of legal, political and military considerations. Here, neither the administration of punishment nor the granting of mercy were incidental: they all responded to specific needs and interests.

Comparing Mexico and Colombia: Concluding Remarks

On the whole, the comparison between the Mexican and Colombian experiences reveals that political crimes had a fluid, mutable nature. Their meaning, always changing, depended on a diversity of legal, political, and military circumstances, and emerged out of the concurrence of multiple instances and interests. Governmental responses to these crimes were as flexible as those meanings were. They involved a variety of changing strategies, both legal and extralegal, that unfolded and evolved in correspondence with concrete needs and purposes. Most of the time, these strategies pushed and redefined the limits that laws and constitutions established in order to protect citizens from unbridled displays of state power and retribution. Although such redefinitions took relatively

analogous forms in Mexico and Colombia, there were important differences between one case and another.

Three differences stand out here as the most striking in terms of their repercussions for the experiences of political criminals in each country. The first one has to do with the jurisdictional complexity involved in the prosecution and judgement of political crimes, which was greater in Colombia than in Mexico. The next one concerns the levels of legal and constitutional exceptionality underlying the treatment of political offenders, higher, again, in the Colombian case. The last one refers to the maintenance of basic constitutional guarantees and judicial protections in the punishment of political criminals, which was much more effective in Mexico than in Colombia. These differences made the administration of justice for political crimes in Mexico simpler and more straightforward than in Colombia, and made possible that Mexican political offenders enjoyed greater degrees of legal security and judicial protection than their Colombian counterparts.

The contrast in this regard is intriguing. The Porfiriato was a highly personalistic and –relatively– autocratic regime, where matters of public order and political criminality did not experience significant legal developments, and whose strategies against "dangerous" dissidence involved a diversity of extralegal displays of state retribution. The Regeneration, on the contrary, experienced regular changes of president, fostered continuous legal developments in matters of public order and political crimes, and entailed highly legalized responses to rebellion and other "criminal" manifestations of dissent. Considering these circumstances, it would be tempting to think that the treatment of political criminals was more unpredictable, unregulated, and devoid of basic protections in Mexico than in Colombia. Yet, this study shows that the opposite was true. For most of the

period under examination, political criminals in Colombia remained at the mercy of a series of logics of state retribution that unfolded away from any formal legal, constitutional, or judicial restriction. Constitutional and procedural guarantees for offenders were almost inexistent, and the formal justice system could barely intervene on their behalf. It was a situation that strikingly differed from what occurred during the Porfiriato. In Mexico, the treatment of political criminals –at least of those that did not fall victim of Diaz's extralegal, semi-privatized, and overly-violent strategies of repression– commonly remained in the hands of the ordinary justice system. Criminals also had a diverse repertoire of constitutional guarantees that they could invoke to obtain some sort of redress from the regime's iron fist.

These conclusions raise a number of questions for future research. How did Mexican authorities respond to political criminality during the Mexican Revolution, and to what extent these responses parallel those of Colombia during the Thousand Days? What characterized the legal treatment of other forms of criminality in both countries during the Porfiriato and the Regeneration? Can the comparative study of these other criminal categories reinforce or question the conclusions of this study? How did lawyers, legal experts, and legislators discussed about the definition and punishment of these other crimes, and what were the differences between these conversations and the ones revolving around the treatment of political criminality? Did Mexico and Colombia share a common intellectual framework for thinking about other crimes as they did in the case of political crimes? From the perspective of other modalities of criminality, how similar or how different were the legal cultures of Mexico and Colombia during the period? These are just a few questions suggesting the potential of further comparative analyses between the

experiences of Mexico and Colombia during the period. Additional questions could involve comparisons with other Latin American countries, and even with other Atlantic experiences throughout the decades in question. As this dissertation has demonstrated, comparative studies of this nature are valuable not only because of what they reveal regarding the nature and development of certain legal phenomena in specific historical contexts. They are also crucial considering what they uncover concerning the very essence of the workings of state power and the relationship between state and citizens in concrete historical settings.

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2015. "Loyalties, Rivalries, and Internal Conflicts: An Overview of the Political Associations in Colombia in the 1860s and 1870s." 15th Annual Graduate History Conference. Florida International University, Department of History (March 27). Miami, Florida.