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# Death and Democracy

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WORKING PAPER N° 43

**DEATH AND DEMOCRACY  
CAPITAL PUNISHMENT AFTER THE FALL OF ROSAS**

Ricardo D. Salvatore \*

August 1997

**ABSTRACT:** After the fall of Rosas, the new leadership of Buenos Aires province tried to build a new institutional framework more in tune with liberal principles. Before they could achieve much institutional change, however, liberals had to construct the memories of the past dictatorship and deal with the menace of a resiliente and rebellious rural culture. They accomplished the former through the trials of the 'assassins of 1840'. They dealt with the latter in a notoriously brutal fashion: executing common delinquents and exposing their dead bodies to the public view. Thus, despite the commitment of liberals to construct a liberal (and humane) social and political order, the practice of public executions continued unabated. The very free press, which was one of the achievements of the new democratic regime, helped to create the conditions for the acceptance of public executions. Unable to depart with the pedagogy of exemplary punishment and conscious of the need to mark their difference with the Rosas regime, liberals used public executions in a parsimonious fashion.

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Death and Democracy:  
Capital Punishment after the Fall of Rosas  
Ricardo D. Salvatore\*\*

In 1852 the firm Baring Brothers sent an agent to Buenos Aires to persuade the government to renew negotiations on the question of the 1824 loan, still unpaid. The agent, according to H.S. Ferns, brought with him a rifle and pair of pistols to regale the new governor Urquiza. Soon after his arrival, he changed his mind and sold the gift. He considered it inappropriate to the new political climate. "In this country --he wrote in his diary-- conditions have changed in extreme... all the dignataries and officers I dealt with are illustrated doctors in law and peaceful civilians. Thanks God, the era of caudillos is passed [my emphasis]."<sup>1</sup> New sensibilities brought to the political arena by the new liberal leadership anticipated a time of peace and prosperity, the end of an era of civil wars, caudillo politics, and brutality.

In a sense the British agent was not mistaken. To contemporaries, the years which followed Caseros were lived as a period of historical discontinuity. Daily reminded of the crimes committed by the Rosas regime, and promised, almost as frequently, that things from then on would be different, contemporaries came to accept that view that the Tiranía was a terrible experience, never again to be repeated. Though the process of institutional reform was just beginning, the fall of the dictator was interpreted as the opening of enormous possibilities for the enhancement of individual liberties. In particular, people expected that the brutality and arbitrariness of the past regime would give way to a regime that protected the property and life of citizens. An independent judiciary and the democratization of the political system would guarantee these rights. If this was so, fire arms would cease to be a necessity.

Far from an irreversible trend, the process of institution-building which followed Caseros encountered many obstacles. The debate about key issues for the future of the province (government finances, banks and money, taxation, and recruitment) added instability and uncertainty to the lives of porteños. Whereas the launching of the first railroad project and the free transportation of the rivers created favorable expectations about economic growth, peace was not yet a solid conquest. After the liberal journée of September 11, 1852 (which liberated the city from Urquiza forces), various events assailed the tranquility of porteños: the siege to the city by General Lagos, several landings of Urquicista troops, Indian invasions to the western frontier, and rumors of insurrections in the Littoral provinces. In addition, in the mid-1850s, the population of Buenos Aires was assaulted by a quite modern fear: a crime panic. Contemporaries

experienced this transition as a time of individual and collective insecurity. The promises of the liberal leadership notwithstanding, porteños had still many reasons to keep their fire arms at hand.

If the Baring Brothers agent had stayed long enough, he would have noticed also some important elements of continuity undermining his early assessment. He would have seen in the capital, or perhaps in countryside towns, the spectacle of public executions being conducted for the sake of the new liberal order. Some forty of these spectacles were carried out between 1852 and 1864. If he was an assiduous reader of local newspapers, the British agent would have concluded that Buenos Aires was not as safe as he had thought: 'illustrated doctors' were busy passing death sentences to murderers while 'peaceful civilians' lived under the menace of crime. The past Dictatorship did not seem so distant in these regards.

The executions were little different from those conducted during the Rosas administration and, what is more important, those who presented capital punishment as necessary for the preservation of social order used arguments reminiscent of those used by the 'Restorer of the Laws.'

Despite important differences between Rosismo and the liberal administrations, judges continued to believe in the efficacy of exemplary punishment. Executions, in particular, were deemed essential to the legal and political apprenticeship of lower-class people. Whether the regime was a 'Tyranny' or a 'Democracy' did not make much difference, for the lower-classes remained 'uncivilized' and lawless. Among subaltern subjects, judges thought, the sight of hanged bodies produced enough fear to keep them from committing crimes. The confidence liberals deposited on the new institutions (elementary schools, immigration laws, and civic militias) did nothing to undermine this basic belief. On the contrary, the experience of Rosismo, reinforced the views that a resilient rural culture, still prone to violence, could only be taught into 'democracy' and 'progress' with the pedagogy of terror.

This paper investigates the role of capital punishment in the construction of a social and political order after Caseros. The suggestion that there is a relationship of necessity between 'death' and 'democracy' points to the continuity of penal policy between Rosismo and the liberal regimes which followed. Still a preliminary stage of a longer research project, the paper tries to map the contours of a problem ignored by Argentine historiography: the sentencing to death of common criminals during the decade following the fall of Rosas.

How could the same pedagogy of terror serve two distinct social and political experiments? What sustained the necessity of public executions after Caseros? Why did common murders become such a public threat? Was there a parallel continuity in public sensibilities about executions? These are some of the questions which stimulate my inquiry. Traditional explanations of the abolition of the death penalty in Argentina had overlooked this important moment of transition. Political histories, guided by the same enthusiasm and

partisanship as the British agent, had overestimated the changes between the Rosas and the liberal periods. It is a good time to review these conventional wisdoms, and nothing better than the hanging pole to fix our attention.

### The Death Penalty

Before its abolition in 1921, the death had been profusely used to sustain the social and political order of the republic. The first revolutionary Junta (1810) had sentenced to death conspirators against the new government. The first Triunvirate (1811) had used the hanging pole to punish the corsaries acting in the name of the Spanish crown. The Assembly of 1813 --known for its decisions leading to the abolition of privileges of nobility, instruments of torture, and the freedom of slaves' children-- had established capital punishment for desertion. Director Posadas and Alvear (1814-15) had used the death penalty against duelists, traitors, and deserters.<sup>1</sup>

The Rosas regime used executions to punish a variety of crimes: political, military, and civil. The regime executed recidivist deserters, political adversaries accused of treason or rebellion, and common criminals --in particular, assassins and thieves. In military campaigns, both federales and unitarios resorted to shootings or deqüellos (beheading with a knife) as a culmination of a favorable battle. Engaged in a confrontation aimed at the total elimination of the enemy, unitarios and federales believed that the course of the war could turn adverse if they stopped the execution of prisoners. In times of peace, authorities applied the doctrine of exemplary punishment to the task of restoring social and political order. Governor Rosas, granted extraordinary faculties in 1835 to 'restore order', resorted to public executions as an important instrument of pacification.

The Constitution of 1853 (enacted by the congress of Santa Fé and not ratified by the province of Buenos Aires until 1860) abolished capital punishment for political motives and prohibited executions through 'lance and knife.' The death penalty for common crimes remained, with the only change that the condemned would be shot (and then hanged) instead of knifed. For the authorities of Buenos Aires, the limitations contained in a constitution they had not signed were of no significance. Criminal judges continued basing their sentences on the Spanish colonial legislation, which prescribed the death penalty for a variety of crimes.

Judged by the numbers of executions, 1855 and 1856 were years of resurgence of the death penalty.<sup>2</sup> Magnified by the press, a wave of crimes re-activated among porteños the memories of the violent past. As the perception of personal

<sup>1</sup> "Las ejecuciones en la historia argentina," Qué Sucedió en Siete Días, no.88, June 19, 1956, pp. 6-7.

<sup>2</sup> The number of death sentences for crímenes alevés were: 11 in 1855, 8 in 1856, 4 in 1857, 3 in 1858, 1 in 1859, 2 in 1860, 2 in 1861, none in 1862, 4 in

insecurity grew, so did the necessity of capital punishment. Responding to this crime panic, judges resorted to stiff sentences against delinquents. Those accused of 'treacherous murders' (crímenes alevos) received commonly the death penalty. After 1856, the numbers of annual executions declined until in 1864, when they virtually ceased to exist. After that year, executions continued to be carried out in institutional or enclosed environment (the army, the prison) or applied to special situations (rebellion and wars), but not in public spaces and not applied to common criminals.

The same factors which had facilitated the resurgence of the death penalty in 1855-56 contributed to its decline after 1856. The involvement of 'public opinion' in criminal cases --stimulated by the same publicists who wanted to secure the liberal order-- worked after 1856 in the opposite direction. The public reaction to the death sentence of a female assassin in that year forced the judiciary to reconsider the morality and necessity of capital punishment. Clorinda Sarracán, a woman accused of the brutal murder of his husband in complicity with his lover, had been sentenced to death. As rumors circulated that Sarracán was pregnant, the public turned against the programmed execution. A petition signed by 7,000 made the Buenos Aires legislature suspend the execution. The Superior Tribunal of Justice, considering that the legislature had trespassed its own jurisdiction, refused to consider other cases contemplating the death penalty.

The suspension of this execution prevented the completion of others, preparing the terrain for a congressional debate on the need for the abolition of the death penalty. After 1856, new institutional obstacles made death sentences less frequent. In September 1857 the legislature passed a law authorizing the governor to commute death sentences for treacherous crimes (crímenes alevos). The same year, the Chamber decreed the suspension of the practice of hanging the dead bodies of the executed. In 1858 the Chamber made compulsory the consultation of death sentences with superior courts. In 1859 the Superior Tribunal of Justice decreed that all death sentences should be confirmed by the superior court by a unanimous decision.<sup>3</sup>

This short cycle of public executions (with its two phases of enthusiasm and rejection) coincided with the experiment led by liberals to establish a new institutional order. Because part of this new order was predicated on the notion of greater citizen participation, and because the leadership tried to differentiate their political project from the past Dictatorship, we have called 'democracy' to this ideal referencial regime. The services that capital punishment could provide to this political project depended on the state of 'public opinion' and on the 'menaces' facing society and the state. These were constructed states, emerging at the conjuncture of a dynamic relationship between

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1863, 1 in 1864. Information taken from El Judicial, 1855-1864.

<sup>3</sup> Abelardo Levaggi, Historia del Derecho Penal Argentino (Buenos Aires: Perrot, 1978), 135-36.

magistrates, the press, and the public. These estates of opinion and fear presented politicians and judges with the ingredients to reinforce or disactivate the machinery of the scaffold. In what follows, I discuss in part this dynamic, examining in turn the executions, the 'moral panic' and the arguments which sustained them, and the political uses of death for a liberal republican order.

### The Executions

In the first years after Caseros (1852-1853) judges extended death sentences mainly to the authors of aberrant political crimes during the Dictatorship. Figures such as Badía, Troncoso, Cuitiño, and others were executed as a means of reassuring the inhabitants of Buenos Aires that the new regime, despite its troubles, could at least do justice to the assassins of the massacres of 1840 and 1842. Though much was said in these trials to implicate Rosas as ultimate responsible for this type of violence, the new authorities postponed accusing directly the ex-governor until 1857.<sup>4</sup> After 1853, there was a shift in the direction of policy, as a result of which capital punishment came to be associated with the repression of aberrant common murders. All death sentences passed between 1855 and 1864 referred to cases of aggravated murder, sometimes in combination with assault and robbery. This shift in policy coincided with two important changes in the public sphere: the perceived rise of interpersonal (non-political) violence; and the new importance attributed to the question of the 'heritage of Rosismo' in the political arena.

While the press might be held responsible for rousing public enthusiasm and alarm round the question of violent crimes, and certainly the press was the medium used by liberal politicians to accuse each other of having participated in the past Dictatorship, it was the decisions and the rationale generated within the judiciary which led to the abandonment of the prosecution of political criminals. After 1853 judges were lenient with regard to political crimes committed during the Rosas administration, absolving all but a few infamous members of the regime. Even Antonino Reyes, Rosas' faithful secretary for many years, was absolved of all wrong-doings in 1855, after having been sentenced to death a year earlier.

Judges justified these absolutions with two different arguments. One was the doctrine of uncontrollable fear according to which members of the regime were said to have acted, not only following orders from Rosas (directly or indirectly), but also on the knowledge that, if they did not comply with these orders, their life would be in danger. Like an state of mental disorder or emotional distress, fear made the accused irresponsible for his crimes. The other was the doctrine of generalized savagery, according to which soldiers,

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<sup>4</sup> Early on, we must remember, the new government confiscated Rosas' assets. The confrontation between liberal porteños and the Urquicistas concentrated on the question of the legal or illegal means by which Rosas' fortune was obtained. His responsibility in the assassinations, torture, and other forms of violence

officers, policemen and other auxiliaries of the Rosas regime were said to have acted with a cruelty and violence that was characteristic of the period. The dictatorship had impregnated social relations with a high level of violence, making violence 'natural' among lower-class subjects, particularly among peasants. Therefore, the mere belonging to this 'class' or the fact of having lived through the experience of Rosismo was considered an alleviating circumstance for murder.

In March 1848, Manuel G. López, an alcalde during the Rosas administration, ordered the shooting of a Basque prisoner put under his custody. When tried in November 1855, the prosecution asked for the death penalty. The judge, instead, sentenced López to five years in prison (the Cámara later confirmed this sentence). To ground this verdict, the judge invoked the doctrine of generalized savagery. The accused's condition (lower-class) and political sympathies (federalist), in the particular context of the Rosas Dictatorship, served to explain and excuse his criminal behavior.<sup>5</sup> A complementary argument used by the defense, that the accused must have felt "compelled" to commit this crime to protect himself from any punishment from the governor, was also accepted by the court as reasonable. Given Rosas' unbounded and arbitrary power, it was normal to assume that fear should dominate the behavior of a local policeman.<sup>6</sup>

In 1869, another crime committed under the dictatorship was pardoned under a similar argument. Mariano F. Espiñeira, arrested in 1848 by the justice of peace Calixto Calderón, spent 14 months at the prison of Santos Lugares just for saying that federalist soldiers were mercedarios.<sup>7</sup> His arrest came from a suggestion (not even an order) made by general Pacheco to the justice of peace. After Caseros, Espiñeira sued Calderón for unjustified imprisonment, unsuspecting that his case would drag along in the courts for 18 years. In 1869, when the final decision came, he was shocked. The Cámara pardoned Calderón (already dead) based on the doctrine of fear: the justice of peace, the judges stated, was unable to defy one of Rosas generals without risking his life. The "fear to provoke the Tyran's ire" was sufficient reason to justify the Calderón's conduct; under a regime of terror, Calderón could have done nothing else but try to satisfy Rosas.

In fact, argued the chamber, not Pacheco but Rosas was the ultimate responsible

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exercised by his administration were considered several years later.

<sup>5</sup> "Que no habiéndose probado a López otro crimen, ó hecho que demuestre perversidad de alma en una época en que la crueldad y la violencia eran la disposición habitual de los hombres de su condición y principios políticos, debe darse a las circunstancias que le desfavorecen una interpretación más benigna." El Judicial, May 29, 1855.

<sup>6</sup> "Que siendo López un empleado que custodiaba a Curuchete y debía presentarlo vivo o muerto, no está en el riguroso deber de probar su excepción, cuando después de un acontecimiento como el que motiva este proceso, pasado sin testigos, asegura que se vió necesitado a ejecutar el hecho para salvar su responsabilidad, que en la época de Rosas no tenía límites en semejantes casos; y tiene derecho por consiguiente a que toda duda a este respecto se resuelva en su favor...." Ibid.

"Pleito que, ya, lleva 18 años," El Judicial, October 20, 1869.



for Espiñeira's arrest.

In this way, the judges eliminated the penal responsibility of the agents of state violence, concentrating all the blame in a few political actors. Devoid of legal arguments to prosecute other authors of 'excesses' during the past regime, lawyers ceased presenting these type of cases. As a result, many state violations against the lives and property of citizens were never fully investigated, much less tried in a court of law. The murders for which the 'assessins of 1840' were tried represented a small proportion of all the political assassinations allegedly committed during the Rosas administration. Despite the press' insistence on reactivating the public's memory about the excesses of the past regime, the judiciary chosed to put an end to the issue.<sup>8</sup> This explains why, after 1853, the hanging pole was reserved almost exclusively for the punishment of common criminals.

Our reconstruction of public executions for the period 1855-1864 places the number of executions in the neighborhood of 36 to 40, almost all of them in cases of aggravated murder.<sup>9</sup> Other executions, chiefly those carried out within army barracks and those for crimes not considered aleves, might have escaped registration. Though not impressive, in comparison with the numbers of executions carried out contemporaneously in the United States and Europe, this estimate is indicative that liberals were as much willing to resort to capital punishment as the hated Dictator. The main criterion judges used for extending death sentences was that the crime be committed with some degree of premeditation and treachery. Hanging, in particular, was reserved to cases considered crímenes aleves.

What constituted a crimen aleve can be measured by the sentences judges passed. Usually, the murderers had used a disproportionate amount of violence against their victims and had carried out their crimes with treachery. Pedro Alcántara García, for example, had killed Lucas González with a pole, striking many times the head of the victim while the latter was sleeping. Juan José Acosta, sentenced to death in 1855, had killed Teresa Martínez with a knife, after raping her --apparently, after she rejected in his sexual advances. Tomás Ordoñez, also executed in 1855, was said to have knifed Agustín Agüero, without any words or dispute, while the victim was sitting in a baile. Or the case of

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<sup>8</sup> Ironically, the same liberal leadership who seemed so interested in unveiling the crimes of the past Dictatorship, was reluctant to prosecute all the authors of political assassinations during the Rosas era. Valentín Alsina, president of the lawyers' association and member of the Cámara de Justicia was also a publicist, directly involved in the recreation of the memory of the crimes of Rosas.

According to the information provided by El Judicial the number of death sentences passed between 1855 and 1864 amounted to 36. This figure probably contains an underestimation of the order of 10 to 20 percent. As some judges failed to pass the information to the editor of El Judicial, the journal was not confident that the death sentences published were all. For the crucial period 1852-54, we do not have a reliable estimation on the number of times the judges used capital punishment.

Raymundo Reyes, who killed a fellow peon with a burning log, desfiguring his face. These were crimes which stroke the sensibilities of the population.

Moreover, the brutality of these crimes reminded judges of the violence of the past Dictatorship. Judge Federico Olmo, trying to convey in his sentence the treacherous nature of the crime committed by Santiago Molina and Loreto Heredia in 1856, compared the murder with the killing of animals.<sup>10</sup> Lassoed and dragged through the dirt like a calf, the victim was later knifed across the neck (dequello), as peons would do in the slaughterhouse (matadero). This method of killing was the one preferred by the Mashorca to dispense with Rosas political opponents. The association between the slaughterhouse and the terror of the Rosas period, a compelling motif in Sarmiento's Facundo, in Ascasubi's La Refalosa, and many travel narratives, was a signal of ominous developments. The countryside, still dominated by the political culture of Rosismo, was accustomed to killing people like animals. Hence the need for the continuity of exemplary punishment.

The characteristics of some victims (female, very young, elder, Indian, foreign, etc.) must have added notariety to the crime, but it was the treacherous nature of the murder which led judges to opt for the capital punishment. Of the 33 victims of murder recorded, we find that 27 of them were male and six female.

Generally, the victims were relatives or lovers of the murderers or were desconocidos killed in the environment of anonymity and confusion of a pulpería or baile. Passion, economic gains, or simple revenge were the most current motives declared at the trials. There were, however, other crimes in which the felon seem to have killed for no apparent reason. The numbers of foreigners and native-born among the victims were almost the same. Among the victims were an aborigin, a pardo and a moreno, the rest must have been of white or triqueño complexion. We know little about the occupations of the victims: among the male victims we find pulperos, ranchers, artists, peons, bakers, peasants, and policemen; the occupation of the female victims was not recorded.

Most executions took place near the site where the murder was committed. Of 34 sentences recorded, 23 corresponded to places outside of the city, rural towns such as Salto, Arrecifes, Tandil, Dolores, Azul, etc. --only the pueblos (medium-size towns) could hold this type of spectacles.<sup>11</sup> Death sentences in Buenos Aires were less frequent (11 out of 34). Generally, the executions took place in the central square of these towns, where the neighbors were invited to attend. Presumably, peasants constituted the majority of the witness of these executions; they were the ones to whom this pedagogy of death was addressed.

<sup>10</sup> "... y aún la forma misma del asesinato, en la que, equiparándose la víctima a un irracional, fue llevado a la rastra al matadero." El Judicial, June 27, 1856.

<sup>11</sup> When Raymundo Reyes was shot and hanged, his body was exposed in the square of Dolores because the place where he committed the murder, Tuyú, was still not a 'town'. El Judicial, February 23, 1856. The same happened when Santiago Molina and Loreto Cejas were executed; their execution was scheduled in

Considered a territory in which the legacy of the Rosas period was still strong, the countryside was also the site of a culture traditionally rebellious and resilient to progress. Horrible rural crimes, as interpreted by judges, were only an enactment of the barbarism left by an epoch of terror and violence.

In the form they were carried out, these executions differed little from those of the Rosas era. After a priest delivered his sermon, the sentenced was placed in a stool or bench (banquillo) and shot by a firing squadron. Usually, he was offered the alternative of being blind-folded or looking his own execution. After the shooting, his body was hanged from a pole or on an elevated wooden structure resembling the scaffold (patíbulo) and exposed to the public gaze. Only those sentenced for crimenes alevés were subject to the hanging and exhibition of the dead bodies; the rest were sentenced to death by shooting but not exposed afterwards.<sup>12</sup> In all case the "suspension of bodies" lasted between four and eight hours. Another carry over from the Rosas period was the system of lottery: in the cases where more than one felon was sentenced to death, a lottery decided which one would be executed. The rest generally saved their lives (their sentences commuted) but were compelled to watch the execution. To add suspense and drama to the spectacle, the 'lucky' ones turned into privileged observers of exemplary justice.

Publicity, though limited, was one of the main objectives of the hangings. Executions were public events in which the liberal state communicated the citizens important lessons of governance. In the town where the condemned was to be hanged, judges ordered the posting of sufficient notices of execution. Though the local public was welcome to witness the ceremony, extra-locals were discouraged from attending. The judges who sentenced Santiago Molina and Loreto Cejas, for example, wanted the whole vecindario of Dolores to observe the event and ordered the distribution of execution notices in all towns of the Department. Though ample, the invitation excluded people from other departments as well as those who were not vecinos (neighbors), mainly transients and travellers.<sup>13</sup> Perhaps, judges were trying to prevent the formation of riotous crowds, or the attendance of relatives and friends of the condemned.

The short time the bodies were exposed (usually from four to eight hours) was related to the memory of early hangings, during the Rosas era, in which the crowds either desecrated the bodies of the executed or showed sympathy to the

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Dolores because Pila was not yet a town.

<sup>12</sup> Victoriano Pacheco, sentenced to death for murder and assault in 1855, was shot in Independence square and then buried. His body was not exposed to the public gaze.

<sup>13</sup> In other cases, execution notices were distributed to the justices of other districts but were not posted, so as to avoid unwelcome visitors. The order of execution of Tomás Ordoñez prescribed: "The chief of police [of Tandil] should print enough number of copies, and order them to be posted in public sites, and have them circulated with equal object to the justices of peace of the countryside the same day of the execution or afterwards in the districts in which they did not reach in time." El Judicial, July 11, 1855.

felons' plight.<sup>14</sup> The degradation or abuse of bodily parts evoked the cruelty, profanity, and excesses of the civil war, aspects of a history liberals wanted to leave in the past. Under the reign of freedom, the bodies of the executed had to be sanitised, whole, and untouched, that is, distinct from the decapitated bodies rotting on the sidewalks and from the heads exposed on pikes of the previous epoch. In addition, short exposures reflected the 'parsimony of violence' which liberals associated with democratic regimes. A liberal regime had to constrain itself from inflicting a punishment considered too disproportionate to the felon's crime. The exhibition of bodies served the purpose of establishing the law upon the eyes of the public, but a prolonged exhibition would have projected a wrong image.

Public executions were little different in the post-Caseros period from the Rosas era. The way in which the executions were carried out were quite the same, except for two aspects: the time the bodies were exposed, and the publicity given to the event. We know that during the Rosas period, the bodies of the executed were exhibited for at least half a day, generally more: they were generally shot in the morning, and the bodies remained exposed to the public view until sundown. In the public executions carried out between 1852 and 1857, the exposures of bodies was limited to four, six, or eight hours. In the Rosas period, the publicity of executions depended on the nature of the crime committed. If the crime was desertion, the execution was carried out within the quarters of a garrison, no public allowed to witness (except for those who 'won' the lottery). In the cases of murder, theft, kidnapping, and other grave crimes, Rosas ordered the death sentence but not always this resulted in a public execution.

Considering the number of executions in the two periods, the differences are not significant. In the most reliable figures, the number of official public executions ordered by governor Rosas (not including shooting of unitario military officers, or collective killings of indigenous peoples) reaches 52.<sup>15</sup> Of these, 24 were deserted soldiers executed within regiments or frontier garrisons (hence,

<sup>14</sup> A fictionalized narrative of how crowds profanated the bodies of the Reynafé brothers, the assassins of gral. Facundo Quiroga, can be found in Eduardo Gutiérrez, Juan Manuel de Rosas. Los Dramas del Terror,...

<sup>15</sup> In May 1865 El Judicial published a summary of the punishments inflicted by Rosas, taken from the sentence of the trial. According to this source, 315 were sentenced to death, 1,411 to forced service in the army, 176 went to prison, 93 received whippings, 93 were declared subject to persecution, elimination, and pillage (the unitarios), one was sentenced to banishment, and one to forced labor. In total, there were 2,090 registered victims of the past tyranny. Among those 'sentenced' to death, the journal included 124 Indians shot by the military in a public square in 1836, eleven unitario military officers shot in San Nicolás 1831 and Arroyo del Medio 1839, as well as many murders committed by the Mashorca during the night and without any written order (much less a sentence). A greatly exaggerated account of Rosista violence was Rivera Indarte's Tablas de Sangre: the author claimed that Rosas had killed by degüello 1,765 persons, had shot 1,393, had assassinated 722, and had poisoned four. In addition, there were 14,920 who were killed in combat. Ernesto Quiroga Micheo, "Los Mazorqueros ¿Gente decente o asesinos?", Todo es Historia, no. 308 (March 1993), p.47.

spectacles not open to the public); the rest (28) were individuals accused of a variety of crimes (9 for homicide, 8 for robbery, 3 for assault resulting in wounds, 3 for political reasons, 2 for fleeing a prison, 1 for vagrancy, and 2 for various felonies).<sup>16</sup> The latter figure (28) compares favorably with the number of executions carried out by the liberal regimes which followed general Rosas. And this needs to be underlined. No matter how different things were in terms of political assassinations, confiscations, and banishment, or in the use of the justice system for recruiting purposes, Rosas and the post-Caseros leadership shared the same belief on the necessity and efficacy of capital punishment. Only that they applied it to different criminals: Rosas used it to scare deserters, unitarios, thieves, and other law offenders; the post-Caseros leadership reserved the capital punishment for the mashorqueros of the past regime and for murders of the democratic period.

### The Making of a Moral Panic

The judicial experiment with capital punishment found in the liberal press one of its major supporters.<sup>17</sup> Directly, the liberal press applauded the execution of the mashorqueros as a form of legitimate public reparation of crimes committed by the past dictatorship. Indirectly, it contributed to create an environment of fear, a situation close to a 'moral panic,' in which capital punishment appeared as necessary for the restoration of social order.<sup>18</sup> Liberal publicists accompanied the transition between executions of political murderers and executions of common murderers, providing the necessary connections between the new 'crime wave' and the legacies of the past regime. Informing the public about horrible and aberrant crimes, reminding the public about the violence of the Rosas era and, keeping high the public confidence on the new justice system, the liberal press processed and directed the 'public interest' in support of exemplary punishment.

The siege of Buenos Aires by General Lagos (December 1852-March 53) re-activated the fears of a resurgence of Rosismo. The countryside, carrying the old federalist banners, was attacking the city in retaliation for the policies of the new liberal government. Urban publicists, to support the liberal cause, construed the besieging army as a phantom of the past, as an assembly of federalist brutes, given to depravity and cruelty.<sup>19</sup> El Nacional, for example, reported acts of incredible savagery committed by Lagos' troops: shootings, degüellos, castrations, among others. La Tribuna carried the story of an elderly woman being stripped and whipped in front of soldiers on Urquiza's orders. The

<sup>16</sup> "Sentencia contra Rosas," El Judicial, March 5, 1865.

<sup>17</sup> I refer to newspapers like Sarmiento's El Nacional, Mitre's Los Debates, Calvo's La Reforma Pacífica, and La Tribuna.

<sup>18</sup> For the concept of a 'moral panic' see Stanley Cohen, Folk Devils and Moral Panics (New York: St. Martin's Press, 1980).

<sup>19</sup> The Guardsmen defending the city, instead, were portrayed as self-controlled and disciplined citizens-in-arms fighting for 'freedom.'

instrument used, assured the newspaper, was not a regular whip (chicote) but a verga used by the Mashorca in times of Rosas.<sup>20</sup>

The depiction of the cruelties of 'federales' prepared public opinion for the future trials against the Rosista leadership. As soon as the siege was lifted, liberal publicists started to demand the trial and punishment of the "assassins of 1840" and the confiscation of all Rosas' assets.<sup>21</sup> The demand for justice, in view of the recent events, was necessarily limited. Instead of requiring that all the functionaries of the past regime be put on trial, liberals urged the sentencing of the most conspicuous members of the Mashorca: Reyes, Cuitiño, Troncoso, Badía, among others. As it became clear later, these trials would be the scenario in which liberals would reconstitute public memories in support of their political project.

The capture and trial of the 'assassins of 1840' proceeded swiftly -- between August and November, the justice system tried the main authors of the killings of 1840 and 1842. Of nine persons accused for these crimes, five were sentenced to death. During this time, newspapers encouraged the public to engage in the trials, denouncing the cruelties committed to their families by the accused or the losses of property suffered as a consequence of their actions.<sup>22</sup>

Newspapers reported the condition and state of mind of the accused, celebrating their death in anticipation.<sup>23</sup> The readers responded with enthusiasm to the news: according to historian Sáenz Quesada, "...la gente se arremolinaba frente a los periódicos para comprar las ediciones especiales donde se detallaban los truculentos asesinatos de la Mazorca."<sup>24</sup>

Soon, the public knew about the death sentences of Badía, Troncoso, Suárez, Cuitiño and Alén. The liberal press backed these decisions with enthusiasm. La Tribuna warned its readers neither to forget the crimes of the Mashorca nor to pardon the assassins, and urged the public to support the death penalty as the only chance to contain popular violence.<sup>25</sup> El Nacional published the whole

<sup>20</sup> La Tribuna, August 25, 1853.

<sup>21</sup> The editorial of La Tribuna of August 9, 1853, read: "El pueblo de Buenos Aires pide a voces el castigo de los asesinos del año 40, en desagravio a la moral pública ultrajada y como único medio de establecer sobre bases seguras la fusión política que el mismo Urquiza ha proclamado..."

<sup>22</sup> "Llamamos la atención sobre los Edictos Judiciales que se registran en nuestras columnas, citando a todos los que tengan que acusar a esos célebres bandidos, a todos los que tengan que llorar la pérdida de un padre, un hijo, un esposo, una persona querida arrebatada por la alevosía de un puñal asesino, a todos los que se vean privados de sus fortunas adquiridas legalmente, y que hayan sido infamemente despojados por la arbitrariedad y la fuerza bruta. ¡Ciertos estamos que no serán pocas las acusaciones que fulminen contra los bandidos de los años 40 y 42!". La Tribuna, August 13, 1853. While Antonino Reyes was in prison, a portrait of him was shown in a merchant's warehouse, so as to familiarize the public with one of the leading figures of the past regime.

<sup>23</sup> Under arrest, these 'ferocious murderers' seemed tamed, commented El Nacional, as if accepting in advance that their time had passed. "La Mashorca," El Nacional, March 15, 1853.

<sup>24</sup> María Sáenz Quesada, "Crímenes después de Caseros," Todo es Historia, no. 85 (June 1974), p.36.

<sup>25</sup> "Si no aplicásemos inmediatamente la última pena a esos verdugos,

sentence against the mashorqueros in October 1853, accompanied by comments emphasizing the import of the judicial decision. According to this paper, the execution of Badía and Troncoso taught a lesson to the lower classes, a lesson which could prevent in the future the repetition of 'tyranny.'<sup>26</sup> The satirical periodical El Diablo put the news of the executions in harsher terms: Rosas' assassins had been given a 'passport to hell' where the Devil was eagerly waiting for them.<sup>27</sup> Los Debates celebrated the execution of mashorqueros as a popular, democratic achievement, phrasing the events in words similar to those used by the judiciary.<sup>28</sup> The public executions of political criminal would serve for the escarmiento of common criminals.

From October to December, porteños witnessed two executions each month, in a climate which was described by the liberal press as the vindication of republican principles.<sup>29</sup> In November, Floro Vázquez, an officer of the rebel forces was tried and sentenced for the brutal death of two young officers of the National Guard. El Nacional, which had followed the case, published the death sentence against Vázquez, and reported his execution on November 24, 1853. The writer (probably Sarmiento) remarked the cold-bloodness and serenity of the accused in the face of death, how he asked to address the public, how he threw his jacket against the crowd, and how he blind-folded himself and laughed before the shooting.<sup>30</sup> The newspaper did not comment how fast the whole process had been, the execution being staged only three days after the sentence was passed. On late December followed the execution of Ciriaco Cuitiño and Leandro Alén. These were the last offenders executed for political crimes. From then on the scaffold was used to show the excesses and treachery committed by common criminals.

Gradually, the press prepared the public to accept the notion that personal violence was on the rise, even though the province was in the road to political pacification. Newspapers, which had started dealing mostly with political and institutional issues, added soon a column about crime. Some murders, considered

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abriríamos para lo futuro las puertas a un mal que difícilmente podríamos contener más tarde; haríamos comprender a los reos que la flojedad, que siempre nos ha perdido, es el Juez que los arrebataría ahora de las manos de la Justicia, y entonces ¿qué habríamos adelantado?". La Tribuna, August 11, 1853.

<sup>26</sup> "En este sentido, la sentencia de los asesinos Badía y Troncoso, va a contribuir a derramar en el pueblo las sanas doctrinas, que descendiendo hasta las últimas clases de la sociedad acompañadas del ejemplo, harán imposible toda tiranía entre nosotros. Tales son [las doctrinas], que el asesinato no se prescribe jamás, y que hay siempre una mano justiciera que persigue al criminal hasta entregarle atado de pies bajo la cuchilla y que nadie debe obediencia a sus superiores para violar las leyes divinas y humanas, sino para hacer aquello que sea lícito..." El Nacional, October 18, 1853.

<sup>27</sup> El Nacional in its issue of November 14, 1853, reproduced with enthusiasm this article of El Diablo.

<sup>28</sup> "Los diez mil hombres se disiparon en un día como el humo, y Troncoso, Badía, Cuitiño y los degolladores que habían ensangrentado en otro tiempo las calles de Buenos Aires gritando '!Mueran los Salvages unitarios!', subieron al patíbulo para escarmiento de los criminales." Los Debates, November 11, 1857.

<sup>29</sup> Ibid., pp.36-38.

extreme for their cruelty and cold-bloodness, were single out as 'news' and reported with gruesome detail. The killing of whole families, the murder of pregnant women, or the ensañamiento shown by some assassins produced an outburst of public condemnation which soon turned the case into a 'cause célèbre'.

To establish the new public danger, newspapers resorted to impressionistic accounts of life in the countryside.<sup>31</sup> Let us read, for example, how La Reforma Pacífica described the situation in Quilmes in 1856:

"... a las 12 del día se asesina un hombre o se le dá puñaladas, y los malhechores se burlan de la justicia, porque no se les persigue, porque no se les castiga. Al entrarse el sol, ya no se puede tener abierta una casa de familia por los escándalos y riñas que tienen esos vagabundos, sin más ocupación que la del cuchillo en una mano y el naipe en la otra..."<sup>32</sup>

The new insecurity to the persons and property of citizens coincided with massive Indian attacks on the frontier. Liberal newspapers, nonetheless, chose to focus on the rise of personal crimes among lower-class cristianos. Their main strategy was to bring to the light --to put before the eyes of the citizenry-- the dark side of rural popular culture. To this effect, nothing produced a greater effect than reporting crímenes alevés.

The murder of the estanciero Planes, his wife, two daughters, and a peon in the district of Ranchos in November 1855 caught the public's attention. The knowledge that a whole family was 'executed' by peons of the same ranch and that a young peon was killed while sleeping attracted public curiosity, not only because the crimes were brutal and cold blooded, but also because they were difficult to comprehend. The motivation of this multiple murder, theft, did not squared with the brutality of its execution.<sup>33</sup> And, more importantly for urban residents, the event showed the enormous potential for violence hidden in an apparently peaceful countryside.<sup>34</sup>

The 'celebrity' of a crime, explained El Judicial, was given by "the ferocity of killers, by the indefension of the victims, and by the bloody details of the execution."<sup>35</sup> The case of Raymundo Reyes, who killed a fellow peon with a

<sup>30</sup> El Nacional, November 22 and 24, 1853.

<sup>31</sup> Crime statistics were few, but those in existence were used to create the same sense of public danger. Homicides were rising to a "terrifying figure", observed El Judicial in May 1855, after reviewing the current arrest figures. Of the 113 prisoners in the state jail, 101 were accused of murder.

<sup>32</sup> La Reforma Pacífica, December 6, 1856.

<sup>33</sup> El Judicial carried the news of this crime in the issues of November 17 and 29, and December 11, 1855.

<sup>34</sup> Locally, the resonance of the case was important: the justice of peace had no trouble in gathering fifty vecinos to chase the alleged murderers, some of the parties reaching the province of Santa Fe and arresting the accused. But in Buenos Aires, the event would have passed unnoticed, unless reported by the newspapers. El Judicial complained that between November 2nd, when the crime was committed, and November 17th, when the crime was reported by Crónica, porteños were unaware of the existence of such a violent crime.

<sup>35</sup> El Judicial, November 29, 1855.



burning log, desfiguring his face, or the case of Juan Sosa, who assassinated his lover's husband in front of the latter's wife and children, provoked horror and repulsion among readers. Certain spaces, such as the the ranch, the farm, and the pulpería appeared as repositories of potential violence. Among crimes considered aberrant, none more intriguing and repulsive than those committed against women. The killing of pregnant women, the rape and kidnapping of young girls, or passionnal crimes involving jelous husbands caught the immediate attention of the public.

Crime enigmas were particularly suitable news. When the body of a young lady (Da. Edelvira Iriarte y Rivadavia) was found on the banks of the river, the public found in the case a fertile terrain to knit all kinds of stories.<sup>36</sup> The press, stimulated by 'public interest', tried to solve the mystery, providing information where only gossip and rumor existed. The cooperation between the 'public voice' and the press alerted the justice system about the case and kept the interest high.<sup>37</sup> The excitment found among the public was such that the Chamber of Justice made its employees work during festive days (Easter) in order to elucidate the case.<sup>38</sup>

Though Buenos Aires was still closer to a gran aldea than to a metropolis, publicists found in the city a brutality and perversion proper of London, Paris, or other European cities. The origin of such violence was, of course, the penetration of rural culture in the city. Not by coincidence, the panic about crime grew immediately after the rebel forces ended the siege of Buenos Aires. The second half of 1853 inaugurated a 'golden age' for criminals, asserts M. Sáenz Quesada. By 1854 the moral panic was already established. The most incredible stories run across the city, spreading fear among the residents: stories of gangs of children assauting jewelry stores, of delinquents who undressed their victims in the street, of rings of professional robbers (such as that of Domingo Parodi, el jorobado), of immigrant quinteros (horticulturalists) brutally attacked in their way to the market. In this context of fear, publicists demanded the restoration of hangings and lashes for common robbers -- punishments which were at odds with the new liberal sensibilities and contrary to judicial practice.<sup>39</sup> By 1855 porteños were demanding greater controls of brothels, Black dancing academies, and produce markets as means to curtail the perceived crime epidemic. Sieged by the dark forces of rural culture, the city --the refuge of civilized democracy-- seemed unable to offer security of property and life to its citizens.

Why this new interest of liberals in crime? The question had a political

<sup>36</sup> "Mil conjeturas se hacen sacadas de diversos hechos que se dicen concocidos y la prensa insta por su esclarecimiento" --commented El Judicial, December 11, 1855.

<sup>37</sup> "El Tribunal ha sido instruído por los diarios de esta capital y por la voz pública, que le viernes de la semana anterior fue encontrado el cadáver de una joven en la ribera del río en el bajo del Socorro." Ibid.

<sup>38</sup> El Judicial, December 17, 1855.

importance. Personal indefension in the face of barbarous attacks was a major weakness of the new democratic regime, for it meant that the property of families and of businesses (the two basic supports of a political regime based on possessive individualism) could not be safeguarded. This indefension was particularly threatening when creole delinquents discharged their vengeance on immigrants. That is why, Los Debates, a political newspaper, called the attention of its readership to the 'Crime of San Vicente.' An immigrant businessman, Sr. Ponzatti, has lost all his capital, when two masked individuals had entered his property, barbarously beaten his Black maid, and burned his store to the ground.<sup>40</sup> Crime could potentially stop immigration, one of the pillars of the liberal project for reconstructing the nation.

To an extent, the press was undermining the liberal project, painting a picture of growing personal insecurity just when the liberal leadership was claiming some progress in the reconstruction of republican institutions. Some publicists, aware of this contradiction, tried to find some answers. The solution to this riddle was to locate the danger outside, that is, in the countryside, and secondly, to blame the past dictatorship for the resurgence of personal violence. The thesis of the Rosas legacy, used to hang the mashorqueros, could be now applied to explaining the rise in criminality. Whereas the new republican institutions (including the new National Guard) were able to contain the resurgence of federalists as a political threat, the cultural heritage of Rosismo was still intact. This meant, among other things, a propensity for brutality and violence in rural areas which was hard to control.

Reflecting upon the new crime wave, El Judicial found various factors responsible for this situation: the legacy of the Dictatorship ("los hábitos feroces contraídos en 18 años de dictadura"); the increase in the number of rural taverns (pulperías), places of a wild sociability, out of the reach of the state; the generalized use of the knife to solve personal differences; and the lack of religious and civil education among the lower classes.<sup>41</sup> Among these factors, the heritage of Rosismo was given a prominent place in the liberal press.

Making the connection between horrible crimes and the past Dictatorship was, in some cases quite natural. The murder of a pregnant woman and his two children in Chapaleufú in 1856 brought immediately the association with the case of Camila O'Gorman, a pregnant woman executed by Rosas' orders in 1848. Without mentioning the case, El Judicial, could blame the murder on the Rosista legacy by simply activating collective memories.

"Es deplorable, desconsuela ver reaparecer en tan corto tiempo delitos que por su crueldad y barbarie, parecen ajenos a la época de moralidad y progreso, de que tanto nos ufanamos. Sólo en tiempo de la dictadura se vieron crímenes parecidos a éstos, los que aún

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<sup>39</sup> See M. Sáenz Quesada, "Crímenes después de Caseros,"...

<sup>40</sup> "Crimen de San Vicente," Los Debates, January 3, 1858.

<sup>41</sup> El Judicial, May 1, 1855.

duermen velados por el misterio, y se atribuyeron entonces a la política sanguinaria del dictador."<sup>42</sup>

To the editor of El Judicial, even minor crimes were taken as signs that the monster of anarchy was awakening. In April 1855, the journal reported various incidents involving soldiers which disturbed the tranquility of the town of San Nicolás.<sup>43</sup> A soldier shooting an officer, a fight between two soldiers in a wedding, soldiers' threatening and killing immigrants during a carnival night all pointed to an state of tolerated illegality resembling the years of the Mashorca.

To the liberal elite, the connection between the past regime and the current wave of violent crimes was clear. To the rest of the population, this was not self-evident. Mainly because most of the population was atuned to local news, transmitted via rumor, violent crimes committed elsewhere had a minor impact on the life of each town. More importantly, peasants tended to associate the fall of Rosas with a decline in number of requisitions and forced recruitments, that is, with a time of pacification. To convince them that these were violent times must have required an important effort. To establish in popular mentality the connection between the past dictatorship and the current rise in criminality, liberals would spend over the four or five years which followed Caseros rivers of ink and volumes of paper.

A renewal of the book industry served to make available an increasing number of titles dealing with the past regime. The same year Sarmiento's Campaña en el Ejército Grande was made available through the newspapers (1853), El Nacional published Ascasubi's poem La Refalosa, probably the most enduring condemnation of the violence of the Rosas regime.<sup>44</sup> In 1853 also the Imprenta de Mayo was advertising to the National Guards the publication of Rivera Indarte's works, one of the poets and publicists more prolific in his attacks to Rosas.<sup>45</sup> Titles such as Rosas y su hija en la Quinta de Olivos (1852), Episodios Sangrientos del año 40 (1856), El prisionero de Santos Lugares (1857), or Los mártires de Buenos Aires (1857) contributed to the enterprise of re-actualizing the memories of the dictatorship. In addition to printed materials, liberals made available visual images of the Rosista leaders as a means to consolidate the popular rejection of the past. In the Fussoni brothers' warehouse, a painting of Antonino Reyes was exhibited, inviting the public to see one of the most powerful men in the Rosas regime.<sup>46</sup> Associating portraits with crimes, liberals expected

<sup>42</sup> El Judicial, July 11, 1856.

<sup>43</sup> El Judicial, April 1, 1855.

<sup>44</sup> Also in 1853, appeared the compilation of Ascasubi's poems entitled Trovos de Paulino Lucero, a book exalted by Sarmiento as the best effort to pull the gaucho from its lethargic past.

<sup>45</sup> "A los Guardias Nacionales," La Tribuna, August 18, 1853.

<sup>46</sup> "Exhibición pública--En la calle del Perú no. 62, en el almacén naval de los Señores Fussone Hermanos, se halla de exposición el Retrato del primer cómplice de las maldades de Rosas titulado Teniente Coronel Antonino Reyes, condecorado con la Gran Cruz de la Mashorca. Invitamos al público a que pase a conocer a éste famoso discípulo de Caco, cuyo retrato tiene bastante semejanza con el original." La Tribuna, August 18, 1853.

the public to remember better the 'villains' being discussed in the news.

Once established, the 'Rosista legacy of violence' could serve two purposes: to help people distinguish clearly between a democratic present and a dictatorial past; and to explicate the rising criminality as a resurgence of the past, as the sign of the unfinished project of civilizing the pampas. The scaffold served these political objectives well. A visible demonstration of the effectiveness of the justice system in the punishment of crime, the executions gave legitimacy to the new justice system. The violence shown was public, institutionally sanctioned, and bounded. This differentiated the new regime from the past dictatorship. Also, as most of the criminals were from rural origins, urbanites could contemplate on the hanging poles the remnants of a culture still uncivilized, brutal and violent. As a containment of the barbarity of rural life and as the exorcism of a tyrannical past, executions provided an important service to the liberal project of reconstruction.

### The Politics of Death

To the liberal leadership that controlled the politics of the city after 1852, capital punishment was a necessary instrument for political stabilization but, at the same time, a medicine to be used carefully and in small doses. When in 1853 La Tribuna demanded the death of the 'assessins of 1840' as a pre-condition for the forging of a new political union, many liberals took as self-evident the connection between capital punishment and a liberal democratic regime. The death of mashorqueros was a pre-condition for the functioning of liberal republican institutions. Not only because the pedagogy of death embedded in the hangings promised to contain popular excesses dangerous to the stability of these institutions (the possibility of the 'people' overthrowing elected governments), but also because the killing of leading figures of the Mashorca separated the ideal liberal regime from the past experience of Rosismo.<sup>47</sup> Establishing that distance --putting an end to the era of caudillos and civil wars-- was essential for the success of the new experiment of refounding the republic along liberal principles.

Buenos Aires, claimed the liberals, was leading a 'political regeneration' which required reactivating the memories of the past, reestablishing the legitimacy of the justice system, and recreating the public trust on political institutions. To all these objectives, capital punishment provided an indispensable assistance. For the spectacles of death served to impress citizens about the power of the law, while reminding them of the brutality and excesses of

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<sup>47</sup> This is not the place to deal with the political and social project of liberals. The institutional structures recommended by Sarmiento and Alberdi (the limitations to the authority of the executive, the electoral system and the legislatures, the municipal regime, the distinction between civil and political liberties, the condition of the immigrant, etc.) and their differences are brilliantly discussed in N. Botana, La Tradición Republicana (Buenos Aires: Sudamericana, 1984), cap. 7.

the past dictatorship. Watching the mashorqueros hang from poles, citizen-viewers would realize that the time of civil wars, the period of polarization of 'opinion,' was over, and hence, would start building the social and political 'fusion' necessary for the working of a republican democracy.<sup>48</sup> Disactivating the old antinomies (unitarios vs. federales) required the staging of public dramas which could mark the end of an era and, at the same time, cleanse the political community of its wounds. The re-foundation of a republican order demanded first the reconstitution of a moral community (the citizenry), lacerated and divided by eighteen years of Dictatorship. The reparation of "public moral" gained by these executions would create a climate of cooperation in which it would be possible to pass institutional reforms leading to enhanced citizen control of government.

Similar to the period of Anarchy which led to the formation of the Pax Rosista (1820-1835), this was a time of transition, a time in which it was necessary to 'calm the passions' in order to institute an stable system of governance. Post-Caseros liberals, the same as governor Rosas, had to reconstitute "order" as a pre-condition for the establishment of political and legal authority.<sup>49</sup> Hence, it is not remarkable to find that both Rosas and the liberals believed in the necessity of public executions as the guarantee of the stability of government. But the conceptions Rosas and the liberals had of the political utility of death was different.<sup>50</sup> To Rosas, the nation (Federation) was engaged in a Holy war whose ultimate end was the extermination of unitarios.

In a Republic threatened by domestic agitators and by foreign forces, state-induced violence was a condition for the restoration of order.<sup>51</sup> As the war was

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<sup>48</sup> 'Fusion' was the word used, referring to a sort of armistice between ex-unitarios and ex-federales necessary for the working of the new political institutions.

<sup>49</sup> Liberals' depiction of the Rosista regime as a time without law is incorrect. Rosas legitimized most of their decisions in the mandate he received to establish an effective legal order and was quite successful in establishing this order. Similarly, in the provinces, other caudillos acted on the basis of an authority granted by laws and legal political institutions. See R. Salvatore, "'El Imperio de la Ley': Delito, estado y sociedad en la era Rosista," Delito y Sociedad, año 3, no. 4-5 (1993-94), 93-118; and N. Goldman, "Legalidad y legitimidad en el caudillismo: Juan Facundo Quiroga y La Rioja en el interior rioplatense (1810-1835)," Boletín del Instituto de Historia Argentina y Americana Dr. Emilio Ravignani, 3a. serie, no. 7 (1993), 31-58.

<sup>50</sup> The argument that distinguishes the Rosas regime as an 'state of terror' and the liberal regime as a moderate regime respectful of individual liberties is not convincing. Public executions (whether used by Rosas or by its liberal successors) were a form of terror conceived by state functionaries as a means of terrifying the population into obedience of the law or of the federalist system. Compared with that of liberals, the authority invested in Rosas was certainly vast, almost without limits. Also, the liberal state might have produced in the end a lesser number of deaths than the Rosas regime (we are not at all certain at this point that this was so). But both regimes used 'terror': the execution of criminals, the shooting of deserters and political rebels, the 'repressive incursions' into Indian territory.

<sup>51</sup> For the meaning of the Republic displayed in public events during the Rosas period, see my "Fiestas Federales: Representaciones de la República en el Buenos Aires rosista," Entrepasados, no. 11 (December 1996).

total, so was violence. The post-Caseros porteño leadership, on the other hand, had a more parsimonious view of violence. State violence could produce the new social and political amalgam (the 'fusion') required for overcoming 'anarchy' and establishing the reign of 'freedom' only if used in limited doses. 'National' reconstruction under a liberal model entailed the building of an array of institutions (electoral methods, communications, municipalities, schools, national militias, tax-collection systems) requiring a degree of consent from the citizenry. Stretched between the demands of 'authority' and the imperatives of 'freedom', liberals conceived state violence as selective, contained, and exemplar.

In a liberal republic, state violence could never be extreme. It had to remain within bounds, in the same way as the power of the executive was bounded.

It was only a means for directing public attention to the double dangers of a past always ready to re-emerge (caudillo politics) and of a culture still uncivilized and violent (rural culture). This explains the 'parsimony of violence' exercised by liberals. Compared with the Rosas period, executions during the Post-Caseros era were limited in at least two regards: their publicity and the time the bodies were exposed. Liberals' conception of a limited democracy restricted the publicity of executions.<sup>52</sup> While liberals wanted to tell a political message through the bodies of the executed, they were not prepared to deal with large numbers of viewers. Only neighbors (vecinos) -- the local incarnation of citizens in the countryside-- were invited to witness the executions; extra-local crowds were unwellcome. What mattered was the other type of publicity, the dissemination of news through the newspaper, a publicity targeted mainly to urban inhabitants with reading skills. This was the audience liberals wanted to instruct. A plethora of publications about crime (and about the Rosista era) coexisting with limited publicity of executions revealed the nature of the 'democracy' imagined by liberals: a regime reserved to the participation of an informed and civilized citizenry, preferably urban, proud of their struggles against Dictatorship, and scornful of everything related to the countryside.

By exposing the bodies of the executed during short periods, liberals sought to educate the most humble members of the republic (the illiterate peasant and laborer) about the power of the law and, simultaneously, to show the self-limitation of a government respectful of individual liberties. The judges who ordered capital sentences did not wish the public to associate liberal governments with an unbounded authority to inflict damage. They preferred 'sanitized' executions, devoid of cruelty and as little exposed to people's reactions (festive or riotous) as possible. In particular, they wanted to prevent bodies from being mocked, touched, profanated by the crowds. In a

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<sup>52</sup> Alberdi's distinction between unlimited civil liberties and limited political liberties clearly exemplifies the fear liberals had of extending democracy to the masses.

representative democracy political sovereignty was entrusted on government and could not be directly exercised by the people. Peoples' interaction with the bodies of the executed (hanging vegetables, damaging organs, spitting on them) was not only uncivilized and brutal but conveyed a dangerous proximity between political sovereignty and authority. This proximity was a sign of the 'inarticulate democracy' of the Rosas period, a symptom of a regime which tolerated and exploited popular excesses in exchange for adulation and loyalty.

The violence unleashed by the liberal state was different from that of the Rosas period in another crucial aspect. While Rosas terror consistently (with ebbs and flows given by the evolution of politics and war) targeted unitarios, army deserters, and common delinquents, the public violence of the new regime shifted rapidly its destination. At first, it concentrated on the assassins of the past regime (that is, state-sponsored violence), but then, after 1853, it redirected towards common murderers. Though the trial and execution of the 'assassins of 1840' seemed at the time as epoch-making events, in the long run, the executions of common murderers overpassed those of political criminals in a proportion close to 7 to 1. Why was this so? Why this shift in criminal policy? Was there a change in the liberal perception of social and political threats? Why were the executions of common murders so important for the political legitimacy of the regime?

One of the clues can be found in the different treatment afforded by common and political criminals in the courts, a difference explicable only within the context of an hegemonic discourse about the legacies of Rosismo. The same arguments that served to create the crime panic of 1854-55 and which lent support to the executions of common murderers were used by judges for a radically different purpose: to exonerate political criminals from all guilt. Once the murders of 1840 and 1842 had been 'cleansed' with the execution of five members of the Mashorca, judges started to reject new charges brought against other assassins of the past regime. In a political environment charged with mutual accusations and suspicions --many of them, based on alleged participation in the past dictatorship-- judges considered that it was best to put the issue to rest.<sup>53</sup> Except for a minority of persistent, doctrinaire unitarios, the rest of the population was suspect of having assisted the Rosas regime in one way or another, and this was dangerous to the stability of the political system. If everybody was (or could have been) a mashorquero, then nobody was endowed with the public virtues required for elective positions. To calm this muddy waters, judges found a simple and clever solution: Rosas was to be blamed for all the violence of the past, so that all other authorities or employees would be excused for their crimes, for they were only obeying orders. The trial of Rosas, opened

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<sup>53</sup> The rosista terror, claimed La Reforma Pacífica in 1856, was replaced by the fear of being publicly difamated. Every politician was calling the other masorquero as a means to win elections. "El Terror," La Reforma Pacífica, December 2, 1856.

in 1857, closed all other proceedings against political murderers.<sup>54</sup>

This solution was consistent with the image liberals wanted to affirm about the past Dictatorship: a political system based on terror, in which policemen, bureaucrats, and local justices had unwillingly followed irrational and criminal orders. In a way, all reverted back to the center of the political model: to Rosas. This view of the past included, in addition to this earlier version of the argument of obediencia debida<sup>55</sup>, a cultural perspective which considered the 'federalist plebe' endowed with all the attributes of Barbarism. In this point, judges and liberal publicists coincided: the Rosista legacy included, besides the passivity of people subjected to tyrannical authority, a natural propensity to violence, a propensity which, like the fear, was not easy to control. As following a text which had previously explained the limits and possibilities of the republic (Sarmiento's Facundo), liberals arranged their arguments so that the ultimate reason was always the same: Barbarism. ("La barbarie, siempre el fantasma de la barbarie", Botana, La Tradición Republicana, p.347)

We need only evoke the arguments used by liberal publicists in favor of the death penalty and for explaining the rise in criminality of the mid 1850s to see how the discourse Rosista legacy was used politically. The memories of the Dictatorship were always part of these arguments, coloring all explanations and discussions. It was the fault of Rosas, argued El Judicial, that 'we' now find the popular classes abandoned to themselves, that is, without the benefits of education and religious instruction. To fabricate republican virtue out of this raw material --a rural culture untouched by any moral campaign, by any civilizing mission-- was close to impossible.<sup>56</sup> A similar argument, frequently deployed, stated that subaltern subjects, specially in the countryside, were accustomed to violence. They had worked violently, slaughtering cattle, mares, and sheep for their livelihood --an argument repeated by most travellers-- and, hence, in contact with knives and blood all the time. And, having contributed to the Pax Rosista with their military services --killing unitarios and Indians with the same passion and brutality-- violence was already part of their customs and habits. Was it possible to reform them?<sup>57</sup>

<sup>54</sup> For a discussion of the ideological bias and formal errors of the Rosas trial, see Vicente Zito Lema, "La condena judicial de Rosas," Todo es Historia, no.34 (February 1970), 42-52.

<sup>55</sup> This early version of the doctrine of obediencia debida rested on the two arguments we discussed earlier ('generalized savagery' and 'uncontrollable fear'). The doctrine was used in the 1980s to absolve those responsible for the violation of human rights and was made law in....

<sup>56</sup> This reflection came from a visit judges made to the Buenos Aires prison. "Abandonados los presos a sí mismos, privados de toda ocupación como de toda distracción, sumidos por consiguiente en el ocio, fuente de tantos vicios, y perteneciente por lo general a una clase que, gracias a la desastrosa dictadura, ha vivido durante veinte años en total abstracción o lejanía de las nociones morales, era indispensable irlos introduciendo paulatinamente en la región, para ellos desconocida, de las ideas religiosas." El Judicial, July 11, 1855.

<sup>57</sup> Not by chance, the main disagreement between liberals Sarmiento and Alberdi centered on this question: whether the rural inhabitants of the pampas



A violent popular culture was an obstacle to the construction of a democratic polity. Violent crimes could stop or reduce the immigrant flow, spread insecurity among property owners, impede the enforcement of military recruitment, and, of course, erode the basis for the association between peace and progress that liberals wanted to articulate. Worse still, a peasantry accustomed to violence might demand, violently, a greater participation in the making of 'democracy', debanking the liberal gurus and re-stating caudillos more atuned with their lifestyles and conceptions of governance. How the would-be-citizens of the republic respect the neighbor's rights and the laws of the nation if they could not control their own passions?

That is why the attention of publicists concentrated on violent rural crimes. Here were the clues to understanding the past Dictatorship, this combination of Terror and Popularity which was so difficult to comprehend and whose understanding was so necessary for articulating a viable project of institutional reform. Passivity in the phase of tyrannical authority and lower-class, rural violence against their social equals or superiors were features of the past regime which were difficult to eradicate. Popular rural culture, interpreted within the contours of the Rosista legacy, seemed to provide innumerable examples of lack of self-control and of rebellious political reactions. Due to its unboundedness, rural culture was a menace to the whole edifice of stable and elective government.

To be sure, there were other arguments used for sustaining the necessity of capital punishment during this period of transition. One recurrently used asserted that, despite the best intentions of magistrates, the inexistence of modern prisons made impossible to substitute the death penalty for more humane forms of punishment. This was the argument used by the Superior Tribunal of Justice in 1855, on occasion of its report to the provincial assembly.<sup>58</sup> Though a modern penitentiary was not built until 1876, there were during this 1850s various attempts to improve existing prisons, and in particular, a renewed interest of citizens in the condition of prisoners. Judges started to visit prisons more regularly, religious services were introduced in the Cárcel Pública, and charities and the public were invited into this prison to interact with inmates.<sup>59</sup> Most frequently, the necessity of capital punishment was predicated on its pedagogic function. Judges and publicists expected the public to learn from the hangings important lessons concerning crime and the law. Viewers of

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were reformable through elementary education or if, on the contrary, they needed to be replaced by European immigrants, already acculturated into hard work, free commerce, and legal government.

<sup>58</sup> "...como carecemos de presidios y prisiones adecuadas, resulta que para los delitos graves, no existe propiamente pena alguna aplicable, a no ser la capital: todas las demás son irrealizables." Informe del Superior Tribunal de Justicia a la Asamblea General, May 1, 1855, El Judicial, May 29, 1855.

<sup>59</sup> This interaction between the public and the prisoners might have conditioned later public responses to executions, in the direction of a rejection of corporal punishment.

public executions would derive a saludable escarmiento which would prevent them from committing crimes. The belief that exemplary punishment could contain evil was shared by Rosas and the liberal leadership, but the latter's 'parsimony of violence' required that only the most brutal and treacherous crimes be placed under public scrutiny.

These two 'practical' reasons (the lack of prisons and the didactic function of executions) worked within a context impregnated by anxieties derived from the Rosista experience. Both the judges who extended death sentences to common murderers and the publicists who contributed to create the 'crime panic' shared the view that they were living in a post-dictatorial period, in which the primordial collective task was to understand and conceptualize the past. Thus, judges were prepared to find great similarities between the crímenes aleves of the present and the state violence of the past. The comparison judge Olmos made between the murder committed by Molina and Heredia in 1856 with the scene from El Matadero exemplifies this, almost compulsive, connection with the past. The liberal elite, in its search for a new order, found any trace of the old regime threatening: form a red ribbon in a soldier's jacket to a peasant shouting "Viva Rosas!", from promises of dequello to foreigners to a whip used by the Mashorca.

Death sentences were grounded on deep-rooted anxieties about the incorporation of lower-class members of society to the enterprise of 'democracy' and 'progress,' anxieties which had formed during the Rosas period.

Looked in the other direction (towards the future), public executions revealed weaknesses and contradictions in the project of state-building undertaken by liberals. To put death as a pre-condition of a process of institutionalization leading towards a liberal regime entailed, at least, a recognition by the liberal leadership that were great obstacles on the road. One obstacle that they saw closely related to the state's penal policies was the question of governability. We must only recall at the peak of public executions (1855-56), pampa Indians launched massive invasions to frontier towns, the state being unable to gather enough military muscle to repress them. Similarly, important questions of taxation and sovereignty were been debated with the government of the Confederation at Paraná, questions which could easily lead to new military confrontations. How could the province be governable if the old polarities and confrontations (hence, the menace of civil war) still persisted? How could a weak state, with reduced military capabilities, guarantee the right to life and property of its citizens? The death penalty was a temporary solution to this lack of state capacity.

While the doctrines of 'generalized savagery' and 'uncontrollable fear' coincided with the imagine liberals had of the past Dictatorship, they stood in tension with the new Republic they wanted to establish. First, because the construction of a more democratic political system required an effective and credible system of justice, one that did not leave past aberrant crimes in

impunity.<sup>60</sup> Taking to court only the most notable members of the 'Mashorca' revealed the weakness of the new state to deal effectively with the past. For a regime interested in asserting its difference from the past, particularly with regard to the security of property and life, this weakness was a major drawback.

Secondly, because absolving without a trial those presumed of political crimes left the impression among the public that they were living amongst dangerous criminals. This impression had imprevisible consequences for the political system. Their past cleansed, old rosistas could return to the political arena with a vengeance. Any candidate, now matter how liberal in rhetoric, could be suspected of having an involvement with the past Dictatorship. In an environment of generalized distrust and suspicion, in which libel and diffamation became effective political weapons, the public trust on the representative system was bound to decline.

If the justice system was unable to separate 'the grain from the straw' -- to distinguish addicts to tyranny from freedom-lovers-- the indictment of post-Caseros liberals to the political culture of the Rosas era appeared as mere rhetoric. In order to make independent and informed political choices, electors needed to know who had committed what crimes during the Dictatorship.

Accusations of rural barbarism (placed upon rosistas) and claims of distinction and civilization (as distinguishing features of porteño liberals) were not enough. The fear of a resurgence of Rosismo impregnated still the politics of Buenos Aires; the Lagos rebellion was still to near to forget that porteño liberals were an urban minority surrounded by a majority of rural sympathisers of the past regime. How could this fear be contained if the justice system was unable to identify possible new caudillos who could take the federalist banner and again put the city under siege?

Finally, there was the gender question. The case of female murderer Clorinda Sarracán initiated a process of gradual but effective decline in the use of the death penalty as punishment for murderers. The public solidarity with the female murderer surprised the liberals, and took away many of the arguments they have used to sustain the need for capital punishment. Suddenly, the death penalty appeared to offend 'democratic-liberal' sensibilities. The argument put forward by L'Emigration, that "It is not democratic to kill a woman," brought a new and disturbing element to the discussion about the death penalty: the irruption of immigrant culture in the public sphere. Immigrants, who had participated actively in the defense of Buenos Aires joining the National Guards, now wanted to be heard in an issue they considered of vital import: the power of

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<sup>60</sup> The question of the institution of a national system of justice was, of course, not relevant to this period, mostly because, this issued only appeared after the constitutional agreement of 1860. The obstacles which this process faced are discussed in Eduardo Zimmermann, "Los abogados, las instituciones judiciales y la construcción del estado nacional: Argentina, 1860-1880," paper presented to the Coloquio Internacional de Historia del Delito y la Justicia en América Latina, Universidad Torcuato Di Tella, Buenos Aires, October 1996.

the state to inflict damage to women. To them, this was an issue related to the promises of the liberal state vis-a-vis propriety-owners. The state, they argued, was reaching too far beyond its own sphere when it wanted to punish women in public, this was a right reserved to men in the private domain.<sup>61</sup> A liberal state should respect families in the same way it respected private property. To violate the bodies of women was an inadmissible intrusion of the state in the male 'private' domain.

To an extent, liberals had prepared the terrain for this masculine reaction. An important indictment against the past dictatorship --used repeatedly by liberals-- emphasized the multiple ways in which the Terror state had violated the privacy of the home. Rosas' agents had arrested unitarios in their private residences, had killed them in the view of their families, and many times, in order to further the humiliation, had raped, kidnapped, or killed the female members of the family. The complain expressed by Mitre en Los Debates about the "tiranía feroz que azotó y afrentó a nuestras madres, a nuestras hermanas y a nuestras hijas en los templos, y hasta en el santuario del hogar doméstico" was the common site of condemnation of the past regime.<sup>62</sup> To liberals, who were quite suspicious of religion, the home was the most sacred place; and it was the gravest sin of the Dictator to have profanated this sanctuary.<sup>63</sup> Implicit in the remarks of Los Debates was the promise that a liberal state would never do that, that it would respect the sanctity of home and the sovereignty of male heads of household over 'their' daughters and wives. When the immigrant press demanded the concretion of this 'right' liberals had no other choice but to concede.

The comparison between Clorinda Sarracán and Camila O'Gorman was a powerful symbolic connection which threatened to undo the wall liberals had built between them and the past. If Rosas' violence had not stopped at the wound of a pregnant woman, the liberals were not prepared to go that far. To do otherwise would have risked being associated with this violent past the liberals had contributed to establish (through public executions and the press). Faced with new constituencies and aware of changing public sensibilities to the executions, liberal judges gradually rid the state of the burden of the spectacles of the scaffold. They suspended the hanging of bodies, prolonged the 'state of execution' period, raised the conditions for death sentences, and at the end, abolished the whole category of crímenes alevés. I do not think that Sarracán's fake pregnancy by itself engendered the crisis of capital punishment. There must have been important changes in public sensibilities towards executions pointing

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<sup>61</sup> Immigrants had a more proprietary view of families than creoles. Women and children were considered their property --indeed, their most valuable assets-- and, as such, not subject to the interventions of the state.

<sup>62</sup> Los Debates, November 11, 1857.

<sup>63</sup> According to liberals, the terror of the Rosista state was unbounded, reaching into the privacy of the homes of gente decente, and gender-blind, it killed women with the same regularity and pleasure as men.

in the same direction. We must consider also a possible exhaustion of the 'crime panic' as a factor contributing to disarm the deadly arguments. These two factors belong to the question of public responses to the spectacles of death and to the press-created moral panics, an issue that goes beyond of the objectives of this paper.

Table 1: LIST OF DEATH SENTENCES, 1854-1864

Date*	Name	Crime	Place**
<u>1854</u>			
October 16	Justiniano Silva (Florencio Negri+) (Domingo Farodi+)	theft	Buenos Aires
<u>1855</u>			
March 28	Celestino Ceballos	murder	Arrecifes
March 29	Anastacio Gutiérrez	murder	Azul
March 30	Antonio Almada	murder	Chascomús
May ?	Tomás Ordoñez	murder	Tandil
May 22	Pedro Alcántara García	muder	Salto
July 12	Juan José Acosta	murder	Buenos Aires
August 2	Manuel Ferreira	murder	25 de Mayo
Sept. 13	Victoriano Pacheco	murder and assault	Buenos Aires
Sept. 18	Faustino García	murder	Morón
Sept. 24	Severo J. de la Cruz	murder	Buenos Aires
Decemb. 15	Raymundo Reyes	murder	Dolores
<u>1856</u>			
??	Juan Sosa	murder	Baradero
May 7	Santiago Molina Loreto Heredia Cejas	murder and robbery	Dolores
October 14	Mariano Arrascaete	murder	Dolores
November ?	Clorinda Sarracán++ Remigio Gutiérrez++ Crispín Gutiérrez++	murder	Buenos Aires
November 25	Juan Medina	murder and robbery	Cañuelas
<u>1857</u>			
August 3	Agustín Rey	murder	Buenos Aires
October 3	Rosa Cornejo	murder	Buenos Aires
October 15	José Barrionuevo	murder	Va. Mercedes
November 2	Diego Vidal	murder	Cañuelas
<u>1858</u>			
March 15	Isidro Barraza	murder	San Vicente

June 4***	Facundo Díaz+++	murder	Buenos Aires
??	Santos Zapata	murder and robbery	Las Flores

1859

April 2***	José Ma. Zúñiga	murder	Buenos Aires
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1860

April 25***	Domingo Calderón	murder	Buenos Aires
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June 18***	Francisco Chilan	murder	Azul
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1861

July 18***	Antonio Montes	murder	Dolores
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July 22***	Jose Serapio Ledezma	murder and robbery	Lobos
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1863

May 6***	Edeneo Buriñigo	murder and robbery	Bahía Blanca
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August 4***	Lorenzo Tercier	murder and robbery	Mercedes
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Sept. 24***	German Ubiedo	murder, robbery and rape	Buenos Aires
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Sept. 22	Benito Gómez	murder	Dolores
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1864

March 3	Franciso Tolosa	murder	Lobos
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SOURCE: El Judicial, various issues, 1855-1869.

\* date of death sentence

\*\* place of execution

\*\*\* execution date

+ commuted later to 5 years of forced labor

++ suspended

+++ commuted