

Rebellion and Dissent in the Republican Military:

Assessing Military Justice

Linda Arnold

Department of History, Virginia Tech

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Recent literature on the legacies of authoritarianism and their effects on institutional reforms suggest that the process of transition from authoritarian rule and the primary agents of change influence the depth and scope of institutional reforms.¹ Similarly, the literature on reforms in military justice systems which have exercised jurisdiction over civilians has recognized that sweeping reforms in military justice systems are "probable only in transitions by rupture," that is, transitions that result in the demise of old regime elites. Sweeping reforms are not probable in cases of "pacted transitions," transitions led by old regime political elites.² In the case of Mexico in early 1821 old regime elites formed a coalition with insurgent leadership to accomplish independence; that coalition's agenda for change did not include sweeping institutional reforms. In fact, rather than change the military justice system after independence, republican political elites strengthened military justice at the regional level and militarized criminal justice.

According to Anthony Pereira, the extension of military jurisdiction into criminal justice permits old regime elites to control individuals and groups deemed dangerous to the political survival of the new regime. However, strengthening and expanding

1. Gerardo Munck and Carol Skalnik Leff, "Modes of Transition and Democratization," *Comparative Politics* 29/3 (1997): 343-4.

2. Anthony W. Pereira, "Virtual Legality: Authoritarian Legacies and the Reform of Military Justice in Brazil, the Southern Cone, and Mexico," *Comparative Political Studies* 34/5 (June 2001): 559.

the jurisdiction of military courts can prove counterproductive to strengthening the state. "While convenient for rulers of states, most military courts contain serious deficiencies in terms of their composition and procedures, deficiencies that can make them inconsistent with a democratic rule of law."³ Pereira has termed such courts a form of 'virtual legality' - consistent with the rule of law in appearance, but not in substance. In essence, the virtual legality of military justice undermines the consolidation of republican political values in new states, influencing in turn post-transition politics.

Complementing the literature on modes of transition, institutional change, and military justice reforms, Larry Diamond has analyzed obstructions to political consolidation in new states.⁴ Regimes that are "exclusive, unaccountable, and abusive of individual and group rights" face greater difficulty in becoming "deeply legitimated at the mass level," thus lowering the political costs for overthrowing such a regime. Political consolidation requires "greater executive (and military)

3 Pereira, "Virtual Legality," 556.

4 According to Larry Jay Diamond, "Is the Third Wave Over," *Journal of Democracy* 7/3 (1996): 33-34: . . . consolidation is the process of achieving broad and deep legitimation, such that all significant political actors, at both the elite and mass levels, believe that the democratic regime is better for their society than any other realistic alternative they can imagine . . . The less respectful of political rights, civil liberties, and constitutional constraints on state power are the behaviors of key state, incumbent party, and other political actors, the weaker will be the procedural consensus underpinning democracy. Consolidation is then obstructed, by definition. Also see Andreas Schedler, "What is Democratic Consolidation?" *Journal of Democracy* 9/2 (1998): 91-107.

accountability . . . and more effective protection of the political and civil rights of all citizens.”⁵ The failure to politically consolidate the new Mexican state, the repeated episodes of governments threatened and overthrown through the use of military and paramilitary force, and the fundamental absence of reform in the military and military justice system in Mexico after independence illustrate the multitude of difficulties for the old regime elites after independence.

Rather than reform military justice, governments in Mexico strengthened regional military justice and militarized of criminal justice. Governments tolerated long term imprisonment without a hearing, privileged the testimony of officers over the testimony of civilians, and failed to hold officers of the court accountable for procedural irregularities or for the composition of court martial boards - all symptomatic of the virtual legality of Mexican military justice. This study of Mexican military justice during the early republican years highlights the failure of political authorities to make military justice accountable and guarantee basic rights. That persisting political failure also explains why the “liberal” victors at the end of the wars of the Reform abolished the Mexican army in 1860.⁶ Fundamentally,

5 Diamond, 34.

6 “Número 5132. Diciembre 27 de 1860, Decreto del general en jefe del ejército. Se da de baja al ejército permanente que militó contra la Constitución,” in *Legislación mexicana o colección completa de la disposiciones legislativas expedidas desde al independencia de la república. Ordenada por los licenciados Manuel Dublan y José María Lozano*, vol. 8 (México: Imprenta del Comercio, a cargo de Dublán y Lozano, 1876) [hereafter,

abolishing the army, one of the last institutional remnants of the corporatist political culture that Mexicans had inherited from their three hundred year colonial experience, signified the final rupture with the colonial political past and the emergence of new political elites.

THE MILITARY JUSTICE SYSTEM

With independence Mexicans in 1821 adopted a divided powers system of government with executive, legislative, and judicial branches and a simplified, but still complex system courts.⁷ Paralleling ordinary - and after the adoption of a federal republican constitution in 1824 constitutional - jurisdiction courts, special jurisdiction military courts guaranteed military personnel and members of the immediate family access to a "privileged" jurisdiction for military, civil, and criminal law cases in which they were defendants. At the first instance level members of the artillery and engineering corps had a special jurisdiction; members of the naval forces had their own

Legislación mexicana.] .

7 For an extended discription of colonial military jurisdictions, courts, and jurisprudence, see "Discurso preliminar, Juzgados militares en España y sus Indias" in Félix Colon y Larriategui Jiménez de Embun, *Juzgados militares de España y sus Indias* (Madrid: la Vda de Ibarra, hijos y Cía., 1788-1798), vol 1. For the revisions, changes, and additions to the laws pertaining to army justice in Mexico, see Tratado VIII and Apendices in *Ordenanzas militares para el régimen, disciplina, subordinación y servicio del ejército, comparada, anotada y ampliada por la que se observaba al verificarse la independencia, con las disposiciones anteriores y posteriores hasta el presente año, en que revisada previamente por la Junta Consultiva de Guerra, se publica por disposición del Supremo Gobierno*, (México: Imprenta de Vicente G. Torres, 1852), vol. 2.

jurisdiction; members of the army had a still another special jurisdiction; and members of the old Mexico City merchant association's militia had still a separate jurisdiction.

Political authorities in Mexico shortly after independence strengthened and began to systematize military justice. Dispersing first instance jurisdiction throughout the country, the new government authorized six captaincies general with first instance military jurisdiction on January 15, 1822.⁸ Over the next two years political authorities centralized and systematized military justice further, replacing captains general with commandants general and creating an appellate military court, the *Supremo Tribunal de Guerra y Marina*.⁹ At the unit level senior officers adjudicated minor military laws cases involving troops under their command. At the regional level commandants general administered the *fuero militar*.⁸ They appointed court martial

8 The six captaincies general were: (1) much of the old intendancy of Mexico and all of the intendancies of Querétaro, Guanajuato, and Valladolid (Michoacán); (2) Nueva Galicia (Jalisco), Zacatecas, and San Luis Potosí; (3) Puebla, Veracruz, Oaxaca, and Tabasco; (4) the provinces of Tlalpa, Chilapa, Tixtla, Axuchitlán, Ometepec, Tecpan, Jamiltepec and Teposcolula; (5) the eastern and western interior provinces; and (6) Mérida de Yucatán. The territorial jurisdiction of the commandants general conformed initially to the old intendancies and subsequently to the territorial limits of the states under the 1824 constitution.

9 For legislation that established, defined, and modified the responsibilities of the appellate military court, see "Decreto de 23 de enero de 1822, formación del supremo tribunal supletorio de Guerra," *Legislación mexicana*, vol. 1; "Decreto de 26 de febrero de 1822" in Mariano Rivera Galván, comp., *Colección de órdenes y decretos de la Soberana Junta Provisional Gubernativa y soberanos congresos generales de la nación mexicana*, 4 vols. (México: Imprenta de Galván, 1829-1840): vol. 2; "Decreto de 15 de septiembre de 1823, Sobre la administración de justicia militar" in *Legislación mexicana*; "Decreto de 23 de octubre de 1823" and "Decreto de 12 de enero de 1824," in Rivera Galván, *Colección de órdenes y decretos*.

boards, *consejos de guerra*, for military and criminal law offenses and acting on the advice of their legal counselors (asesores) adjudicated civil cases and minor criminal cases.

After experimenting with an appellate process that assigned second instance jurisdiction to a nearby commandant general, political authorities in January 1824 centralized second and third instance appeals in the *Supremo Tribunal de Guerra y Marina*, composed of six generals and five ministers on the territorial audiencia, the civilian regional appellate court.¹⁰ Following the decision by the State of Mexico in January 1827 to establish its capital beyond the boundaries of the Federal District, thus physically removing the territorial audiencia from Mexico City, the federal executive decided to appoint civilians lawyers resident in Mexico City to the military appellate court. Similar to the appellate judges in ordinary jurisdiction courts, the men who sat on the military appellate court had wide latitude to review evidentiary, procedural, and sentencing issues.

Beyond strengthening the military justice system, political authorities in Mexico after independence also extended the jurisdiction of commandants general in September 1823 to include cases against civilians accused of sedition, highway robbery, rural theft, and murder. That initial militarization of criminal

10 "Decreto de 15 de septiembre de 1823, Sobre la administración de justicia militar" and "Decreto de 27 de septiembre de 1823, Que los reos de algunos delitos sean juzgados militarmente," *Legislación mexicana*, vol. 1. For criminal cases against troops (*soldados*, *cabos*, and *sargentos*) and civilians, lower level officers constituted *consejos de guerra ordinarios*. For cases involving officers, senior officers, *coroneles* and *generales*, constituted

justice led to immediate criticisms and continued calls for reform.¹¹ While political debate at the time questioned the necessity of extending military jurisdiction to cases against civilians, armed gangs of highway robbers had generated political support for that legislation.¹² Additionally, political authorities, facing conspiracies and armed challenges from diverse ideological factions, found it convenient to extend the jurisdiction of commandants general to include cases against civilians.

Commandants general throughout Mexico responded to the extension of the jurisdiction of army courts in criminal and political matters. They investigated and prosecuted ordinary and political crimes committed by both military personnel and civilians. Procedurally, military justice paralleled civilian justice; and the same laws regulated the legality of evidence. Structurally, military justice stood apart from civilian justice: each case adjudicated by the military involved a unique court martial board.

The commandant general for the Federal District and the State of Mexico, for example, oversaw more than nine hundred investigations and courts martial by 1832. Data compiled from

consejos de guerra de generales.

11 Carlos María de Bustamante, *Diario Histórico de México, 1822-1848*, eds. Josefina Zoraida Vázquez and Héctor Cuauhtémoc Hernández Silva, CD-1 (1822-1834) (México: CIESAS and El Colegio de México, 2001), entries, September 15, 19, and 24, 1823.

12 Bustamante, *Diario*, entries, September 15, 19, and 24, 1823.

the criminal case files indicated that between 1821 and 1832 the commandant general's office closed the files on 965 cases (see Table 1).¹³ The extant data contains exact dates for 882 of those case files; as illustrated in Table 2, the commandant general's office dispatched almost 30% of the complaints it received within one month, usually dismissing charges because investigations yielded insufficient evidence to prosecute individuals; and it closed the files on nearly 70% of its cases within seven months. Nevertheless, the statistical appearance of expeditious justice in military jurisdiction belied its underlying virtual legality - and the nearly 30% of open case files in the system that persisted for 8 or more months. Who were the accused? What were the accusations? What role did politicians have in the military justice system?

Executive and legislative branch politicians manipulated military justice not just by conveniently assigning the sedition and major criminal cases to military jurisdiction. Legislatures issued blanket amnesties for political prisoners; and executives

13 AGN, AG, vol. 1030, [Causas concluidas, 1821-1832]. This register of criminal cases contains 1025 entries, some of which are duplicated internally within the document. Each entry identifies the military rank or civilian status and the name of an accused, the accusation, the date the file was opened and the date the file was archived or closed. I created a database with that information and modified it to exclude duplicate entries and seventeen entries concerning civil cases. Additional variables I added identify the jurisdiction of a case under current law, the jurisdiction and gender of the aggrieved party or victim, the number of weeks and months the case file remained open, the rank (*tropa, oficial, jefe*) of accused military personnel, and the social status (*don* or *doña* or the absence thereof) ascribed to the accused.

TABLE 1: Number of Filed Cases, 1821-1832

Opened	Archived												Total	
	unk	1821	1822	1823	1824	1825	1826	1827	1828	1829	1830	1831		1832
unknown	47	1	1	1	1						1			50
1821		9	25	1										35
1822	7		68	28	3	1		2	2					111
1823	1			29	27	3	1	1	1					63
1824	2				29	32	10	2	1	1	1	2		80
1825	5					33	22	6	2	2				72
1826	1						28	30	6	2	2			69
1827	4							50	23	10	2	1		90
1828	2								31	29	2	5		69
1829	4									66	33	5		104
1830	1										105	45		151
1831												40	10	50
1832	2												19	21
Total	72	9	93	58	60	70	61	82	73	113	146	99	29	965

TABLE 2: Duration of Cases, 1821-1832

Number of Months	Number of Cases	Percentage
1	248	28.1%
2	110	12.5
3	83	9.4
4	59	7
5	46	5
6	44	5
7	31	3.5
8 or more	261	29.5

granted pardons and altered sentences for military personnel and civilians who had been arrested or sentenced by military courts.¹⁴ The virtual legality of military justice stood at the heart of calls for reform.

Contemporary criticism of the *fuero militar* and its special legal jurisdiction focused on ideological as well as political concerns. For example, José María Luis Mora waged a rhetorical battle against the *fueros* and privileges of the military and the

14 The constituent congress published its general amnesty decree on 9 March 1824; that decree applied to all individuals involved in the various conspiracies to return Agustín Iturbide to a Mexican throne as well as to all those involved in conspiracies in support of or opposition to one form of government or another. The law of 12 January 1829 amnestied all those arrested or complicit in political crimes after September 1828, all those involved in the hotly contested presidential election that fall. Another law, 12 March 1829, amnestied all those involved in the rebellion in Durango. Repeated amnesty laws and decrees in April 1832, May 1835, April 1838, February 1841, June 1843, May 1845, February 1847 June 1847, and January 1853 freed those accused or convicted of political crimes. See, *Legislación mexicana. Índice alfabético razonado de las leyes, decretos, reglamentos, ordenes y circulares que se han expedido desde el año de 1821 hasta el de 1869. Arreglado por José Brito, empleado de la Tesorería General*. 3 vols. (México: Imprenta del gobierno, 1872).

militia.¹⁵ Astutely aware of the challenges facing his young republic, Mora challenged the very legitimacy of the laws that permitted separate courts for different groups of people, arguing that it was vital to cultivate the spirit of the nation rather than to permit the persistence of a sense of corporate identity. Mora would have preferred that all civil and criminal cases be heard in ordinary jurisdiction first instance courts. Reflecting a more pointed political perspective, Carlos María de Bustamante believed that the extension of military jurisdiction had led opposing political factions to use it to repress political opposition.¹⁶ Responding to the criticism about the abuse of laws that granted the military jurisdiction over civilians, political authority rescinded the extension of military jurisdiction by the end of the 1832 civil war.¹⁷ The Senate in

15 Subsequently, Mora collected and published a number of his writings during his self-imposed exile in France during the late 1830s. His two-volume collection has been reissued as *Obras sueltas de José María Luis Mora, ciudadano mexicano*, 2nd edition (Mexico City: Editorial Porrúa, S.A., 1963). For attacks against privileged groups, especially the clergy, the militias, and the military, see: "Abolición de los privilegios del Clero de la Milicia" and "Supresión de las instituciones monásticas y de todas las leyes que atribuyen al Clero el conocimiento de negocios civiles, como el contrato del matrimonio, etc.," 55-82; and "Discurso sobre los tribunales militares," 549-556.

16 Bustamante, *Diario Histórico de México*, entry: "Lunes 17 de diciembre de 1832."

17 "Ley, 18 de diciembre de 1832, Cesan las leyes que expresa relativa a ladrones, y otros reos que deben ser juzgados militarmente" and "Circular, 9 de abril de 1833, Circular de la Secretaría de Guerra, Que los comandantes militares se arreglen a las leyes vigentes in los juicios criminales. . . . sin disponer de la vida de ningún ciudadano ni súbdito, sino en los casos y con las formalidades prescritas en las mismas leyes, que han querido justamente dar todos los hombres cuantos recursos legales convengan a su defensa, y las garantías necesarias para su conservación en sociedad, designando las autoridades que han de conocer en los juicios, y la circunspección y formalidades en su fallo" in Basilio José Arrillaga, ed., *Recopilación de leyes, decretos, bandos, reglamentos, circulares y*

February of that year and the *Cámara de Diputados* in December removed criminal and sedition cases against civilians from military jurisdiction.

For the commandant general in Mexico City criminal investigations and prosecutions involving non-military personnel had represented nearly twenty-five percent of his judicial work load. Table 3 illustrates the types of cases investigated and prosecuted; these included robber cases; saying something offensive to a member of the military (*insultos*); serious crimes such as homicide and manslaughter (*muerte*); and political crimes, such as sedition. Political, criminal, and military law cases involving military personnel represented over seventy-five percent of the cases handled by the commandant general in Mexico City. As illustrated in Table 3, investigations and cases involving abandoning a duty post and desertion, malicious wounding, and sedition represented a substantial number of those cases. Sedition under military law included political conspiracies, spying, and encouraging troops to disobey orders. It should be noted that neither commandant generals nor member of court martial boards exercised complete autonomy in judicial matters. The law required that they rely on the legal advice of counselors. Additionally, those convicted and sentenced at the first instance level, had the right to appeal. Still, the virtual legality of military justice in republican Mexico began with

senior officers, usually commandants general, who were responsible for investigating alleged crimes, appointing court martial boards, and heeding the legal advice of trained lawyers.

Beyond commandants general, investigators, prosecutors, members of court martial boards, appellate judges, and political authorities in republican Mexico all acted to undermine basic rights of civilians and military personnel alike. The investigative, first instance, and appellate case files from the era provide the documentation for assessing the roles of lawyers, commandants general, and military officers who investigated complaints and sat on court martial boards.

Case files reflect the three phases of military justice - preliminary investigation, court martial, and prosecution and appeal - and the "virtual legality" of military justice. Contrary to the rhetorical ideal of equality, commandants general could and did treat wealthy and poor citizens differently. Court martial boards and prosecutors could and did ignore evidence. And commandants general could and did ignore procedural rules.

The three files discussed below illustrate the seemingly technically sound and procedurally proper appearance of military justice while also illustrating its "virtual legality."

TABLE 3: Charges and Affiliations of the Accused, 1821-1832

Accusation	Affiliation of Accused								Total
	Civil	Ecl	militia	Military	NA	Police	retired	Unk	
Abandono				21					21
Alevosía	3	1		14	1		1		20
Aperatura de Correspondencia				1					1
Aarmas prohibidas	2								2
Conducta militar			4	49	3	1	2		59
Contrabando				2					2
Desafío				2					2
Deserción	6		2	52	3				63
Empeño, estafa, juegos	1			2					3
Estrupo, incesto, infanticidio o rapto	1			5					6
Extravío de cartas	3	2							5
Falsificación	5			12			1		18
Fuga	2		2	38	3				45
Fugado	9			11		1	1		22
Heridas	18		1	77		2	12	1	111
Homicidio	8			8			3		19
Homicidio y robo	2								2
Incendiario				1	1				2
Infidencia	10	2		6	1		2		21
Injuria	3		1	11	2	1	3		21
Inobediencia			1	4					5
Insubordinación	1		1	39			1		42
Insultos	12			29			2		43
Mala comportamiento	13	1	1	27			2		44
Malaversación				7					7
Muerte	3		2	12					17
Muerte y heridas, riña, robo o sedición	1			9					10
Riña	3		1	12	2	1			19
Robo o ladron	23			38	12				73
Sedición	75	8	2	106	12		1		204
Soborno		1		3					4
Sospecha	4			3					7
Unknown or not applicable	10		2	27	4		2		45
Total	218	15	20	628	44	6	33	1	965

Preliminary investigation

Anastacio Garnica and a couple of his friends joined the fray in the La Palma and Merced barrios on the afternoon of Saturday, March 29, 1823.¹⁸ Falling at the end of *Semana Santa*, that Saturday was a festive occasion. Additionally, Agustín de Iturbide had recently abdicated his throne. An advanced unit of the *Exército Libertador*, the second successful Mexican army that influenced the course of political events, had entered the city.

On Easter Sunday that army would formally march into the city. Political authority at the time had its attention focused major political developments. Anastacio and his friends were busy getting drunk, tossing stones, and generally creating a major disturbance in the barrios.

Army troops forcefully contained the melee in the barrios, arresting a number of participants, including Anastacio. That evening rumors circulated about militiamen in the Batallón de los Cuatro Barrios involved in the melee. The conspiracy theorists of the day imagined a seditious plot to alter political events and recall Agustín de Iturbide to his throne.¹⁹ Responding to such rumors, at 9:30 that night the Captain General, José Antonio Morán (the *Marqués de Vivanco*), ordered Lic. Bernardo González Angulo, the legal counselor for both the Artillery and Engineers

18 AGN, AG, vol. 507, 1823, "Criminal contra los que resul[tan] culpado en el alboroto . . . en los Barrios de esta Capital la tarde de 29 del presente."

19 Bustamante, *Diario Histórico de México*, entry: "Sabado el Gloria, 29 de marzo de 1823."

corps as well as the army, to investigate just who had stirred up the "plebe." González Angulo issued military arrest orders the senior officers in charge of the militias.

The investigation into who might be held responsible for the riot in the barrios focussed on Comandante de Batallón suelto de Infantería Mariano Barrera and his brother Coronel Manuel Barrera; both had been arrested the night of March 29th. Wealthy entrepreneurs, the Barrera brothers had supported and been rewarded by Agustín de Iturbide. Mariano received title to a lucrative regional administrative position (*subdelegado de Cuautla Amilpas*). Manuel, who had "donated" uniforms for the army, was given command of the *Regimiento Provincial de Policía*, the militia regiments for the four Mexico City barrios (San Pablo, La Palma, Merced, and Santa Cruz). Neither was a professional military officer; still, Iturbide had granted both ranks in the army and access to the *fuero militar* for their judicial disputes.

Lic. González Angulo's investigation revealed that a number of officers in the regiment had not wanted Manuel Barrera as their colonel. Rather, there had been a disagreement among those officers. Talabortero López, who had been performing the duties of the regimental colonel, had successfully orchestrated a formal review of the troops by the former captain general, José Antonio Andrade, in a bid to be named the regiment's colonel. Other officers, who preferred not to become subordinate to one of their

own then asked the captain general to name someone else. The government then named Manuel Barrera as colonel of the regiment, even though Barrera had not requested that political reward and did not really want the job.

When Iturbide abdicated and political flux created an opportunity for seeking advantage, López posted flyers around the barrios to recruit militiamen to support the entrance of the *Exército Libertador* into the city. Participant testimony attributed the melee to an internal conflict in the regiment between rival factions in the militia, between those who supported López and those who once again did not want to see him become the regimental *coronel*.

No witnesses supported the rumors that the Barrera brothers had any involvement in the riot. Quite the contrary, militia members repeatedly corroborated the Barrera's testimony that he rarely interacted with the militia, leaving the day-to-day administration of the regiment to López. That work principally involved organizing police patrols.

Before a week had passed the absence of any direct evidence to support a sedition charge against the Barreras, or any others for that matter, led Lic. González Angulo to recommend releasing the Barreras on their word of honor and releasing the most of the militiamen after they posted a bond. The Barreras were released on April 6 and got on with their business

dealings.²⁰ Fifty-four others, who had their employers or friends sign bonds for their release, returned to their daily lives on April 7.²¹

The melee in the barrios led to a general review of that urban policing unit. That review suggested that contrary to acting under Manuel Barrera's orders, the troops had in fact been acting against him. It also noted that the troops, residents of the barrios, did not really want to be in the militia. Finally, it questioned the motivation of those troops who had said that they had wanted to serve and protect the entrance of the *Exército Libertador* into the city: "pues nadie dudaba en esta Capital, y fuera de ella que la mira de los barrios era muy diversa . . .". With the elite free on their word of honor and the plebes free on bond, only Anastacio Garnica, Félix Vasquez, and Gregorio Briseño remained in jail in early July when the army prosecutor reviewed the file. He concluded that there was no evidence against the Barrera brothers. Citing art. 23, tit. 6, trat. VIII of the *Ordenanzas General*, he recommended that they be granted indemnity. That indemnity under military law involved the government printing a flyer and posting it about the city. Much to the consternation of the Barreras, though, another flyer accompanied the one intended to clear their name. A flyer titled "Indulto de los Barrera é Injuria a la Nación" led them to

20 Bustamante, *Diario*, 6 de abril de 1823.

21 AGN, AG, vol. 507, "Lista de los presos que se pusieron en libertad con fianzas," 7 de abril de 1827.

complain to the government.

With most of the charges remaining unsubstantiated, Anastacio Garnica likely thought he, too, would be released from jail. However, the army prosecutor did find evidence to suggest that Capitán Pio Marcha had provided false testimony. Consequently, the file remained open and Anastacio remained in jail. While he remained behind bars, political changes pursued by republican federalists had created a climate of support for a federal republic. Through 1823 and 1824 congresses convened in Mexico City and around the country to author constitutions that would structure and limit the powers of government. No one gave much thought to a penniless prisoner.

Friday, January 7, 1825, was a beautiful day, according to Carlos María de Bustamante. Anastacio Garnica might well have agreed with him. That day the army prosecutor decided to close the case file on the March 29, 1823, melee in the barrios. He went to the jail to release the remaining prisoners. Jail records did not state when or by whose authority Félix Vázquez and Gregorio Briseño had been released. Only Anastacio Garnica remained behind bars. The prosecutor ordered his immediate release and that he be freed without being charged jail costs.

Who was Anastacio Garnica? Who was responsible for his twenty-one month imprisonment? One might blame Anastacio. When first interviewed by military investigators, he identified himself as a an 18 years old *indio* who worked as a cloth dyer.

He freely admitted that he had been in the melee in the barrios, commenting that after he had become quite drunk a couple of his friends spotted him and asked if he wouldn't like to come with them to the riot in the barrios. Anastacio also freely admitted that he had picked up some stones and tossed them and had shouted "Viva el emperador absoluto y muera el Congreso." When asked who else was throwing stones and shouting that seditious phrase, Anastacio replied that he had been too drunk to even notice who else was around him.

In addition to blaming Anastacio, one might blame the Captain General who saw a seditious plot behind an urban melee. One might blame Lic. Bernardo González Angulo who insisted that poor post bonds while the rich secured their freedom on the basis of their honor. One might blame politicians who authored amnesty legislation on March 9, 1824, that set political prisoners free, but not material witnesses in political or criminal cases. More pointedly, one might blame the military justice system because while it provided free defense counsel for those accused of crimes, it had no provisions for providing counsel for material witnesses. No one was there to look out for the rights of a young *indio* who had been arrested and held for twenty-one months.

The preliminary investigation, which included interviews with everyone who had been arrested never led to formal charges being filed against anyone involved in the March 29, 1823, of the riot in the barrios. Direct participants commented that alcohol,

jealousy, and fighting words had been at the root of that holiday weekend melee, not sedition, and certainly not a plan to reinstate Agustín de Iturbide.

The Sumaria

Perhaps the most notable early preliminary investigation and court martial that reflected the virtual legality of Mexican military justice was the 1823-1824 case against José Antonio Lopez de Santa Anna.²² Military law mandated that the local regional commander, who during the summer of 1823 still held the title of captain general, had the responsibility for appointing a military prosecutor, the officer responsible for compiling the documentary record, interviewing witness, presenting the evidence to a summary investigation board. In a case against an officer, the prosecutor and the members of the court martial had to be senior officers - division generals and brigadier generals (*efectivos* or *graduados*); the regional commander also served as the president of that board of inquiry.²³

The investigation into Santa Anna's political, military, and criminal behavior in and during his march to San Luis Potosí was not heard by the senior regional military commander, Brigadier José Gabriel Armijo, in San Luis Potosi. Rather, political

22 AGN, AG, vols. 458 and 459, "Actuaciones sobre la conducta que el s. Brigadier d. Antonio López de Santana observó en la Provincia de San Luis Potosí desde principios de junio último, y el Plan que proclamó en la citada ciudad en cinco del mismo mes."

23 *Ordenanzas militares*, tit. VI, Trat. VIII.

authority, in this instance the secretary of war, *general de brigada* José Joaquín Herrera, ordered the commandant general in Mexico City to investigate charges against Santa Anna. General José Moran y del Villar, who following Iturbide's abdication left the captaincy general of Puebla and Veracruz and became the captain general of Mexico, formally ordered *Brigadier* Joaquín Parres to investigate Santa Anna's conduct in San Luis Potosí and his *Plan de San Luis Potosí*. Parres, a thirty-year-old former junior officer from the regional militia in Guanajuato whose active 1820-1821 networking had built up widespread support for independence and earned him an extremely rapid rise in rank, received his orders on July 29, 1823. Parres began by interviewing Santa Anna on August 4, 1823. That first summary investigation into Santa Anna's military conduct lasted until March 23, 1824, during which time he remained under house arrest.

Santa Anna's testimony reflected the fluid political climate of the spring and summer of 1823. He stated that he had marched toward Guadalajara before the Congress had moved toward establishing a federal republic; and he claimed to have desisted and voluntarily traveled to Mexico City after Congress supported the federal option. At the root of the investigation was the fact that one of the units under his command opened fire on a government unit under Armijo's command. Only after that episode did Santa Anna opt to obey government orders and submit to government authority. Parres asked him why he disobeyed

government orders, why he proclaimed a political plan, why he didn't pursue pacific means of protest, why he confiscated money that belonged to the treasury, and under whose authority he had given positions and promotions to soldiers and officers. Santa Anna quickly referenced the high level of dissatisfaction among veterans to justify his actions. He also stressed that the promotions were provisional, contingent upon subsequent confirmation by the government.

Over the course of the next few months Parres interviewed some twenty military officers in Santa Anna's force and a number of civilians. Most of the civilian witnesses addressed the forced requisitioning of livestock, looting, injuries inflicted by troops on civilians, and the occasional drunken brawl, robbery, sexual assault, and a civilian death. Military witnesses discounted civilian witness testimony, blaming the "plebe" for acts of violence between troops and the local folk who lived in the path of Santa Anna's volunteer regiment. Parres opted not to focus on the substantial body of civilian testimony or civilian concerns about livestock, property damage, or personal injury. Rather, Parres queried every military witness about political purpose of their march into San Luis Potosí. He asked several witnesses about the specifics of the brief engagement outside San Luis Potosí between the troops under Lt. Colonel Diego Argüelles' immediate command and some of Armijo's troops. That episode ended with the capture and arrest of

Argüelles, a Spanish born former imperial officer whose principal military experience had been fighting the French in Europe after 1808.

By the time Parres concluded his investigation, the government had abolished the system of captaincies general and replaced it with the system of commandancies general. And the government replaced Captain General Moran with Commandant General Miguel Barragán. Barragán appointed the board of inquiry to deliberate the evidence against Santa Anna. The members of that board were *general de división* Manuel de la Sota Riva, *generales de brigada graduado* Juan José Miñon, Jose Figueroa, Pedro Zarzosa, Manuel Gual, and José Mendivil. *Teniente coronel* Francisco Nava served as the board's military legal advisor and *Coronel* José Ignacio Ormaechea served as secretary. After listening to the reading of the testimony for eight mornings in late March 1824, the board voted to absolve Santa Anna of any wrong doing. Reticent about the board's vote, Sota Riva, formerly secretary of war during Iturbide's empire, registered an independent vote urging the commandant general to recommend that the military appellate court review the evidence against Santa Anna and the court martial board's procedures.

Procedural law permitted a commandant general to make an independent decision to convict an individual. Barragán, though, did not heed Sota Riva's advice or cast his independent vote for conviction. Instead, the commandant general chose to heed his

legal counsel's advice. Barragan's legal advisor, Lic. Ignacio Alvarado, had reviewed the testimony and argued for dismissal of the case in front of the court martial board. He stated in his March 22, 1824, opinion that only one witness had implicated Santa Anna directly in a criminal act.²⁴ Consequently, rather than focus on Santa Anna's criminal behavior, Alvarado had urged the senior officers to judge Santa Anna based on the outcomes of his political actions. Concluding that Santa Anna had been struggling for federalism since November 1822 - a debatable assertion - and that because the nation ultimately adopted the federal option, Santa Anna's means justified the ends: "Cuando el objeto es inculpable, los son también los medios necesarios y las consecuencias forzosas." Shortly after the government dropped its charges against Santa Anna, it did decide to remove him from his his regional base in Veracruz and assign him to the commandancy general in the Yucatán.

The summary investigation into Santa Anna's behavior exemplified similar investigations of senior officers. There are many, many summary investigations; there are few indictments against senior officers, much less death sentences. Even then, senior officers tended to avoid capital punishment.

²⁴ Extant law required two eyewitnesses to the same act for that evidence to be recognized as legal proof.

The Proceso and Appeal

Commandants general appointed members of court martial boards. The composition of those boards determined the legality of judicial decisions. Those accused and convicted of serious crimes, crimes that warranted capital punishment, could and did challenge the legality of the proceedings based on the composition of court martial boards. Such challenges did not mean that the convicted could avoid being held responsible for their crimes. Rather, an individual could be subject to double and sometimes even triple jeopardy. The case against Manuel Antonio Yslas illustrates that dynamic of military justice and the influence of personal politics and national political on military justice.

Coronel graduado capitán suelto de caballería Manuel Antonio Yslas, military commander of the militia forces in Tejupilco in 1831, had the authority to arrest civilians and to submit them to military justice. Yslas, though, did not arrest Juan Ramon Costillas and his fourteen-year old son Luciano Tranquilo on March 13, 1831.²⁵ Instead, that afternoon he ordered local

25 AGN, AG, vol. 443, exp. [4396], "Plaza de México, Proceso formado contral el señor coronel graduado don Manuel Antonio Yslas y alférez de Nacionales don Vicente Reyes, acusados de haber mandado decapitar a Juan Ramon y Luciano Tranquilo Costills en un despoblado entre el Pueblo de Tejupilco y el Pueblo de Yzta . . . y el primero también por otros excesos contra algunos vecinos de Tejupilco y otros puntos." Yslas, who lived in Tulancingo, had joined the royalist militia forces fighting the insurgents in that area prior to independence. Following independence the government disbanded the Tulancingo militia unit and Yslas received a certification of retirement from active duty. When the Anastasio Bustamante government found it impossible to contain the rebellion that broke out in the south and when bands of factionalists threatened the security of the Valley of Mexico, the government recalled to active duty a number of old militiamen to assist in security operations.

militiamen to summarily execute them. The following morning Yslas informed his superior, Lt. Col. Lino Alcorta, that he had pursued the Costillas, whom he identified as cattle thieves, and shot them. Alcorta included that information in his regular report to *general de brigada* Felipe Codallos, the commandant general in Mexico City, but not in his daily report to his immediate superior, general Juan Amador. Codallos then forwarded a transcription of Alcorta's report to Secretary of War Antonio Facio on March 16th. At the time neither Alcorta nor Codallos ordered any further inquiries into the deaths of the Costillas.

Were it not for Yslas's continued abuse of power in Tejupilco, his superior officers may have continued to permit the aging local militia commander to abuse his authority. However, one local resident, Juan Antonio Campusano, in late April 1831 wrote Alcorta that Yslas had forcefully ejected him from two rooms he had rented in Tejupilco. Formally, Campusano objected to Yslas's appropriation of private property without government authorization, particularly because Yslas just used those rooms to house a couple of women. Strengthening his complaint, Campusano included a certified statement from the Ayuntamiento of Tejupilco attesting to the truth of his complaint. He added, as additional evidence of Yslas's abuse of authority, that Yslas had ordered the executions of the Costillas.

Alcorta could not ignore Campusano's April 1831 complaint

Yslas was one a many old royalist militiamen who responded to the governments' call.

lest he be held legally responsible for covering up Yslas's actions. Consequently, Alcorta forwarded Campusano's letter to general Amador, who forwarded it to Codallos. After his legal advisor, Lic. Manuel Zozaya, a Mexico City judge, evaluated Campusano's complaint, Zozaya advised the commandant general about federal and local laws that protected the rights of property; and he expressed grave concern about Campusano's allegation that Yslas had ordered the execution of the Costillas.

Acting on legal advice, Codallos ordered an investigation into Yslas's appropriation of private property. The commandant general did not order an investigation into the deaths of the Costillas.

The investigation against Yslas for illegally appropriating private property took a different direction in July. Early that month 1831 María Rios, the widow of Juan Ramon Costilla and mother of Luciano Tranquilo, wrote President Anastasio Bustamante with her own complaint against Yslas. She included the details that she knew about the deaths of her husband and son. About 4 PM on March 13 a local militia detachment under the command of alférez Vicente Reyes came to her home, ordered his men to seize and bind her husband and son, and escorted them to an arroyo a short distance away. Reyes then left to inform Yslas, who returned with Reyes. Yslas then ordered the local militiamen to take the Costillas two leagues further away from Tejupilco. There, he ordered the militia troops to execute father and son.

Bustamante read that Juan Ramon Costillas had been supporting his six children along with his elderly mother and others. He ordered his Secretary of War, José Antonio Facio, to see that María Rios's complaint be investigated with total preference and efficacy. Under direct orders from his superiors, Codallos ordered Yslas and Reyes arrested and an investigation into their roles in the deaths of Juan Ramon and Luciano Tranquilo Costilla.

Acting under presidential orders, the commandant general's office pursued a thorough investigation of Yslas involvement in the deaths of Juan Ramon and Luciano Tranquilo Costillas. The collection of evidence, consisting principally of interviews and depositions, lasted into the spring of 1832. Yslas, Reyes, and the militiamen who participated in the apprehension and execution of the Costillas all confirmed that facts that María Ríos had related to President Bustamante. Documents, records related to Yslas's military service and the performance of his duties, and character references from his former immediate superiors and commanding officers completed the compilation of evidence.

With the evidence compiled, Codallos ordered a court martial board convened on May 24, 1832. Coronel graduado Andrés Huete, serving in Mexico City as the Sergeant Major of the Plaza, had the task of presenting the evidence against Yslas.²⁶ Coronel

26 Archivo de la Secretaría de la Defensa Nacional, Sección de Cancelados, D-111-2-372, hoja de servicio, Andres Huete, March 8, 1839. Huete, the son of a Spanish army captain, like many senior officers in the Mexican army, had served in the royal army during the wars of independence. While serving, he badly injured his right arm in a riding accident in 1819, leaving it virtually useless. He had retired from service in 1825 as a *coronel graduado*. When

Eulogio Villaurrutia, assigned to inactive duty in Mexico City in 1832, served as defense counsel with teniente coronel Cristobal Gil de Castro assisting him.²⁷ Codallos named generals Juan Pablo Anaya, Pedro Sarsoza, Pedro Valdes, and colonels Guadalupe Palafox, José Joaquin Ayestarán, Mariano Arista, and Tomás Castro to serve on the court martial board to evaluate the evidence against Yslas and to decide his sentence should they voted to convict him.

The evidence against Yslas left little for his defense to dispute. First, Yslas had confessed to ordering the execution of the Costillas. He justified his actions, explaining that local folks had told him that the area was full of spies for the factionalist leader Juan Cruz and that the Costillas had burned a hayfield to protect the escape of Cruz and his men from pursuit by government forces. Yslas had also stated the local folk were fearful of reprisals from factionalist bands that roamed the area should they cooperate with government forces; some factionalists had even tried to steal the horses belong to the local militia.

widespread uprisings and popular resistance to the government of Anastasio Bustamante created a need for senior officers in administrative posts, he returned to active duty in May 1830. Hereafter, ASDN, SC.

27 AGN, AG, vol. 443, exp. [4396], f. 384; and ASDN, SC, XI-111-2-1784, hoja de servicio, Eulogio Villaurrutia, September 4, 1836. Eulogio, who had been born in Spain, was the son of the noted Mexican lawyer and judge, Jacobo Villaurrutia. Because Jacobo had been born in Mexico, Eulogio was exempt from the expulsion laws Congress issued in 1827 and 1828. Nevertheless, the government assigned him to a duty post with the 8th Regiment in Durango. He had returned to Mexico City in early 1831, but as a *suelto*, that is, an officer without a duty assignment.

In short, the execution of the Costillas, served to protect the locals and to restore peace in the area.

Col. Huete, a second-generation professional soldier whose service in the army had begun in 1802 when he entered the royal army as a cadet, could not accept cold blooded murder as a tactic for restoring political peace. He presented the recent history of Yslas' military conduct to illustrate a pattern of excesses. Notably, prior to assuming new duties in Tejupilco, he had been among the forces assigned to suppress factionalist activity around Chalco. Complaints from innocent civilians in the area about Yslas's abuse of authority had led his commander to request that the government remove Yslas from service. The government, however, faced continued threats from factionalists. Rather than retiring Yslas once again, therefore, the government opted to reassign Yslas to Gen. Amador's command in the south. In reassigning Yslas, the government did not inform Amador that Yslas's former commanding officer had expressed serious concerns about Yslas fitness for duty. Even though the government had not informed Amador about Yslas's abuse of authority, Amador had little use for an aging, illiterate militia officer. Appealing to old contacts, though, Yslas asked fellow Tulancingo native colonel Martín Cos for advice. Cos suggested he pay a visit to Alcorta, then commander of the western flank under Amador, and ask for an assignment. On Cos's recommendation, Alcorta assigned Yslas as commander of the militia forces in Tejupilco. There,

Yslas decided to pursue collaborators aggressively, even after the mid-March 1831 amnesty law following the execution of Vicente Guerrero on February 14, 1831.

Huete concluded his presentation of the evidence against Yslas stating that neither exalted zeal nor stupidity could explain his behavior. Rather, Yslas acted to extend his personal authority, place himself above the law, and trample the rights of citizens. Simply put, the deaths of Juan Ramon Costilla and his son could only be classified as homicides - intentional, premeditated murders. Emphasizing Yslas' cruelty, he noted that the local militiamen had testified that because they were so few in number that Yslas had ordered them to discharge their weapons repeatedly at the Costillas to insure their deaths.

Huete called on the court to find Yslas guilty of premeditated murder and sentence him to death. Referencing art. 20, tit. X, trat. VIII of the military *Ordenanzas*, Huete argued that the law called for a punishment proportional to the crime. To show that both military and civilian laws required that those who unjustly pronounced a death sentence should be condemned to the same sentence, he cited art. 64, tit. XI, trat. VIII and ley 11, tit. 8, Part. 7.

Recognizing that the country was in the midst of a civil war, Huete urged his fellow officers to send a strong message to the people that the army would not tolerate murder. Sentencing Yslas to death would serve to show the people that the army was

the defender of the rights of the people. As for alférez Reyes, Huete argued that because he was following direct orders, he could not be held responsible for the deaths of the Costillas and should be set free.

For the defense Col. Villaurrutia presented an image of Yslas as elderly, rustic, ignorant, illiterate, and fearful of the local people. Shifting blame for the Costillas death to others, Villaurrutia challenged the wisdom of the government for reassigning Yslas to Amador's command. Villaurrutia noted that Amador, after briefly interviewing Yslas, recognized that he did not know how to read or write and that his commission as a coronel graduado did not in itself make him fit for command; Amador bluntly told Yslas that he did not have a job for him. Alcorta, however, gave the old royalist militiaman a free hand to pursue the factionalists in the Tejupilco area. Yslas, according to Villaurrutia, in his stupidity, zeal, and ignorance, believed that the local collaborators should not go unpunished. For Yslas, then, executing collaborators would be the only way to impose peace in the area.

Villaurrutia argued that Yslas was ignorant, not malevolent. He pointed to the character references from former commanders and senior officers under whom Yslas had served - Secretary of War general José Antonio Facio; coronel Antonio Castro, previously a captain in the Tulancingo militia forces where he served as Yslas's immediate superior; and Miguel Cervantes, a

member of one of Mexico's wealthiest families whom Anastasio Bustamante had named military commander of the anti-factionalist forces in the Apan-Texcoco-Chalco area in 1830. The defense also obtained a letter from the local first instance judge for the Tejupilco area. Those letters attested to the defense's argument that Yslas was a solid, good man. Additional evidence, testimony from local folk in Tejupilco, supported Yslas's perception that Costillas collaborated with the factionalists in the area. Finally, alférez Reyes had testified that he had standing orders from the previous commander in Tejupilco to apprehend the Costillas, but feared retribution from the factionalists. That fear, according to Villaurrutia, pervaded the countryside and prevented the restoration of peace and tranquility. The letter from the first instance judge in Tejupilco noted that due to Yslas's harsh but necessary actions, he had brought peace, security, and calm to the area around Tejupilco.

As for alférez Reyes, the assistant defense counsel argued that the senior officers on the court martial board should absolve him of responsibility in the deaths of the Costillas. Citing a litany of articles in the Ordenanzas, the defense argued that Reyes was obligated to carry out Yslas's orders. Military law mandated obedience and subordination to orders from senior officers under threat of execution for disobeying them. In brief, Reyes acted properly when he carried out Yslas orders.

The senior officers who evaluated the evidence and the

arguments of the prosecution and the defense in the case against Yslas sided with the prosecution. For the military court, the outstanding issue was not whether or not Yslas was guilty of a crime, but what his punishment should be. In accordance with military law, the members of the court martial board voted presented their reasoning and their votes in reverse seniority order. Tomás de Castro, the most junior of the officers, noted that no single article in the Ordenanzas militares applied specifically to the case at hand. The article cited by the prosecution, art. 20, tit. X, trat. VIII, to argue in favor of the death penalty prescribed the death penalty specifically for soldiers who by word or deed insulted corporals. Castro, voting to dismiss Yslas from the army and condemn him to ten years in a presidio, justified his position by citing art. 120, tit. XI, trad. VIII ["El que valiese del nombre de algun geje o magistrado para sus fines particulares, y aun para asunto del servicio, sin habersele dado facultad para ello, será castigado con proporción a las circunstancias del caso."] Voting second, Mariano Arista concurred with Castro's vote to dismiss Yslas from the army and condemn him to ten years in a presidio. Arista added that he did not think that Article 64, which prescribe hanging for premeditated murder, should apply in the case against Yslas.

The next two senior officers to vote on Yslas sentence thought that he should be condemned to death. José Joaquín Ayestarán disagreed with Castro and Arista's sentencing votes; to

support condemning Yslas to death he cited military law articles 64 and 120, tit. XI, trat. VIII. Ayestarán argued that Yslas should be sentenced according to the same laws as those applied to factionalists who killed civilians in the rural countryside. He further cited tits. 23 and and 26, ley 10, libro 8 of the *Novisima Recopilación de las leyes de las Indias*, which mandated death, to support his vote. Guadalupe Palafox, at the time a secret supporter of the factionalist movement led by José Antonio López de Santa Anna, cited the same articles as Ayestarán, stating that public vengeance demanded death for those who abused power.

Pedro Valdés and Pedro Zarzosa bought the vote to a three-three tie, three for death and three for dismissal from the army and ten years in a presidio. Valdés noted that Yslas had confessed and cited article 64 of military law to support his vote for the death penalty. Zarzosa stated that neither military nor common law expressly described the crime at hand or explicitly cited a punishment for as senior officer who ordered the capture and execution of civilians; in the absence of explicit law, Zarzosa voted for dismissal from the army and ten years in a presidio.

With three votes for life and three votes for death, the senior presiding officer, Juan Pablo Anaya, would decide Yslas's sentence. Anaya, 47 years old, was veteran of the wars of independence since joining Father Miguel Hidalgo's army in

November 1810. After the defeat of that army, Anaya fought under the Rayon brothers in Cuautla in 1811 and 1812, attended the Congress of Chilpancingo in 1812 and 1813, and persisted in his opposition royalist rule until captured and amnestied in 1817. Anaya stated that he thought the crime Yslas committed was "un delito atroz, y muy feo." Yslas acted without authority, denying the Costillas the formulas "salvadoras de los juicios." Citing art. 120, tit. XI, trat. VIII of the military code and tits. 23 and 26, ley 10, lib. 8 of the laws of the Indies, Anaya voted to sentence Yslas to death. He agreed with his colleagues that alférez Reyes should be set free.

Under military law Yslas had the right to appeal his case to the appellate military court; and he did so on the technical point that Codallos had improperly constituted the first instance court martial board. Military law mandated that a senior officer, even a *coronel graduado de capitán*, had a right to a board composed of his superiors. The majority of the members of the board should have had the rank of general. General de brigada Ignacio Mora, the appellate court's military prosecutor during the summer of 1832, reviewed Yslas's appeal. Writing his finding on July 4, 1832, Mora recommended that the appellate court return the case file to Codallos and require that he appoint a properly constituted first instance court martial board. Col. Huete disagreed with Gral. Mora; he argued that even though there were a number of generals in Mexico City most were busy with other

pressing responsibilities. Mora, though, citing art. 3, tit. VI, trat. VIII of the *Ordenanzas militares*, noted, first, that in the absence of the commandant general as the presiding officer, that he should have appointed the most senior officer available. Generals José Moran y del Villar, José Antonio Rincon, José Ignacio Ormaechea, as well as Mora himself, had all been in Mexico City in May 1832; and Moran, who held seniority over Juan Pablo Anaya should have been appointed as the presiding officer.

The first chamber of the appellate military court reviewed and upheld the Yslas appeal on July 30, 1832. Two senior officers represented military interests in that chamber: General de division Luis Quintanar and general de brigada graduado Juan José Miñon, aging former veterans of the wars against the Mexican insurgents who joined the coalition that accomplished independence in 1821. The civilian members of the first chamber were experienced judges: Lic. José Nicolas Olaes, a former *audiencia relator*; Lic. José Sotero Castañeda, a former insurgent; and Lic. Agustín Pérez de Lebrija, a first instance Mexico City judge during the 1820s. The first chamber voted that the Mexico City commandant general should have properly constituted the Yslas court martial board and ordered the case returned to his jurisdiction for a retrial.

Commandant General Codallos informed Col. Huete, as Sargeant Major of the Plaza, on August 8, 1832, to recall alférez Vicente Reyes to Mexico City and require that he post a bond until the

second court martial board issued its findings. That recall process lasted months. By the time Reyes was contacted, returned to Mexico City, and posted a bond, the Anastasio Bustamante and the regular army had suffered significant battlefield defeats.

The new commandant general in Mexico City in early 1833, Luis de Cortazar, appointed a new court martial board on February 25, only to suspend that board and appoint another one on March 13. Within days the composition of that board changed again when the government named one of its members, Mariano Arista, as the new commandant general for Mexico City and the State of Mexico. Arista appointed modified the court martial board for Yslas second trial. Presiding once again, Juan Pablo Anaya oversaw the proceedings. Joining Anaya in voting to condemn Yslas to death once again were a former insurgent, general de brigada Francisco Moctezuma, and former royalists, general de brigada Gabriel Valencia and general de brigada graduado Javier Valdivielso. Voting to condemn Yslas to ten years in a presidio were colonels Valentín Canalizo and Jose Maria Malo. Colonel José Joaquin Reyes voted that the Mexico City commandant general lacked jurisdiction over the case. With a commandancy general recently created for the State of Mexico, colonel Reyes voted that Yslas case should go into that jurisdiction because the crime occurred in that territorial jurisdiction. Reyes's vote aside, on March 18, 1833, a military court voted four to two for the death penalty.

Once again after his second trial, conviction, and capital punishment sentence, Manuel Antonio Yslas appealed to the Supremo Tribunal de Guerra y Marina on the basis of the improper composition of his court martial board. National politics during the late spring and summer of 1833 delayed a prompt hearing of Yslas's second appeal. Those politics included the expulsion of a number of political and military figures for conspiracy, rebellion, sedition, and general disapproval of the policies and politics of Vice President Valentín Gómez Farías and President José Antonio López de Santa Anna. Two appellate court military prosecutors reviewed Yslas files during 1833. Col. Pablo Unda recommended on May 11, 1833, that the court should once again return the file to the Mexico City commandancy general and order the commandant general to appoint a properly constituted court martial board. By the time the appellate court heard the Yslas's appeal a second military prosecutor, Col. Nicomedes Callejo, had reviewed the file and on November 4, 1833, concurred with Unda's opinion. The first chamber took up the Yslas issue on December 3, 1833; and once again the appellate military court granted Yslas his appeal.

The third court martial of Manuel Antonio Yslas did not take place for nearly two years. Finally, in October 1835 Commandant General Gabriel Valencia appointed five brigadier generals and two colonels to hear the Yslas case. Ignacio Mora served as the presiding officer. The other members of the court martial board were general de brigada Pedro Valdes, who had sat on the first board; brigadier generals (*graduados*) Francisco Berdejo, Manuel Andrade, and Benito Quijano; and colonels Miguel Soto and Miguel Garcia Aguirre. That board voted unanimously on October 27, 1835, citing art. 120, tit. XI, trat. VIII, which stated that anyone acting without authorization as a senior officer or judge should receive a punishment proportional to his crime. They condemned Yslas to ten years in a presidio and destitution of his position in military. The court martial board also voted that the time Yslas had served in jail should count toward his sentence.

Had Yslas wished, he might have challenged the composition of his third court martial board because Gabriel Valencia and Pedro Valdes had previously adjudicated his case and Ignacio Mora had previously reviewed his appeal. Technically, Yslas could have insisted that those three senior officers should have recused themselves. Perhaps, however, Yslas perceived that five and half more years in jail was a sentence he could live with; that time might be preferable to risking a death sentence from a fourth court martial board.

Yslas, though, patiently bided his time. The following year after the disastrous loss of Texas in April 1836, the government decided that prisoners sentenced to presidios would be assigned to the army of operations heading for Texas. Resourcefully, Yslas granted Cor. Joaquín Zarco his power of attorney for his judicial affairs on October 12, 1836.²⁸ Within two days José Manuel Fernández de Madrid, governor of the Federal District, requested the commandant general to forward Yslas file. Before another week had passed the commandant general received an order from the federal government to release Yslas into the custody of the Army of Operations headed for Texas. While Yslas may have been resourceful in gaining his release from prison, the record indicates that he did not make the best of his freedom. Several weeks later the first instance judge in Texcoco informed the military that local authorities had arrested Yslas and several others in connection with a counterfeit case.

Had Manuel Antonio Yslas simply arrested the Juan Ramon and Luciano Tranquilo Costillas in March 1831, as he had the power and authority to do, the commandant general's office in Mexico City would have investigated and, likely, prosecuted them. After all, that office had investigated and prosecuted a significant

28 Archivo Histórico de Notarías, Notario José María Covarrubias (no. 176), acta 170, October 12, 1836. *Guía de Protocolos del Archivo Histórico de Notarías, México, D.F., 1836-1857* (México: El Colegio de México, 2000). CD-ROM.

number of cases against factionalists and their collaborators as well as murderers and thieves during the decade prior to Yslas' execution of the Costillas. Yslas's conduct, however, undermined the legitimacy of the military justice system that political elites used to control civilians and military men alike.

CONCLUSION

The seemingly technically sound and procedurally proper cases files discussed above form part of the body of evidence that explains the relationship between the failure to consolidate the new Mexican state and military justice during the first decade after independence. The 1823 reform that had militarized criminal justice had contributed to obstructing political consolidation; and the 1832 reform removed that obstruction. Additionally, the de-militarization of criminal justice in Mexico in 1832 reflected calls for reform. Anthony W. Pereira has argued that calls for reform of military justice tend to surge from within the military when the military is a strong institution; if weakened by loss of prestige, calls for reform tends to surge from civilians, particularly if civilians have experienced the virtual legality of military justice.²⁹ In Mexico both civilians and military personnel endured the virtual legality of military justice. Calls for reform were heeded after the army lost its struggle with regional militias during the 1832

²⁹ Pereira, "Virtual Legality," 568, 572.

civil war: Congress removed sedition and criminal cases involving civilians from military jurisdiction.³⁰

That 1832 reform, however, only served to limit military justice to its traditional jurisdiction, suggesting the persistence of traditional values and traditional elites. Moreover, even the limited reform of 1832 proved short-lived. Continued factional rivalries permitted the political reemergence of those elites who favored a more authoritarian approach to government. New government decrees between 1840 and 1842 reinstated militarized criminal justice once again. Even though those reforms did not survive the return of federal civilian rule of the late 1840s and early 1850s, during the dictatorship of 1853-1855 virtually every petty thief in Mexico City and Guadalajara came under the jurisdiction of the commandants general.³¹ Further, those who preferred military adjudication of sedition cases against civilians also succeeded during the early 1840s and again during the 1850s in militarizing political crimes once again.

Real institutional reform, reforms that would limit military jurisdiction to military law cases, would not be accomplished

30 Ley, December 18, 1832, "Cesan las leyes que expresa relativa a ladrones, y otros reos que deben ser juzgados militarmente." See Basilio José Arrillaga, ed., *Recopilación de leyes, decretos, bandos, reglamentos, circulares y providencias de los supremos poderes y otras autoridades de la república mexicana*. 9 vols. Mexico City: Imprenta de J. M. Fernández, 1828 - 1839.

31 See decrees of 13 March 1840, 22 October 1841, 1 November 1841, 3 January 1842, and 12 July 1842 in *Legislación mexicana*, vol. 4; Ley and AGN, Civil (Legajos), Legajo 6, exp. 51, "Causas criminales seguidas contra personas que tenían fuero militar," February-May 1855; AGN, AG, vols. 1360-1367 and 1370-

until after the regular army suffered major military losses - to France in the late 1830s, to the United States in the mid-1840s, and to the militias during the civil war of the late 1850s - that completely undermined its power and prestige. Furthermore, substantive and far-reaching reforms, reforms that would include greater accountability and greater protection of constitutional and human rights, would only accompany a regime change led by new political actors.

Finally, strengthening the Mexican state would have to follow the final dismantling colonial corporatism, would have to follow a serious political rupture with the past. That rupture would have to involve the dismantling of the *fuero militar*. The liberal victors of the wars of Reform accomplished just that when they abolished the army in 1860. Subsequently, in the new Mexican army generals would not adjudicate military law cases at the appellate level again for nearly a generation. During the early 1860s and following the French Intervention of the mid-1860s federal circuit court judges adjudicated appellate military law cases within their districts until the late 1870s. Civilian adjudication of appellate military justice exemplified the rupture with colonial corporatist political past.

Clearly, assessing the significance of changes in the system of military justice and broader issues of institutional continuity and change requires understanding mode of transition,

1372, "Estados de causas," 1853-1855.

prior regime, and agents of change. It also requires understanding the political dynamics that both impede and permit change. Among others, those political dynamics include regime threats, executive and military accountability, protection of constitutional and human rights, old and new political actors, and old and new forms of political participation. Understanding more fully the relationship among those dynamics in early national Mexico will require much deeper analyses of the unique and peculiar histories of individual, groups, and institutions.