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Ancient Constitution or paternal government? Extraordinary powers as legal response to political violence (Río de la Plata, 1810–1860)

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Introduction

After the revolution of May 1810, the provinces of the former Viceroyalty of Rio de la Plata (1776–1810) fought for their independence from the Spanish monarchy while they looked for a new political organization. However, different attempts (1813, 1819, and 1826) of establishing a general government upon the base of a written constitution failed. In this context, each province declared her own independence and from 1820 onwards, most of them adopted local Constitutions. Each province claimed to be a sovereign state and, by means of pacts, they gave birth to the so-called »Argentine Confederation«. The provinces kept their sovereignty, while the Governor of Buenos Aires, Juan Manuel de Rosas, acted as common delegate for foreign affairs. Rosas was, in fact, more than a mere common delegate. Particularly after 1835, he exerted his political and military influence over the whole territory. This confederative regimen lasted until the constituent moment of 1853/1860.[2]

From a traditional point of view, Rosas regime was a dictatorship, above all after the end of the 1830's, when he began pursuing to all political adversaries. Nonetheless, new perspectives inspired in recent studies have shed a different insight over this context. Local institutions of the period

1 This essay is part of the research project PICT 2014-3408 (FONCYT-Argentina). I would like to thank Agustín Casagrande for reading the first draft and for his bibliographical indications. I also thank the Max Planck Institute for European Legal History for granting me a guest residency in Frankfurt, where I presented a preliminary version at the Workshop »Violent political conflicts and legal responses: a transatlantic perspective (18th to early 19th century)«, organized by Otto Danwerth, Karl Härter and Angela De Benedictis (October 2015)

2 For an overview, Goldman (dir.) (2005).

gained new interest for social and legal historians who have paid special attention to the relationship between the justice system and politics during the Confederation. They have also stressed the agency ability of provincial governors of the period. Actually, provincial governors were the main political actors of the time; they got the support of the local elites and enjoyed a diffuse consent among rural population. The permanent wartime contributed to strengthen their powers.

As Rosas, many provincial governors, in their own way, fit in with the character of »caudillos«. The regime of caudillos is a common subject in the classic historiographical analysis of the first half of the 19th century in Latin America.[3] In the case of Río de la Plata, the experience of caudillos has been subject of academic revision.[4] Scholars have discussed about the cultural background of this phenomena, contrasting their outcomes with the classic picture of a »lawless realm«. Within this debate, they have proposed new interpretations on the classic topic of the extraordinary powers granted to governors during this period. Assuming that said extraordinary powers represented a sort of legal response to political violence, we will focus on the historiographical characterization of such powers.

Firstly, in order to define the »political violence« from a normative perspective, we will consider the different meanings of the notion of political crime and its relationship with the cultural contexts, as we will point out some relevant features of our context of study. In the second place, we will analyze the historiographical explanations on caudillos and their extraordinary powers. Rejecting the theses according to which these »extraordinary powers« took part of a presumed »ancient constitution«, we will suggest that they were rooted both, in a paternal conception of the sovereign, and in the role assigned to the adjectives ordinary / extraordinary in the traditional legal language. Finally, let us add that although our study is focused on Rio de la Plata we expect that some of our conclusions shall be useful for other Latin-American contexts that, at the time, underwent comparable political experiences.

3 Haigh (1964), Hamill (ed.) (1992), Lynch (1992, 2002).
4 Goldman / Salvatore (2005); Ayrolo / Míguez (2012).

Laesae Maiestatis and Political Crime: meanings and contexts

What does »political violence« mean for us? As we are interested on legal responses, the answer must adopt a normative perspective. From this point of view, we find two great paradigmatic frameworks: the ancient *laesae maiestatis* system and the modern concept of political crime. Mario Sbriccoli, in a renowned work on this topic, claimed that they represented two different ways of responding to political violence according to two different historical experiences: the Maiestas of ancient regimen and the liberal State of the 19th century.[5]

Even when they may have played similar functions, if we consider »laesae maiestatis« and »political crime« as normative categories, we would find that they have exactly the opposite meaning. The qualification of laesae maiestatis implied an aggravation of the legal response, so in the punishment as in the procedural conditions. On the contrary, the expression »political offense« (*délit politique*), as it was introduced by the third decade of the 19th century in some European constitutions, was intended to set limitations on the legal response. In accordance with the new value assigned to freedom of press and public opinion, the »political crimes« became a matter of special consideration: they should not be punished with dead penalty – as Guizot had claimed since 1823 – and they had to be tried by a jury.[6]

Sbriccoli suggests that this change had the goal of highlighting the conviction that the new liberal state did not fear its political adversaries. He adds that the liberal discourse laid out a new distribution of crimes considered politically dangerous (now presented as apolitical), so the abandon of the ancient laesae majestatis had at first just a formal effect.[7] However, the said formal effect was in turn a hint of a new cultural era in which political actions deserved protection. It was a signal, we could say, of the »time of politics«.[8] Therefore, we shall take »laesae maiestatis« and »political crime« as two paradigmatic references to analyze the way in which – in a transitional moment – governors of the Argentine Confederation dealt with political violence.

5 Sbriccoli (1974) 175–176.
6 Delbecke (2014) 434 ss.
7 Sbriccoli (1973) 615–616.
8 Taking this expression from Palti (2007) though in our own interpretation.

Looking at the end of our period, we have to note that until the sanction of the Constitution of 1853, the notion of »political crime« as distinct category was not in use in the legal language of the region. It appeared for first time in a normative text when section 18 of said Constitution declared, among other guarantees, that it was »forever abolished« the death penalty for »political causes«[9] Law scholars usually say that this was an original norm based on the previous experience, the decades of excesses of caudillos' governments.[10] However, they do not usually consider the fact that, as we said, by the first half of the 19th century, the notion of political crime – in its new limitative sense of the legal response – was rather a novelty taken from the European liberal language.

Another section of the Constitution provides us a hint of the way in which previous governments had acted. Section 29 read:

> »Congress may not vest on the National Executive Power – nor may the provincial legislatures vest on the provincial governors – extraordinary powers or the total public authority […].«[11]

Unlike section 18, the text of section 29 was an original formulation with clear allusions to the legal language of the previous years. Formulations like »extraordinary powers« (*facultades extraordinarias*) or the »total public authority« (*la suma del poder público)* referred to what had been a common institutional practice in the former Argentine Confederation.

Despite their different sources, there is a meaningful connection between both section, 18 and 29, of the 1853 Constitution. While the first refers to a new time in which politics should have a central role in shaping the social order, the second concerns to the past in order to close an era in which there had been no room for political dissention and extraordinary powers were a

9 »Death penalty for political causes, any kind of tortures and whipping, are forever abolished«. English version of the Argentinean Constitution available at http://www.senado.gov.ar/deInteresEnglish.

10 González Calderon (1930) 343.

11 »Sec. 29: Congress may not vest on the National Executive Power – nor may the provincial legislatures vest on the provincial governors – extraordinary powers or the total public authority; it may not grant acts of submission or supremacy whereby the life, honor, or wealth of the Argentine people will be at the mercy of governments or any person whatsoever. Acts of this nature shall be utterly void, and shall render those who formulate them, consent to them or sign them, liable to be condemned as infamous traitors to their fatherland«. English version available at http://www.senado.gov.ar/deInteresEnglish.

common legal response to political unrest. What kind of cultural horizon was this that the Constitution sought to close?

Let us outline some of dominant patterns of the legal culture that prevailed during the first half of the 19th century, and particularly, during the Confederation:

a) A decade after the Revolution of 1810, the former colonial cities of the region had become sovereign territories (provinces) linked to each other by confederative pacts. Most of them passed a local constitution after 1820.
b) Most of the provinces declared Roman Catholic Religion as religion of State and »fundamental law of the country«, forbidding all other worships.
c) Excepting for those elements in contradiction with the independence and the new laws, the old legal tradition, from the medieval Castilian law to the Spanish Novisima Recopilación of 1805, kept its force alongside with the *ius commune* doctrine.
d) After the decade of 1830, as Rosas consolidated his power and influence over the rest of the provinces, policies to impose uniformity were implemented. All provincial governors adhered to the »Holy Cause of the Federation« while dissention was excluded and political adversaries were treated as criminal.
e) Although provincial Constitutions set republican systems with separation of powers, governors got »facultades extraordinarias« and even the »sum of public power«. If at first, this special powers were granted for a limited period, over time these concessions began to be more frequent and undetermined.[12]

These are the basic traits of the historical context in which provincial governors, among others, were identified as »caudillos«. The meaning of this word changed over the time, to get a strong negative semantic load in the language of the men that organized the country after 1853 and in the first national historiography.[13]

12 For aspects of legal culture, Agüero (2013b); for the political context, Goldman (dir.) (2005), Salvatore (2005).

13 Buchbinder (2005); Svampa (2005); Myers (2005).

Caudillos and extraordinary powers: historiographical approaches

There has been a great deal of academic discussion about the caudillos' government ever since. I will focus on two dominant and divergent characterizations.

a. Lawless Era – Personal Power – Dictatorship

According to a consolidated view, the caudillos regime was something like a »lawless era«, a byproduct of the independence wars and of the institutional vacuum created by two decades of wartime and of massive mobilization of rural population. Different perspectives converged in this approach: from the first liberal historiography that described the caudillos as a despot or a tyrant »who followed his own instincts and ambitions« to those who depicted the caudillo as a landowner ruling for the profit of the landowning class and managing the state as a cattle ranch.[14]

The influential works by John Lynch provide the classic examples of this approach. According to Lynch, after the crisis of authority triggered by the French invasion of Spain in 1808, the colonial state collapsed: »Viceroys were deposed, *audiencias* dispersed, intendants killed. In capital and country colonial institution were demolished […]« As institutions perished, »social groups competed to fill the vacuum«. Beyond the alleged different political causes, these groups shared the same rural conditions of life and the cult of »personal leadership«.[15]

We may include in this group the approach of legal historians that stressed the contradiction between the »extraordinary powers« and the liberal institutions enacted by fundamental laws of the time. They have paid special attention to the normative sense of formulations like »facultades extraordinarias« and »suma del poder público«. Ricardo Levene suggested that while the first formula was equivalent to the classic »dictatorship«, the second meant a sort of »absolute power«.[16] Years later, the legal historian

14 For the historiographic balance Salvaore (2003) 9–11; Goldman / Salvatore (2005) 8–25; Fradkin / Gelman (2015) 11–25. For the classic approach in Latin-American history, see references above, footnote 3.

15 Lynch (1992, 2002) 35–36.

16 Levene (1954–1958) III, 414 (Quoted by Tau Anzoategui, 1961). It is worthy to note that

Víctor Tau Anzoátegui explained that while the *facultades extraordinarias* meant just a simple delegation of legislative powers, the *suma del poder publico* consisted in a transitory o permanent abolition of the republican division of powers. The two were »instruments of political pressure« in a context generated by an array of concomitant causes, such as, the permanent wartime, the immaturity of the people, the embryonic state of the democratic republican regime, and the unquestionable predominance of personalism, embodied in the mythic figure of the caudillo.[17]

In spite of their different perspectives, classical approaches from political and legal history met each other in the etiologic analysis of the caudillos regime. Wartime, rural mobilization, militarization of politics combined with personalism and institutional vacuum, were some of the common causes highlighted by different studies. In a recent work, Chiaramonte has suggested that all these approaches shared the common concern over the incompatibility of caudillos political practices with liberalism.[18] For this reason, he argues, the praxis of granting extraordinary powers was – for those perspectives – »one of the main proof of the absence of legality« and it is still »one of the phenomena most responsible for the attribution of despotism to the conduct of governors in general, whether they are individually considered caudillos or not«.[19] Let us take this reference to introduce the second main historiographical trend we want to consider here.

by the years in which Levene suggested this distinction (1954), dictatorship had become a recurrent device in the Argentine political practice of the 20th century.

17 Tau Anzoátegui (1961) 92–96.

18 The enforcement of liberal institutions is a recurrent topic in Latin-American history. At first, classic historiography stressed the idea that, due to cultural reasons, it was impossible to carry out liberal reforms in Latin America, during the 19th century. However, new perspectives have proposed different explanations. Some scholars have highlighted the strength of liberal ideas expressed in the so many written constitutions enacted after the independence, Rodríguez (2005). Others have paid more attentions to the intrinsic problems of liberalism as a doctrine of the era (and not only for our region), to the defects of the rigid design of separation of powers and to the lack of expertise of Latin American elites in republican governments, Aguilar Rivera (2000). Finally, some have problematized the use of such categories as »traditional – modern – liberal –« that have framed the Latin American history into a scheme of model–deviation, incurring so in anachronisms of different kind, Palti (2007).

19 Chiaramonte (2010) 481–482.

b. Popular support – the power of laws – the Ancient Constitution

As we have said, the history of caudillos has been the subject of diverse revisionisms. By the first half of the 20th century, revisionists emphasized the nationalist values of Rosas regimen in apologetic tenor. However, newer perspectives – from different approaches – have called attention to the discourse of republicanism and the role played by the law and justice during the Confederation.

The subaltern studies have stressed the genuine nature of the popular support that caudillos enjoyed, particularly among soldiers, rural workers and peasants. Without denying the authoritarian traits and the »cult of personality«, they have called attention on the republican elements of the official discourse, underscoring a sort of »two-way street« communication between authorities and subaltern groups. Looking at the justice administration, historian Ricardo Salvatore claims: »The Rosas era was anything but a vacuum of legality«.[20] He also recalls that new studies have called into question »the traditional notion of *caudillismo*« emphasizing »the importance of republicanism and its constitutive discourse«.[21] The reinforcement of the justice system would have had a key role in spreading republican values. In Salvatore words:

> »Unknowingly, in trying to impose Rosas's vision of order, judicial and military authorities found themselves immersed in a conversation about the republic and the place it occupied in the lives of poor rural folks«.[22]

Although political adversaries were the main target of the persecutions and terror campaigns of law and order, repressive institutions were a threat for the common criminals as well. Therefore, Rosas would have had success in the task of restoring stability and order, by reinforcing a justice system that »distributed, systematically, harsh penalties in a swift fashion«, though »preserving certain procedural rules« and, above all, that acquired »significant improvements in peoples equal treatment under the law«. All this would have helped the legal order of Rosas period to attain a »certain degree of credibility«.[23]

20 Salvatore (2003) 194.
21 Salvatore (2003) 14.
22 Salvatore (2003) 5–6.
23 Salvatore (2003) 16, 161, 181–182.

Beyond the problem of legitimacy, most important for us is the fact that, in dealing with justice and legal order, social and political historians cast their eyes over the structural role of law and legal culture, refusing the image of a lawless era. However, new questions arise. What should we understand for »legality« or »equal treatment under the law« in this context? Which law? How can it fit in, within the same framework, republicanism, legality, equal treatment under the law, on the one hand, and extraordinary powers, religious totalitarianism and persecution to all form of political dissent, on the other?

The answer, if possible, must stress the different cultural background and the local understanding of the law in such a context. Professor Chiaramonte presented an accurate attempt in this line, in an article of 2010, in which, in order to comprehend the political praxis of the period, he called attention on the relevance of the »ancient constitution«. He recognizes that attempts »to establish the content of that constitution« – in the Hispanic world – during the late 18th and early 19th centuries, »were not convincing«. However, he states that the »survival of the ancient constitution, long after the independence« is perceptible in three historical aspects: a) the persistence of the Spanish law, both private and public; b) the intellectual background of the so-called caudillos and their advisers; c) the legal nature of exceptional powers or »*facultades extraordinarias*«.[24]

These elements would allow a reassessment of the political behavior of caudillos. Their political conduct – says Chiaramonte – »has been misinterpreted due to a failure to recognize that they belonged to a conceptual world governed by rules attributable to the ongoing force of the ancient constitution«.[25] In this last expression, he also includes the natural law, the law of nations and customs along with new fundamental laws.

Regarding the topic of the extraordinary powers, Chiaramonte points out two notes usually overlooked by local historiography. a) Such powers were used in other regions of Spanish America, such as México, Colombia and Chile; b) similar powers were already envisaged in Rio de la Plata documents produced shortly after May 1810, in decrees that allowed to suspend individual guarantees in case of extraordinary events that might compromise the

24 Chiaramonte (2010) 455–456.
25 Chiaramonte (2010) 479.

public peace and security. Instead of expressing the absence of legality, he says, »these powers were in fact a form of the ancient institution of dictatorship, established according to the rules of the law of nations by consent of those who granted the powers, and with limits on their time and scope.« While historiography has stressed their incompatibility with liberalism, Chiaramonte calls for examining their consistency »with the ancient constitution«.[26]

Chiaramonte's perspective brings to the forefront the explicative value of law and legal culture; however, what should we understand for »ancient constitution« or »constitutionalism«? He warns us of the misunderstanding derived of limiting our frame of reference to the »heyday of constitutional texts that began in the late eighteenth century […]«. Besides that, he is aware of the merely rhetoric use of the expression »ancient constitution«, though he thinks that, in a different sense, it really denotes a »set of constitutional rules in force at a given time«. In another reading, he adds, the term »constitutionalism« denotes »a process that stretched across the seventeenth and eighteenth centuries and placed limits on power through a set of rules of diverse origin and date that simultaneously aimed at moderating the exercise of popular sovereignty.« Nonetheless, in another passage, he seems to identify the ancient constitution with the »natural expression of the dominant social, legal, and political norms of the era«.[27]

In our opinion, saying that the expression »ancient constitution« was something more than a rhetoric resource is highly problematic, at least for the Spanish case.[28] In addition to this, we think that in Chiaramonte's argument, the distinction between the descriptive sense of constitution – as a mere state of things – and its normative meaning, as a legal discourse aimed at placing limits on powers, is not clear. [29] If we use the first sense, we would be doing just a descriptive narrative of the power relations in a

26 Chiaramonte (2010) 481–482, 456.

27 Chiaramonte (2010) 459, 482.

28 Lorente / Portillo (2011) 24–28.We would say that the notion of the Ancient Constitution primarily works as a rhetorical resource in those contexts in which history has something to do with the discussion on the scope of power, in order to set its limits. In this sense, it lies at the intersection between historiography, law and politics, and works in different senses according to those contexts. This seems to has been the main legacy of Pocock (2011).

29 For a brief reference on this distinction, Lorente (2012) 294–295.

specific social context. If we adopt the second meaning, we have a normative criterion to discern about the kind of cultural elements we are willing to consider as part of a constitution, whether it be ancient or modern. If we want to give a normative content to the notion of the ancient constitution – if we admit that it was something more than a mere rhetoric resource – the said content should be related to limitations on power. Limitations that in ancient terms were located in the jurisdictional matrix that reflected, in turn, the naturalized corporative structure of society.[30]

From this point of view, it does not seem coherent to say that granting extraordinary powers was an act of any kind of constitutional discourse, particularly when upon them, traditional and modern limits on power were infringed.[31] We do not mean that the image of the lawless era was right. We are stressing the distinction between legal tradition and constitutionalism. Consequently, we think that it is possible (and necessary) to outline a better cultural framework for explaining the »legal« nature of those extraordinary powers, without overstretching the basic notion of constitutionalism (even of the presumed ancient constitution).

30 Hespanha (1993) (2000); García Pérez (2008).

31 Aguilar Rivera has suggested that the use of exceptional power was contemplated in traditional »constitutions«, from the Roman dictatorship to the British suspension of the writ of habeas corpus. However, –he argues– influential liberal thinkers as Montesquieu or Constant refused the inclusion of exceptional powers in new constitutions, arguing that they would lead to arbitrariness. For this reason, liberal constitutions of the 19th century worked properly only in social contexts where there was no need for such extraordinary powers. This was not the case of Latin-American new countries, where political leaders, notwithstanding, followed the teachings of liberal thinkers and did not admit exceptional power in their constitutions. Therefore, the problem was in the theoretical model they adopted for designing the new constitutions. In doing so, they had no alternative that using »unconstitutional« exceptional powers to face political unrest. Those extraordinary powers would have been legitimate – due to the extraordinary circumstances – but »unconstitutional«. At the same time, the new constitutions were regarded as non-viable for the unstable conditions of the context. Aguilar Rivera (2000) 55–94, 167–197. In our opinion, this argument does not take into account the Spanish traditional legal culture that kept its force after the independence and informed political and social life in spite of the liberal discourse –and of the neoclassic fashion of invoking the Roman dictatorship– that played at a more rhetorical level.

Patriarchy and constitutionalism (Oeconomy vs politics)

If we look back at the origins of constitutionalism, as a discourse aimed at »placing limits on power«, we would find that it sprang out as a response to other discursive program oriented in the opposite sense. Namely, at reinforcing the king's power and facilitating an expeditiously decision-making, avoiding legal (jurisdictional) restraints, in order to face internal upsets or wartimes. This is what some scholars have called the emergence of forms of extraordinary government in the Modern Ages.[32] The expansion of the scope of the kings' power eroded the decisive distinction for the traditional »constitution«, between the spheres of *iurisdictio* and *gubernaculum*.[33]

As known, a recurrent strategy for extending the king's power consisted in evoking the classic analogy between the king and the householder. This was the case of celebrated works like »*The trew laws of a free Monarchy*« (1598) by James I, or the »*Patriarcha*« (1680) by Robert Filmer. The way in which this kind of discourses stimulated responses on the limits of the kings' powers is also a well-known story.[34] However, beyond these famous references, the analogy between the king – or other authorities – and the householder, belongs to a long lasting tradition that, as Mark Dubber says, »can be traced back to the very roots of Western political thought«, as it was based on the Aristotelian distinction between politics (governance of the *polis*) and economics (governance of the household).[35]

This is a familiar topic for those who are concerned on the medieval Oeconomica, the structure of the ancient monarchy or on the rise of absolutism during the 17th and 18th century in Europe. This is not the place to bring back these hackneyed topics.[36] Nonetheless, we think that it would be relevant to consider the imprints of this tradition in the prevalent conception of the sovereignty among the Latin American political elites of the

32 Benigno (2007).

33 Mcilwain (1966).

34 Laslett (1964), Matteucci (1998). Even assuming all the contextual limitation of these responses regarding status, gender, race and other human relationships that, as Clavero claims, continued to be under the oeconomic (domestic) rule, we could still qualify them as »constitutional«. Clavero (2005), (2007).

35 Dubber (2005) xii.

36 Of course, the references should begin with the »ganze Haus« by Brunner (1976), and the new imprints given by Frigo (1985; 1990), Clavero (1989), Cardim (2000), among others, for the Mediterranean area.

19th century and the way they used it to deal with political violence.[37] In order to do it, we need to recall some of the basic features of the householder analogy, particularly in the Hispanic world.

According to Angela de Benedictis, from the middle of the 17th century onwards, when Spanish jurists wrote about the attributes of the king, they mentioned this new fashion of power, inspired in the house governance, naming it *potestas economica et politica*. It served to justify decisions with strong coercive force and executive nature that may dispose over the rights of the subjects, without any judicial proceedings, under the excuse that they were not aimed at declaring the law but at the outright prevention of hazards. The potential of the analogy stemmed from the idea that within his family, and acting for love and protection, the power of a father did not recognize limits. When exerted by the king, this way of governance was qualified as »oeconomic«, as this word named the art of governing the household.[38]

The Spanish kings increasingly used the *economic potestas* during the 18th century. They did it, for instance, to justify the extreme decision of expelling the Jesuits in 1767. In everyday cases, they used it to overstep restrictions linked to the jurisdictional tradition, though it also could be invoked when trying to get consent for internal harmony of the kingdom.[39] The paternal conception, stimulated by the Bourbons apologists, framed the royal power in the standards of domestic life, setting its foundation in the conscience and love of the kings rather than in political relationships.[40]

By the beginnings of the 19th century, a treatise on Spanish Public Law stated that, as fathers of their vassals, the kings could do everything to protect them. As tutor and father of his vassals, the king had the right to defend himself, and this justified the »occupation of temporalities and banishment of clerics«, breaking down ecclesiastical immunity. All these powers were part of the »lordship and economic power« (potestad dominica y económica) of the kings.[41]

37 Erika Pani suggests that with the revolution, all traditional forms of social links based on personal loyalty and parental analogy disappeared from the political imaginary. This is not convincing according to our evidences and for our context. Pani (2010) 191.

38 De Benedictis (2001) 335–337.

39 Vallejo (2012) 167.

40 Lorente/Portillo (dir.) (2011) 37.

41 Dou Y De Bassols (1800), I, IX, V, 264, 287–288, 291.

Contrasting it with the ordinary king's jurisdiction, the »economic / domestic power« was extraordinary for two reasons: a) because it allowed dispensing with the ordinary forms, b) because acting as a father was ordinarily reserved for managing the internal sphere of the household (the so-called *gobierno económico*). In an ordinary sense, the economic government was a privative faculty of each community equated to a household. Extraordinarily, it came exerted over the whole kingdom as one single household. We may suggest that there was an inextricable connection between the paternal (economic, domestic) conception of the sovereign and the justification of his extraordinary powers.

If the image of the King as a father was a commonplace in legal treaties, it was also a frequent topic in sermons and clerics' speeches, a trait particularly emphasized during the regalist policy of the Bourbons. Let us remember, just as an example, that it was one of the leitmotivs in the funeral oration for the King Charles III, pronounced in Córdoba – Rio de la Plata in April 1789. The orator was none other than the Dean Gregorio Funes, who would become one of the most active men from the clerical state among the forthcoming revolutionary governments after 1810.[42]

Beyond the images of absolutism, the householder model of governance has served to analyze the development of the European police science and the construction of police power in North American states. Mark Dubber considers it as a key element in the foundation of the American Government in spite of its inherent tension with the constitutional principles. In our opininion, his description of the localized nature of the householder government in the British colonies – and the later states –, would be valid for the Spanish colonies as well. For this reason, we find important to summarize here the main features of this manner of government that, according to Dubber, founded an interpretation of the state's police power in opposition to the republican constitutional discourse. Those features are:[43]

1) The model of the household governance stands on a basic principle of hierarchy: the essential distinction between the householder and the household, the father and the members of the family, the governor and the governed.[44]

42 Llamosas (2010).

43 Dubber (2005) 36–46.

44 Besides the political position of caudillos, sociologically they all belonged to traditional elites in Río de la Plata, Ayrolo / Míguez (2012).

2) Within its hierarchical structure, the subordinate members may be equalized because of their common subordinate position.[45]
3) The essential connection between the very notion of household government and the power of household self-preservation means that the power cannot be taken away without dismantling the institution for whose governance it is required.[46]
4) The householder's power was essentially arbitrary, not susceptible to prior definition. The end of preserving the community against internal and external threats justified the means. The success of the householder governance is measured in terms of efficiency not of justice.[47]

We find in these features an illustrative framework for our context. As we said, there was a strong connection between the paternal conception of authority and the justification of extraordinary powers. If, at a theoretical level, the traditional distinction between politics and economics lost its relevance throughout the 18th century due to the convergent emergence of the »police science«, the constitutional law and the new science of political economy, it kept informing different devices of power. In the Spanish world, until the colonial system collapse, it offered a justification for the increasingly extraordinary powers used by the kings.

If we accept the persistence of the legal tradition and its religious foundations long after the revolutions. If we also admit that, in the said period, the elites fought for the »retroversion of sovereignty«. Why such elites should have forgotten the paternal attributes increasingly linked to the sovereign's power? Instead of ancient constitution or neoclassical-fashioned republican discourse, we think that the model of the householder provides the most effective framework for comprehending the legal responses in a stage of wartime and of political unrest such as it was the caudillos era. This model was embodied in what was called, at the time, »paternal government«.

45 In our opinion, this is the »equality before the law« that Salvatore ascribes to Rosas' justice administration, Salvatore (2003), 171.
46 This would have had a fundamental role in preserving states' political identity in processes of federal integration, keeping local elites in their privileged position.
47 On this topic, see below.

The paternal government

The expression »paternal government« does not mean (just) evoking the classic topic of personalism or the well-known weight of the kindship networks among Latin-American elites or the »political economy of cronyism«.[48] We are recovering an epochal signifier that defined an essential aspect of a political regime, consistent with the set of belief and values that sustained it. In this sense, in spite of the revolutionary proclamations and of the liberal tenor of some new laws passed by republican governments, the cultural plinth of political power remained the same, at least, in this significant aspect. Long time after the revolution, like in colonial times, governors and other authorities were still treated as »fathers« or »protectors«. Although this may seem just a manner of speech, it was rather an expression of a mode of governance and subordination, persistent furthermore among many different colonial experiences.[49]

In Río de la Plata, evidences show that the paternal conception of public authority was still strong long after 1810 and that revolutionary governments reinforced this mode of political legitimacy.[50] The use of paternal appellatives is evident in whatever kind of sources of the period, though it may have reached a peak during the caudillos era. From Artigas, labeled as »protector of the free pueblos« to Rosas, named »Restorer of the Laws, father of the people of Buenos Aires«, this type of designations was very common among governors of provinces as well. The case of Rosas is perhaps the most characteristic. He was also called »governor and father of the homeland«, »savior of the homeland and genius protector of its existence«, »Father and friend of the Indian Nations«, »Father of the poor«, »Benign and loving Chief«, etc.[51]

48 On the political economy of cronyism Adelman (1999), 109–140. A great deal of historiography deals with the relationship between family and politics in Latin America. Haigh (1964) and others, insisted on the unusually strength of the Spanish family, as a common Latin-American trait, considering that the revolutions augmented the power of local families. For them, the families, provided with an uncommon solidarity, would have taken the place of the colonial officials after 1810. For a brief overview on this historiography, see the introductory pages of Paz (2003) 223–225.

49 Examples from very different contexts, in Clavero (2005), Durand (2012), Zollmann (2014), Kemme (2014).

50 From different perspectives, Cansanello (2002), Di Meglio (2006), Casagrande (2012), Rebagliati (2016).

51 De Titto (comp.) (2009) 36, 41, 152; Fradkin / Gelman (2015) 39, 295, 332, 408.

As it happened with the image of the King-father, the fatherly trait of the sovereign was reproducible at any level of the lesser authorities. A regulation for rural justices, passed by the Government of Córdoba in 1823, gives us a good example, as it also shows the persistent religious foundation of the legal order. Chapter 10, related to the »due respect for judges« said,

> »It is a sacred precept imposed by religion to award the judges with the homage of obedience and respect. In the fourth commandment of the Law of God are construed as fathers not only the natural ones but also all of those that are constituted in authority […] Punishing crimes, exterminating bad habits, rewarding the merits, carrying out justice; public harmony and the general welfare of the State; all these goals depend on the observance of this sacred law.«[52]

Treating the magistrates as fathers was also useful to recall the duty of carrying out justice with mercy, according to the medieval law, as it was noticed in a resonant case in 1837.[53] More than a manner of speech, and even more than a matter of charismatic leadership, all these expressions represented a set of belief and values that shaped the political regime and conditioned the institutional development.

In 1939, the legal historian Zorraquin Becú, called attention on the normative weft that lay behind those paternalistic appellatives. In his view, the federal party rejected the individual base of the liberal programs; consequently, they regarded the notions of rights and equality primarily as attributes of human communities, not of individuals. Popular sovereignty was not a consequence of political individualism but an attribute of the *pueblos* too. He added that, in opposition to the liberal elites, the federalists drew on colonial tradition but as they sought to strengthen the executive power, they developed »the newest theory of the paternal governments«.[54]

In our opinion, Zorraquin was right when he pointed out a connection between the paternal government and the communitarian conceptions of the rights, equality and sovereignty, though he failed in qualifying it as a »new theory« created by the federal party. That communitarian sense was rather an expression of the organic conception of society rooted in the catholic tradi-

52 Agüero (2013b) 247. On the intrinsic relationship between religion and paternalism, in spite of his critical approach to this category, Thompson (1990) 65 ss. About this aspect, our context looks very different to that of the late 18th century England considered by Thompson.

53 Imprenta Del Estado (1837) 357.

54 Zorraquín Becú (1939; 1953) 66.

tion, which was still hegemonic in the new republics, regardless of the diverse political alignments.[55] Anyhow, different testimonies show how the expression »paternal government« was a recurrent topic in proclamations, speeches and reflections of leading men of the period. Let us see some of them.

A decade before reaching the post of governor, Rosas submitted a petition of the farmers to the Supreme Director of the United Provinces. He addressed to the Supreme Director as a »universal father worried about the troubled times of the unhappy people«, stating that they expected the government would have a »paternal behavior« and not harm the poorest.[56]

The federals leaders, Francisco Ramírez and Estanislao López, in a proclamation to the people of Buenos Aires, in February of 1820, said that they would use all their power to conclude the political regeneration that should come once the pueblos were together »under the guide of a paternal government established by the general will«.[57]

Years later, another federal leader, Manuel Dorrego, speaking at the General Congress of 1826, stated that the problem of the province of Santiago was the »lack of a paternal government to take over its interests […]«. In the same speech, Dorrego said about La Rioja: »What she needs is just a paternal government that, as soon as possible, extract out all that richness from the bowels of the earth« (in a reference to the mining industry of that province).[58]

Once in the government of Buenos Aires, and as leader of the Confederation, Rosas expressed in different occasions his desire to exert a »paternal government« or a »paternal authority«. He did not abandon this conception after he was defeated (1852) and exiled. During his last days in England, he expressed in an interview, in 1873, what his ideal of government was. »For me, – he said – the ideal of happy government would be the paternal autocrat: intelligent, selfless, tireless, vigorous and determined to work for the

55 Halperin Donghi, remarked on the »ancient regime's taste« expressed in a legal text of 1817 when referring to the »paternal concern« of the government, Halperin Donghi (1978) 157. The communitarian sense was based in an affectionate sense of community, essential in the family model of governance, in medieval and modern tradition Cardim (2010).

56 Fradkin/Gelman (2015) 55. The expression »universal father« was used by Filmer to designate the King's character, Filmer (1680) 9.

57 De Titto (comp.) (2009) 37.

58 Quoted by Zorraquín Becú (1939, 1953) 66.

happiness of his people […]« He actually thought that he had tried to perform that kind of government: »I have tried to carry out by myself the ideal of a paternal government during the transitional period that I had to govern«.[59]

These testimonies are not isolated expressions. We find them in regulations and in the daily institutional language. They did not stem from the popularity or personal leadership of one particular man. Regardless of who the father was, as a part of the cultural background, the notion of paternal government did provide arguments to shape expectations on institutional behavior, so it had a normative function. In addition, it worked in a context in which, as in the colonial times, provincial governors acted as supreme courts of justice in their territories. Therefore, examining the judicial archives we shall find testimonies of this function.

As we have said, invoking the ideal of a paternal government was a common strategy in order to justify a clement decision.[60] Consistently, defendants were qualified as »sons«, particularly when the paternal government had to justify an indulgent decision based on »philanthropic feelings«.[61] Moreover, the processual language still reflected the old sense of the word »economic«, used to denote the special nature of decisions taken – like a father– without observing the ordinary forms. The expression »providencia economica«[62] (economic ruling) was still used in the old sense to designate a ruling adopted in a preventive way, without due process, as the kings did when they exerted their *potestas economica* in colonial times.

According to these testimonies, it would not be an exaggeration to say that the paternal government was a sort of republican re-signification of the ancient potestas economica, the extraordinary domestic power of the kings. In other words, in spite of the new republican discourse, the elites kept in force an institutional logic that allowed dispensing with the traditional

59 De Titto (comp.) (2009) 89, 90; Fradkin/Gelman (2015) 196; Zorraquín Becú (1939, 1953) 66.

60 Historical Archive of the Province of Córdoba (hereafter AHPC), Gobierno series, 206, B, 1847, f. 464.

61 The governor »[...] using of the philanthropic feelings that characterize him [...] also determined by the good feeling that he has in favor of the sons of Cordoba [...]« AHPC, Crime series, 178, 7, 1834.

62 In the same case, the prosecutor recalled that the defendant had been banished to Salta by *providencia economica* (economic ruling), AHPC, Crime series, 178, 7, 1834.

restrictions – those that may have been part of the ancient constitution. Yet, it would be in the language of the legal responses to political violence, where the connection between the paternal conception of the sovereign and the use of extraordinary powers becomes more evident.

From *laesae maiestatits* to Lesa Patria (or Parricide)

Consistently with the persistence of the legal tradition, the »system of laesae maiestatis« kept defining the legal responses to political violence during this period. No need to recall that some key elements of the householder governance, such as the natural love and subordination to authority, had a significant role on the foundations of the laesae maiestatis doctrine. After explaining the definition of *lesa majesty* in primo *capite* (a direct attack against the Prince and his family), the treaty on Public Law of 1800 said:

> »One of the most enormous crimes of lesa majestad in secundo capite is sedition, tumult, uprising, commotion, noise or riot, that seek to move the people, separating them from the natural love, respect or subordination they must have for magistrates or the government«.[63]

The laesae maiestatis implied not just a notion of power as »maiestas« but also the conviction that love and subordination were still essential ties in society, the same way that in its archetype – the household. How did they apply this ancient doctrine in a republican context?

Looking at the archives, we find that during the first half of the 19th century, upon the base of the same Spanish laws, the laesae maiestatis had become into »Lesa Patria«. When applying this doctrine, the provincial governors were now equivalent to the ancient majesty. A prosecutor, in Cordoba, expressed these transformations in a case against a defendant who had taken part of a rebellion in 1840, then tried in 1845. The renowned local lawyer Jose Roque Funes, in his indictment, said:

> »The crime of the defendant […] is that of Lesa Patria, being at the first degree of this kind of offences any tumult addressed against the first chief of an independent territory, with notorious transgression of the Fundamental Laws, and manifest harm to the communal pro. This is a crime qualified as treason by the first Law, second Title, of the Seventh Partida […]«[64]

63 Dou Y De Bassols (1800) III, V, V, II, 246.

64 Quoting textually the Siete Partidas law defining rebellion, AHPC, Crime series, 208, 7, 1845, f. 26.

The prosecutor asked the death penalty and the forfeiture of goods, invoking the medieval law of Partidas and the »*novisime recopilationis*« (sic). Beyond the persistence of the Spanish laws, and the majesty of the governor (as chief of an independent territory), the indictment shows that the ancient distinction between primo and secondo capite was blurred. It lumped, with no relevant distinctions, the attack to the chief of the territory, the treason and the crime of rebellion. The defendant, in turn, alleged that he had been forced to take part of the rebellion, and that his crime was time-barred. He was condemned at first instance to banishment for undetermined time.

Another attribute of the ancient sovereignty, regarded as a source of extraordinary powers and linked to its fatherly conception, was the grace. It permitted and required exceptional actions of the sovereign, such as indults and pardons. A good paternal government had to be willing to balance its response, from terror to mercy. [65] As a loving father, the governor had to carry out justice with mercy, particularly in cases involving »the poor sons« of the Province. In the aforementioned case, following his advisor's opinion, the governor commuted the sentence to four months of forced labor. The advisor considered three reasons to act with mercy in this case:

A) The recent »triumph of the Confederation's army«.
B) »The clemency and lenity with which the governments of the Confederation have looked at the aberrations and wanderings of the sons of the country, when this indulgence was reconcilable with the public peace«.
C) »The tears of a miserable family, as that of the savage *unitario* prosecuted«.[66]

This way of reasoning reflects some persistent traits of the legal culture: the traditional logic of punishment and pardons; the weight of communitarian values; the significant role of mercy and the paternal hierarchy between the authority and the subjects treated as sons. In these matters, the grammar of law remained unchanged compared to that of the paternalistic monarchy.

Furthermore, under the paternal conception of the sovereign, no wonder that the crime of »lesa patria« could be regarded as a sort of parricide. The analogy between laesae maiestatis and parricide stemmed from the same

65 Hespanha (1993); Cardim (2000); Agüero (2008).

66 AHPC, Crime series, 208, 7, 1845, f. 34. »Unitario« named a member of the Unitarian political party, whose members were considered as enemies of the »Holy cause of the Federation«.

traditional conception and it seemed to be still valid in the context of the Argentinean Confederation.[67] In the case against Andrés Lepes and his son in law »for subversive rumors against the public order and the Holy Cause of the Federation«, pursued in Córdoba in 1846, the prosecutor stressed the seriousness of a crime that he qualified, in abstract terms, as

> »parricide or lesa patria, for all the harmful consequences that capitally would bring onto the same savage unitarios, due to the unrest and dishonor in which would fall this province and her government [...]«[68]

However, the prosecutor considered that, in a concrete analysis, the personal conditions of the defendants made the crime so improbable, that no one but the »savage unitarios« could have taken for truth those subversive rumors. For this reason, in spite of being a case of »lesa patria« – he insisted –, he asked for a penalty of a fine according to the judge's discretion. Consistently, the governor's advisor suggested the imposition of a fine of 25 pesos, for the defendants to redeem the »crime of lesa patria in which they had incurred«. That was the governor's sentence.[69]

If the crime of lesa patria could refer to an array of very different behaviors, from the most violent acts to simple rumors of improbable facts, it should be noted that the category still worked in a cultural context in which the distinction between this kind of crimes and the others was just a matter of degree. In other words, there was no room for »political crime« as a distinct category – as there was no room for political dissension. When Rosas assumed the »sum of public power« on April 13, 1835, he promised to persecute »the impious, the sacrilegious, the thief, the murderer and, above all, the traitor […]« As Salvatore says, »although the main target of the persecution was the *unitario* – an enemy of mythical proportions […] – the threat was intended also for common criminal who, in the troubled political waters of the times, found impunity for his crimes«.[70]

We would add that, in this context, any crime could threaten the order, from the impious and the thief to the murderer and the traitor. There was no

67 On the analogy king/father in laesae maiestatis, Sbriccoli (1974) 101. About the due love to the Fatherland (Patria) that leads to compare its aggressor with a parricide, in Machiavelli discourse, Viroli (2003) 32–33.

68 AHPC, Crime series, 212, 8, 1846, f. 11.

69 AHPC, Crime series, 212, 8, 1846, f. 13.

70 Salvatore (2003) 161.

qualitative distinction among them. For this reason, no wonder that they invoked extraordinary powers in ordinary criminal cases too. For instance, in a case for robbery, the governor's advisor invoked the *facultades extraordinarias* granted to the governor in order »to use them in the defense of her independence, her freedom, her security, her property and peace, both in general and in particular«. Alongside with the extraordinary powers, the advisor recalled »the Christian pity of a paternal government« that should inspire justice, in order to declare null and void a previous sentence.[71]

On the other extreme, the resonant case of a priest, who had seduced a girl of good family, illustrates the dormant political potential of any crime. An anonymous writing justified the execution of the priest and the girl, stating that, »impunity would have destroyed the basic foundations of any security and all moral order in families and in the whole society, because […] the Catholic priest is the repository of public conscience and customs.«[72]

The lack of a concept of political crime, the persistence of the laesae maiestatis system, and the use of extraordinary powers, were consistent with a context in which political dissent was excluded, freedom of speech restricted and public deliberation replaced for uniformity.[73] A context that sustained an ideal of unanimity, close to the tradition of the Catholic republics. No wonder that Rosas had received the »sum of public power«, on two conditions: »to conserve, defend and protect the Roman Catholic Apostolic religion«, and »to defend and sustain the national cause of the Federation«.[74]

This was otherwise coherent with the role assigned to Catholic religion as fundamental law in most provincial constitutions. Within the holistic and religious conception of the social order, there was no reason for differentiating political crimes.[75] Yet, in order to complete the cultural framework that gave sense to the extraordinary powers, we must pay attention to the use of the terms ordinary and extraordinary, as elements of a particular dynamics of the traditional legal language.

71 AHPC, Gobierno series, 206, B, 1847, f. 463v.
72 De Titto (comp.) (2009) 210.
73 Ternavasio (2005).
74 Fradkin/Gelman (2015) 258. On the role of religion in the paternal conception of the sovereign, see above, footnote 52.
75 Myers (1995).

The ordinary/extraordinary dynamics

Legal historians concerned with the pre-liberal tradition have stressed how adjectives »ordinary« and »extraordinary« played as gears of a dynamics of change in the ancient legal culture.[76] Meccarelli suggests that an »extraordinary dimension« of the law, made it possible to integrate unforeseen solutions, without breaching the order. Unlike what happens under the legalistic paradigm of modernity, in the ancient legal culture the »exception« – says Meccarelli – did not imply a »suspension« of the legal order, nor was conceived as part of a merely »political« dimension that would work in a »vacuum of law«.[77]

The repetitive use of the adjective »ordinary« to name common institutions (ordinary jurisdiction, ordinary process, ordinary penalty, etc.) was an implicit reference to the dormant world of the »extraordinary« solutions. In criminal jurisdiction, for instance, seriousness degree of the crime (from too serious to too frivolous) and certain contextual qualifications (notorious, frequent, atrocious, etc.) opened up the door for extraordinary solutions. The legal reasoning reflected a basic intuition according to which in *extraordinary* cases, it was licit breaking the law to keep the order (*licet judici iura trasngredi*).[78] The extraordinary fact was outside the ordinary world but within the transcendent order, which included all effective facts.[79] Besides, this way of reasoning was topically related to some arguments derived from the householder model. It also stood on the common consensus about the protective goals that justified swift actions adopted in extraordinary circumstances.

This framework is useful for explaining why the extraordinary powers did not reflect a »lawless« regime. They were an expression of a legal culture in which factual circumstances regarded as »extraordinary« had the normative potential of allowing exceptions on traditional limits on power – basically, dispensing with the »ordinary forms« and determining decisions in an extremely casuistic way. This was suitable for a judicial process, but for other institutional solutions too. In addition, it fit in particularly well with a

76 Hespanha (1993) 82, (1996) 98–81; Mecarelli (2009).
77 Meccarelli (2009) 493–495.
78 A summary on this topics in Agüero (2008) 279 ss. See also Agüero (2013a).
79 Meccarelli (2009) 495.

context regarded, due to the independence and civil wars, as a »big extraordinary moment« by creole elites.[80]

In 1830, Pedro Cavia spoke at the House of Representatives of Buenos Aires in support of granting extraordinary powers to Governor Rosas. Among other reasons, he said that if the enemies had time, they would proceed »protected by forms that must govern only in ordinary times and quiet moments«, hiding their maneuvers of subversion of the public order. He spoke of the »parricide plans« of the enemies, referring to the notion of »notorious«, commonly used in criminal proceedings to dispense with the rules of proof.[81] Recalling a recent rebellion as evidence of the criminal intentions of the *unitarios*, he claimed »*quae notoria sunt non indigent probatione*«. The Latin formulation was another trait of the still active connection between politics and juristic *habitus*. Breaking the law to keep the order could even mean overruling the principle of *in dubio pro reo* – as it was admitted by the ancient legal culture. In his speech, Cavia said, »It is better than some innocents suffer, than facing the shipwreck of the public ship of the State«.[82]

This reasoning was perfectly consistent with the householder model of governance, according to which, the success of the householder had to be measured in terms of efficiency, not of formal justice.[83] Similar convictions expressed Rosas, in a proclamation to the people of Buenos Aires, in 1835, when he said,

> »The experience of all these centuries, teaches us that the remedy for these evils cannot be subjected to forms, and that its application should be as prompt and efficient according to the circumstances of the moment […]«[84]

We could find thousand examples of this way of reasoning, both in political speeches and in judicial records of the period.[85] Nonetheless, considering the available space, let us proceed to conclude our argument.

80 Ortiz Escaramilla (2013) 230. On the independence wars, as justification for dictatorships, Aguilar Rivera (2000) 170. On the normative value of wartime in Río de la Plata Verdo (2009) The extraordinary sense of this period at the provincial level was remarked, from its very title, in Tío Vallejo (coord.) (2011).

81 Ghisalberti (1957).

82 De Titto (comp.) (2009) 101–106.

83 Dubber (2005) xv, 56, 82.

84 De Titto (comp.) (2009) 164.

85 The criminal records for the killing of Facundo Quiroga –printed at the time as a proof of the good justice of Rosas regime–, is particularly illustrative on the use of the adjective

Conclusions

As a legal response to political violence, the extraordinary powers granted to governors in Rio de la Plata, during the first half of the 19th century, had deep roots on the ancient legal tradition. The picture of the »lawless era« does not give account of this cultural background. However, if we are going to take the notion of constitutionalism seriously, as a discourse aimed at placing limits on power, it does not seems to be the case of this political praxis.

The ancient legal tradition contained both, restrictions and exceptions related to the exercise of power. If some restrictions may denote elements of an ancient constitution, most of the exceptions were used to justify mechanisms of an increasing absolutism at the end of the colonial era. For this reason, unlike the British, the reconstructions of the Spanish ancient constitution were not convincing. Among the absolutist trends, the paternal conception of the sovereign had a central role, endowing the king with the extraordinary attribute of acting as a father, with no formal condition and in a swift and preventive way. The persistence of such a conception during the Argentinean Confederation seems to be evident. We find it in political speeches as in the judicial language.

Our sources show the transposition from the king father to the paternal government of local governors, along with the re-signification of the laesae maiestatis into lesa patria, reflecting the persistence of a patriarchal mode of government in spite of the republican discourse that arose after the independence. The paternal conception of the sovereign, historically opposed to the constitutional discourse (even invoked to break the presumed ancient constitution), had a perfect complement in the also traditional dynamics of ordinary and extraordinary. The extraordinary powers, in our context, were rather an effect of this traditional dynamics, combined with the persuasive conception of the paternal government that defined the means once its protective mission had justified the goals.

We do agree with Chiaramonte when he claims for trying to comprehend the features of the political life of the period giving »priority to a history that pays closer attention to the ancient norms that conditioned the social and

»extraordinary« and on the lack of any constitutional rule, see Imprenta Del Estado (1837).

political life of the period […]« taking also into account the »collective beliefs, which become patterns for group or individual behavior«.[86] In this sense, the model of the householder governance gives better account of the social norms and collective beliefs that conditioned the caudillos regime, without overstretching the notion of constitutionalism. It also provides a better framework compared with explanations that look at the lack of expertise, or at the absence of a tradition on the division of powers, because they fail to notice the strong persistence of the ancient legal tradition and of the political will that kept it in force.[87]

Finally, the adoption, in 1853/1860, of the modern concept of »political crime« – as a distinct category to set constitutional limits on the legal response to political violence –, was a signal of a new time. We may admit that it was a mere symbolic change and we should assume that it failed in its purposes in the short and middle term. However, it is hard to deny that it represented a new legal-political culture, opened to religious tolerance, to a moderate political dissension and, above all, in which granting extraordinary powers was constitutionally forbidden.[88]

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86 Chiaramonte (2010) 487–488.

87 That kind of explanations, in example, in Aguilar Rivera (2000).

88 Besides the National Constitution, provincial constitutions enacted thereafter, included similar prohibitions. Córdoba Constitution of 1855 stated: »No provincial authority is extraordinary. They all are essentially limited by this constitution«. About this context in Córdoba, Ferrer (2016).

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