The search for truth in the trial against Maximilian of Habsburg (1867)

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1. Introduction

Political trials have usually been disregarded as "[...] devoid of legal substance"[1] as they lack impartiality and serve political motives and are, therefore, unsuitable for finding the truth.[2] The present chapter will contest this assumption and will show that political trials help the legal historian in the search for truth in two respects. Firstly, they deliver valuable knowledge on the legal interpretation of concepts, reception of legal traditions, and ways of practicing and enacting the law.[3] Secondly, biases and misconceptions

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1 J Iverson, The Trials of Charles I, Henry Wirz and Pol Pot: Why Historic Cases are often forgotten and the meaning of International Criminal Law, in M Bergsmo, WL Cheah, T Song and P Yi (eds), Historical Origins of International Criminal Law, Volume 3 (Torkel Opsahl Academic EPublisher 2015) 93–95.

2 Judith Shklar defines a political trial as: "[...] a trial in which the prosecuting party, usually the regime in power aided by a cooperative judiciary, tries to eliminate the political enemies. It pursues a very specific policy. The destruction or at least the disgrace and disrepute of a political opponent", in J Shklar, Legalism, An essay on law, morals and politics (Harvard University Press 1964) 149. However, for this chapter, the reader should note that "Political Trials" is used in neutral terms and is delimited to those trials domestic or international in which political or military leaders are charged on grounds of violating international law – or the laws of war.

3 On translation of normative knowledge from one location to the other see T Duve, Theorie und Methode der Analyse asymmetrischer Formen von Abhängigkeit: Eine (global)rechtshistorische Perspektive (Working Paper, Bonn Center for Dependency and Slavery Studies, University of Bonn 2022), https://www.dependency.uni-bonn.de/images/pdf-files/working-papers/wp5-duve.pdf (accessed 2.9.2023). On the reception of Vattel's doctrine in the nineteenth century, see E Fiocchi Malaspina, The legacy of Vattel's Droit des gens in the long nineteenth century, in K Stapelbroek and A Trampus (eds), The legacy of Vattel's Droit des gens (Palgrave Macmillan 2019) 267–284. Also by the same author on the reception in Greece and Italy: Vattel's Law of Nations in Late Eighteenth- and Early Nineteenth-Century Greece and Italy, in P Schröder (ed), Concepts and Contexts of Vattel's Political and Legal Thought (Cambridge University Press 2021) 239–257.

in legal historiography will be revealed as a result of considering the latter, especially when taking into account cases from non-European countries. The military trial against Maximilian of Habsburg in Queretaro, México (1867) will be a case in point. The case proves to be very valuable not only for widening the historical record but also because the trial had the mission of revealing the truth of a foreign intervention (the French Intervention 1862–1867). The military trial against Maximilian of Habsburg was a platform where motives and criminal acts were to be exhibited and discussed. The development of the trial also showed simultaneously that a non-European nation was capable of enforcing its rights through the domestic enforcement of the "law of nations".[4]

A trial is also a space where confronting versions of the factual truth and of the "true" assessment of the law meet. Opposed visions of the same event help legal historians to understand the nuances of the ideological underpinnings that lie behind each assertion of "truth". In the case of Maximilian, decisively so, as two different visions of the world were put before trial: monarchism vs Republican liberalism. As I will show in the sections below, in the records of the trial proceedings, not only can we read about the set of particular choices and justifications of the parties, but we can also be informed of their standing toward the law. Taking place in a century during which the codification of domestic and international law was underway, the trial shows how the tensions between natural law and positive law were expressed and argued by the different parties. In this vein, the trial is an outspoken expression of the view held by Mexican Republican liberals, for whom international law ought to be enforced through domestic law.

It is fair to note that the legal innovations, deployed within the trial against Maximilian of Habsburg, deserve a separate analysis and it is not possible to do proper justice to them in just one article. As a result, this chapter will draw on the generalities of the trial and the arguments delivered by both, the defense and prosecution. The aim is to stimulate further reflection and inquiry.

The main primary source materials used for this chapter are the trial proceedings, published in 2005 by the Mexican legal historian José Mario

4 Even President Benito Juárez referred to the French intervention as "an act of aggression", see B Juárez, Manifiesto del presidente Juárez llamando a la defensa de la independencia nacional frente a la intervención francesa, Abril 12 de 1862, https://www.memoriapoliticademexico.org/Textos/4IntFrancesa/1862MDN.html (accessed 2.9.2023).

Magallón Ibarra and the collection of letters and documents of Benito Juárez, published electronically by the Mexican historian Jorge L. Tamayo in 2006.[5]

2. The historical context of the Trial

Mexico gained independence from Spain in 1821. Inspired by the ideals of the Enlightenment, the "Libertadores" aimed at building a community that would break with colonial hierarchies, but most of all they aimed to achieve agency without the tutelage of the European metropole. The latter is illustrated by Art. 1 of the Mexican Constitution of 1824:

> "The Mexican nation is forever free and independent of the Spanish government and any other power."[6]

Obtaining independence, however, set the stage for the struggle between two different political projects: one monarchist, the other liberal. As historian Hilda Sabato argues, the political project of establishing a Republican government based on popular sovereignty in the newly independent nations of Spanish America was heavily contested – also in the case of Mexico, as it took 55 years to stabilize the Republican constitutional project.[7] The French Intervention is part of this contestation and, as the scholars Long and Schulz argue, it represents the internationalization of the conflict between liberals and monarchists.[8]

5 The 15-volume collection of documents edited by Jorge L Tamayo and coordinated by Héctor Cuauhtemoc Hernández is available at: https://mhiel.azc.uam.mx/juarez/ (accessed 2.9.2023). See the trial proceedings in J Magallón Ibarra, Proceso y ejecución vs. Fernando Maximiliano de Habsburgo (UNAM, México 2005).

6 "La nación Mexicana es para siempre libre é independiente del gobierno español y de cualquier otra potencia", in Decreto del 4 de Octubre de 1824. Constitución Federal de los Estados Unidos Mexicanos, available at https://www.diputados.gob.mx/biblioteca/bibdig/const_mex/const_1824.pdf (accessed 2.9.2023). All translations, unless otherwise noted, are my own.

7 H Sabato, Republics of the New World: The Revolutionary Political Experiment in Nineteenth-Century Latin America (Princeton University Press 2018).

8 T Long and CA Schulz, Benito Juárez Against the World: France, Mexico, and the Clash of Nineteenth-Century Liberal Internationalisms, paper presented at Rethinking the Past and Present of Liberal Internationalism conference (City, University of London, 11–13 May 2023).

In 1857, a liberal Constitution was decreed, and several laws followed, known as "Leyes de Reforma". These laws introduced *inter alia* freedom of education and civil marriage. But what caused much exaltation was the declaring of ecclesiastical property as void.[9] The conservative party did not recognize the Constitution seizing power, through a military coup, in 1858. This started the so-called "Reform War", lasting three years (1858–1861), leaving the liberal government without financial resources. In an attempt to save the situation, Benito Juárez ordered the suspension of all foreign debt in July 1861.[10] As a response to this, France, Great Britain and Spain signed the "Convention of London" in October 1861, in which they agreed to send combined military and naval forces to the coast of Mexico and to occupy several fortresses and military positions.[11] According to the tripartite treaty, the objective was to "[...] guarantee the security of the persons and properties of their subjects as well as the fulfillment of obligations by the Mexican State".[12] Relevant was Art. 2, in which the powers agreed that the coercive measures "did not have the purpose of acquiring Mexican territory nor to exert any influence over the internal affairs of the Mexican State that could affect its form of government".[13]

In late 1861, military and naval forces from Britain, Spain and France arrived at the port of Veracruz. As a result of the negotiations between the three powers and the Mexican Republican government, the "Preliminaries of La Soledad" were signed in February 1862.[14] It was stipulated that there was no intention of occupying Mexican territory and that they would submit their reclamations to the commitment of treaties.[15] The French Army,

9 Ley de desamortización de los bienes de las corporaciones civiles y eclesiásticas (Ley Lerdo), Junio 23 de 1856, https://www.memoriapoliticademexico.org/Textos/3Reforma/1856LEL.html (accessed 2.9.2023).

10 See Ley de Suspensión de Pagos de 1861 in Discurso de Juárez en la apertura de sesiones del Congreso de la Unión, Documentos para la historia de México (Colección Lafragua, Vol 1519, 1889) 857.

11 See Tripartite Treaty of London, *Tratado de Londres,* 31 de octubre de 1861, ratificado por SS. MM. la reina Doña Isabel II, el emperador de los franceses y la reina de la Gran Bretaña, canjeándose las ratificaciones en Londres el día 15 de Noviembre, https://www.memoriapoliticademexico.org/Textos/4IntFrancesa/1861LCL.html (accessed 2.9.2023).

12 Art 1 of the "Tripartite Treaty of London", 1861.

13 Art 2 of the "Tripartite Treaty of London", 1861.

14 Magallón Ibarra (n 5) 560.

15 "Convenio de la Soledad, por el que potencias extranjeras no atentarán contra la soberanía nacional", in Derechos del pueblo mexicano. México a través de sus constituciones (sección segunda, UNAM, 2016) 408–409.

however, remained on Mexican territory with 7,000 soldiers.[16] French representatives justified this move by stating that they aimed to liberate the people from a "system of terror" and to aid their subjects who, they claimed, were endangered by the Mexican Republican government.[17] In addition, as the correspondence of Napoleon III reveals, his plans deviated from what was established in the London Convention of 1861. In reality, Napoleon III planned to expand his empire.[18] "Latin America" constituted the spatial ground where France would exert the leadership of the "Latin race" united by common values such as Catholicism, a linguistic matrix (Latin), and the continuation of the Latin culture.[19] "Latin America" and especially Mexico would be the bulwark against the expansion of the US, which was protestant and Anglo-Saxon.[20]

On April 7, 1862, French General Lorencez occupied the city of Orizaba. This event marked the beginning of hostilities between the Mexican and the French troops.[21] A year later, Mexican monarchists and Napoleon III convinced Maximilian of Habsburg that the Mexican people desired to have a monarchy with him as emperor.[22] And so, Maximilian and his wife

16 Magallón Ibarra (n 5) 104.

17 ibid 107, see also G Niox, Expédition du Mexique 1861–1867 (Librairie Militaire de J Dumaine 1874) 112–114.

18 See the letter of Napoleon III to the chief of the expedition General Forey in 1862: *Instrucciones impartidas por el emperador Napoleon III al general Forey*, Fointanebleau 3 de Julio, 1862, in Memoria Política de México, edición perenne, https://memoriapoliticademexico.org/Textos/4IntFrancesa/1862-IE-GF.html (accessed 02.09.2023).

19 The idea of the "latin race" was developed by Michel Chevalier, French Saint-Simonian and economist who was also advisor of Napoleon III. See M Chevalier, Lettres sur l'Amérique du Nord, Vol I and II (4th edn, Wouters et C Imprimeurs-Libraires 1844) https://catalogue.bnf.fr/ark:/12148/cb399038154 (accessed 2.9.2023). On the works of Michel Chevalier and his influence over the foreign policy of Napoleon III see L Gavião, Raízes da américa latina: origens e fundamentos de uma identidade (2021) 180 Revista de História 1, 3–8; J Jurt, Ein Subtext Frankreichs: Mittelmeeridee, Latinität und Katholizismus. Zu Wolf Lepenies, Die Macht am Mittelmeer (2016) (Nr 4) Romanische Studien 33–64, https://www.romanischestudien.de/index.php/rst/article/view/182/487 (accessed 2.9.2023).

20 As to the term "Latin-America", and the debate of who coined it first, see M Rojas Mix, Bilbao y el hallazgo de América latina: Unión continental, socialista y libertaria (1986) 46 Cahiers du monde hispanique et luso-brésilien, Contre-cultures, Utopies et Dissidences en Amérique latine 35, 38–46.

21 Magallón Ibarra (n 5) 560.

22 The agreement was formalized through the treaty of Miramar (1864). See "Tratado de Miramar" (10 de abril de 1864) in Derechos del pueblo mexicano. México a través de sus constituciones (sección segunda, UNAM 2016), https://archivos.juridicas.unam.mx/www/bjv/libros/12/5625/30.pdf (accessed 2.9.2023).

Charlotte arrived at the port of Veracruz in May 1864. However, to the disappointment of Napoleon III, Maximilian failed to consolidate his reign, which added to the pressure the US exerted on Mexico; he decided to withdraw the French troops on December 16, 1866.[23]

3. The law of January 1862

On January 25, 1862, given the special powers granted by the Mexican Congress,[24] Benito Juárez issued by decree the "Ley para castigar los delitos contra la nación" (Law to Punish Crimes Against the Nation, hereinafter Law of 1862).[25] The law defined crimes (a) against the independence and security of the nation; (b) against the law of nations; (c) against public peace and order; and (d) against individual rights. This law would become five years later, the legal framework for the trial against Maximilian of Habsburg and his co-conspirators, Tomas Mejía and Miguel Miramón.

The novelty of issuing this law lies in the fact that it merged international law with criminal law, to enforce the right to self-determination, political independence, and territorial integrity. Equally important, it enforces through criminal law *ius ad bellum* and *ius in bellum*.[26]

According to the doctrine of Emmerich de Vattel, to exercise "legally" the use of force, a state had to declare war and expose its reasons for going

23 See M Charles Calvo, Le droit international théorique et pratique : précédé d'un exposé historique des progrès de la science du droit des gens, Tome 1 (Guillaumin 1887) 324–350, http://catalogue.bnf.fr/ark:/12148/cb30188197m (accessed 2.9.2023).

24 "Decreto del Congreso. Se suspenden algunas garantías constitucionales y se faculta ampliamente al Ejecutivo", Diciembre 11 de 1861, https://www.memoriapoliticademexico.org/Textos/4IntFrancesa/1861SGC.html (accessed 2.9.2023).

25 "Ley para castigar los delitos contra la nación, contra el órden, la paz pública y las garantías individuales, espedida por el Supremo Gobierno de la Nación", published in edict of 6 February 1862, https://www.memoriapoliticademexico.org/Textos/4Int Francesa/1862CDN.html (accessed 2.9.2023).

26 On the efforts of criminalizing violations to the laws of war during the nineteenth century, see the important work of DM Segesser, „Moralische Sanktionen reichen nicht aus!" Die Bemühungen um eine strafrechtliche Ahndung von Kriegsverbrechen auf nationaler und internationaler Ebene, in S Neitzel and D Hohrath (eds), Kriegsgreuel. Die Entgrenzung der Gewalt in kriegerischen Konflikten vom Mittelalter bis ins 20. Jahrhundert (Ferdinand Shöningh 2008) 57–74. By the same author, Recht statt Rache oder Rache durch Recht? Die Ahndung von Kriegsverbrechen in der internationalen wissenschaftlichen Debatte 1872–1945 (Ferdinand Schöningh 2010).

to war.[27] Failure to do so would equate to a breach of the law of nations and would make the war "illegal".[28] Following Vattel, Juárez criminalized the failure to formally declare war and defined it as an act against the independence and security of the nation. Juárez's provision transformed into written law the state practice of declaring war in the tradition of "just war theory"[29] and adhered to the European trend of codifying the laws of war.[30] Internationally, the state practice of declaring war crystallized in the Hague Convention III of 1907.[31] In a sense, the intentions of Juárez and the delegates in support of the said Convention were not that far apart.[32] Juárez also wanted to avoid war. In this regard, Benito Juárez's legal thought could be placed within the Kantian tradition of regulating war through law and achieving peace through law.[33]

Other acts that fell into the category of crimes against the independence and security of the nation were: (a) the voluntary service by Mexicans to foreign troops; (b) the invitation made by Mexican or foreign citizens residing in Mexico to invade the national territory or subvert the form of government; and (c) contributing in any way to the establishment of a government in the territories occupied by the invader.

Regarding "crimes against the law of nations", Art. 2 of the said law criminalized piracy, slavery, the slave trade, and most remarkably: "[...] en-

27 See P Kalmanovitz, The Laws of War in International Thought (Oxford University Press, Oxford 2021) 86–93. See also, S Zurbuchen, Vattel's law of nations and just war theory (2009) 35 History of European Ideas 408–417.

28 ibid.

29 On how the tradition and practice of "just war theory" did not completely disappear during the nineteenth century, see H Simon, Anarchy over Law? Towards a Genealogy of Modern War Justifications (1789–1918), in L Brock and H Simon (eds), The Justification of War and International Order (Oxford University Press 2021) 147–166.

30 In the case of positivizing the concept of "just war" see R Lessaffer, Too much history. From war as sanction to the sanctioning of war, in M Weller (ed), The Oxford Handbook of the Use of Force in International Law (Oxford University Press 2015) 35–55.

31 Convention (III) relative to the Opening of Hostilities. The Hague, 18 October 1907, in D Schindler and J Toman (eds), The Laws of Armed Conflicts (Martinus Nijhoff Publishers 1988) 57–59.

32 For the case of The Hague Convention III (1907), see I Hull, The Great War and International Law: German Justifications of Prevention and Pre-Emptive Self-Defence, in L Brock and H Simon (eds), The Justification of War and International Order (Oxford University Press 2021) 186–188.

33 H Simon, The Myth of Liberum Ius ad Bellum: Justifying War in 19th-Century Legal Theory and Political Practice (2018) 29 European Journal of International Law 113–136.

gaging nationals to serve foreign powers to invade the nation". The Mexican provision was ahead of international law, as it was not until 1874 that the Brussels Declaration and the Hague Convention of 1899 prohibited "[...] any compulsion on the population of occupied territory to take part in military operations against its own country".[34]

A true innovation of this law was in protecting individual rights in times of war and with it, regulating the conduct of hostilities (*ius in bellum*).[35] The said law defined "crimes against individual rights" as (a) taking hostage citizens or inhabitants of the Republic to demand ransom; (b) the sale of hostages or the forced lease of their services or work; and (c) violence against persons with or without the purpose of seizing their property.

Through this law, liberal Republicans departed from the notion that violations of international law or breaches of the laws of war were only attributable to states. In their view, war was ordered and conducted by individuals and, therefore, criminal liability should follow. The law fulfilled the requirement of legality as the punishment followed the definition of the crime and with it, legal certainty and foreseeability were accomplished.[36] As we can see, the catalogue of crimes included conduct under the *ius ad* and *in bellum*, as well as others outside the context of war like slavery, the slave trade, and the violation of diplomatic immunity.

Additionally, the law stipulated broadly a differentiated form of participation. Art. 1 (IV) encompassed "any form of complicity to engage, prepare or favor the execution and success of the invasion". Individuals were then criminally liable as accomplices for any of the above-mentioned acts. Any person facilitating or providing intelligence or news to the enemy, provid-

34 Project of an International Declaration concerning the Laws and Customs of War. Brussels, 27 August 1874, Art 36; Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 29 July 1899, Art 44. Also see A Bello, Principios de Derecho Internacional (tercera edición, Valparaíso, Imprenta de la Patria 1864) 184.

35 On the criminalization of "barbary warfare" in the doctrine of Vattel, see W Rech, Enemies of Mankind. Vattel's Theory of Collective Security (Martinus Nijhoff Publishers 2013) 112–127.

36 On the principle of legality in international criminal law, see B Van Schaack, The Principle of Legality in International Criminal Law (2011) Santa Clara Law Digital Commons, https://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=1621&context=facpubs (accessed 2.9.2023). On domestic criminal law see A Masferrer, Principle of Legality and Codification in the Western Criminal Law Reform, in MG Musson and A Pihlajamäki (eds), From the Judge's ›Arbitrium‹ to the Legality Principle: Legislation as a Source of Law in Criminal Trials (Duncker & Humblot 2013) 253–294.

ing arms, provisions, money, baggage, or preventing the authorities from arresting the invaders or accomplices and spreading false news that would discourage the public "enthusiasm" would be considered an accomplice of the crime: "against the public peace and order".

Regarding *ius ad bellum*, through the Law of 1862, Juárez warned the foreign powers that in case they resorted to armed violence and did not comply with the formal requirements for going to war, the omission would be considered a crime. In a visionary manner, Juárez aimed at enforcing the right to self-determination through criminal justice, foreshadowing the hypothesis drawn in Art. 8 bis para. 2 of the Rome Statute, in which an act of aggression is defined as "[...] the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations."[37]

The preemptive nature that the law had – by criminalizing an illegal armed invasion – was reinforced by a Manifesto written by President Juárez issued on April 12, 1862 (5 days after the advancements of French forces) where he detailed the breaches of international law committed by France, also denouncing the "aggression" against a "free, sovereign and independent state".[38] He further declared that once hostilities had started, "[...] the rules of the law of nations" were to "be observed by the army and by the authorities of the Republic".[39]eng

Juárez ended the Manifesto with a sentence that leaves no doubt as to the significance of the principle of sovereign equality and non-intervention for the Mexican Republic as these principles guaranteed its existence and continuity: "[...] united we will save the independence of Mexico, succeeding not only our fatherland *but the principles of respect and inviolability of the sovereignty of nations*" (emphasis added).[40] It is then no surprise that the Republican liberals were so determined to bring Maximilian and the main figures of the conservative party to trial five years later.

37 UN General Assembly, Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998, ISBN No 92–9227–227–6, https://www.refworld.org/docid/3ae6b3a84.html (accessed 2.9.2023).

38 Juárez (n 4).

39 ibid.

40 "Tengamos fe en la justicia de nuestra causa; tengamos fe en nuestros propios esfuerzos y unidos salvaremos la independencia de México, haciendo triunfar no sólo a nuestra patria, sino los principios de respeto y de inviolabilidad de la soberanía de las naciones", Juárez (n 4).

4. The instructions to open the trial

In February 1867, without the support of the French forces, Maximilian of Habsburg fled the capital to the city of Queretáro. After 72 days of siege, he was taken prisoner on May 15 along with 8000 soldiers and 400 chiefs and chief officials of the monarchist army. On May 21, 1867, Ignacio Mejía (head of the Ministry of War), on behalf of President Benito Juárez, issued an "instruction order", in which he instructed Chief General Mariano Escobedo to arrange a court-martial according to Arts. 6–8 of the Law of 1862 against Maximilian of Habsburg, Miguel Miramón and Tomás Mejía.

Benito Juárez and the leaders of the liberal Republican movement reckoned that the imprisonment of Maximilian had to be treated as transparently as possible because it would be closely scrutinized by the European powers. Therefore, by choosing a trial as the forum to expose the illegality of the intervention and the way the war was conducted, future allegations of savagery or illegality by European powers could be avoided.[41] Furthermore, the accused were given the chance to testify themselves or through their defense lawyers. As an expression of this sensibility, the place to hold the trial hearings would be a theater (Teatro Itúrbide) with a capacity to hold 600 spectators. Here, we can identify a pattern of war trials, in which the aim is to give a "pedagogical lesson of justice" through the performance of legality.[42]

The instruction orders issued by Ignacio Mejía formulated the reasons as to why the Republican government had decided to install a court-martial. Among them was the need to apply the law and, in doing so, to pave the way for peace and for the enjoyment of the rights of all citizens of the Mexican Republic. Particularly relevant was to punish Maximilian of Habsburg for serving as an instrument to Napoleon III and installing a government that was contrary to popular will and sovereignty. According to the instruction orders, to accomplish the policies of Napoleon III, Maximilian recruited foreign filibusters (Austrian and Belgian) who further endangered

41 See El Emperador de Austria se interesa por la suerte de Maximiliano in Tamayo (n 5) Abril 6 de 1867, Doc 1, Vol CCXI, Tomo 11.

42 On the "pedagogical lesson of justice", see L Douglas, The Memory of Judgement. Making Law and History in the Trials of the Holocaust (Yale University Press 2000). For an overall view see B Sanders, Doing Justice to History (Oxford University Press 2021).

the installment of peace, as these individuals belonged to nations against which the Republic was engaging in no official war.[43]

Overall, the charges against Maximilian in the instruction orders issued by the minister of war Ignacio Mejía convey *ius ad bellum* as well as *ius in bellum*. In the case of *ius ad bellum,* Maximilian had no "legitimate title" to use force against Mexican citizens' lives and property as he had seized power by subverting the legal Republican government. Regarding the conduct of hostilities (*ius in bellum*), Maximilian is charged not only for issuing a decree in 1865 that violated the laws of war but also for ordering executions in compliance with the said decree. According to the instruction orders, he commanded the "soldiers of the foreign invader, to burn and destroy entire cities and villages, especially in the states of Michoacán, Sinaloa, Coahuila, and Nuevo León.[44] Finally, he was accused of ordering the execution of "thousands of Mexicans" who resisted the empire.[45] As for Miramón and Mejía, both were chief generals in the monarchical army of Maximilian and as such, according to the instruction orders, were responsible for making possible the invasion, development, and continuation of the war in the years 1862–1867.[46]

5. The military trial

According to the Law of 1862, the trial was subject to Martial Law and had the following stages: pre-trial (where the charges were read and interrogations and depositions of the accused were taken), trial, verdict and execution. The whole criminal procedure lasted 28 days and according to the chronicle it started at 8:00 a.m. and adjourned at 10:00 p.m.[47] Maximilian of Habsburg was not present in the trial hearings that took place in the theater, as his doctor declared he was ill.[48] His defense lawyers, however, did attend. The Journal of Queretaro, which was published twice a week, reported thoroughly on the trial and transcribed the most important trial

43 Magallòn Ibarra (n 5) 570–571.
44 ibid 359.
45 ibid.
46 ibid 357–362.
47 La Sombra de Arteaga. Periódico Político y Literario, Querétaro, 16 de junio de 1867, AGE, hemeroteca, POSA, 16/06/1867, No 6, T1.
48 See S Basch, Maximilien au Mexique : souvenirs de son médecin particulier (A Savine 1889) http://catalogue.bnf.fr/ark:/12148/cb30063585x (accessed 2.9.2023).

proceedings.[49] The telegraph line between Queretaro, Mexico City, and San Luis Potosí – where Benito Juárez resided at that time – was enabled, allowing for prompt communication.[50]

The court-martial was composed of seven military judges and a legal counsel. The public prosecutor had 60 hours for the arraignment and the defendants 24 hours to present motions and evidence. From the trial proceedings it can be deduced that, after each motion was presented, the counsel would issue a legal opinion addressed to the General in Chief, who either confirmed or denied it with a short argumentation.

Manuel Aspiroz, a young lawyer and lieutenant colonel was appointed as Chief Prosecutor.[51] He was a liberal Republican, who would ask his enemies of battle what their reasons were for usurping a legally constituted government.[52] The prosecutor was interested in knowing and exhibiting the motives of Napoleon III, Maximilian of Habsburg, and the conservatives for establishing a monarchy in Mexico.

As for the main charge against Maximilian, "being an instrument of Napoleon III", it is worth pausing to consider the legal arguments resorted by prosecutor Aspiroz. The Law of 1862 in its Art. 1 (I) criminalized "an armed invasion on the territory of the Republic executed by foreign citizens and Mexicans, or just by foreigners, without a previous declaration of war by the foreign power". From reading the written statements of the public prosecutor as well as the instruction orders of Ignacio Mejía, it is clear that the main violation to be punished was waging an illegal war against the Mexican Republic and through it substituting the Mexican Republic for a monarchical regime. As derivatives of the main crime – the intervention – individual lives were lost and villages were destroyed. Finally, peace could not be restored due to the continuous combat – even after the French forces were retired.

The main perpetrator of the invasion was Napoleon III, and as a result, to attribute criminal responsibility to Maximilian for waging an illegal war against Mexico, Chief Prosecutor Aspiroz deployed a differentiated form of

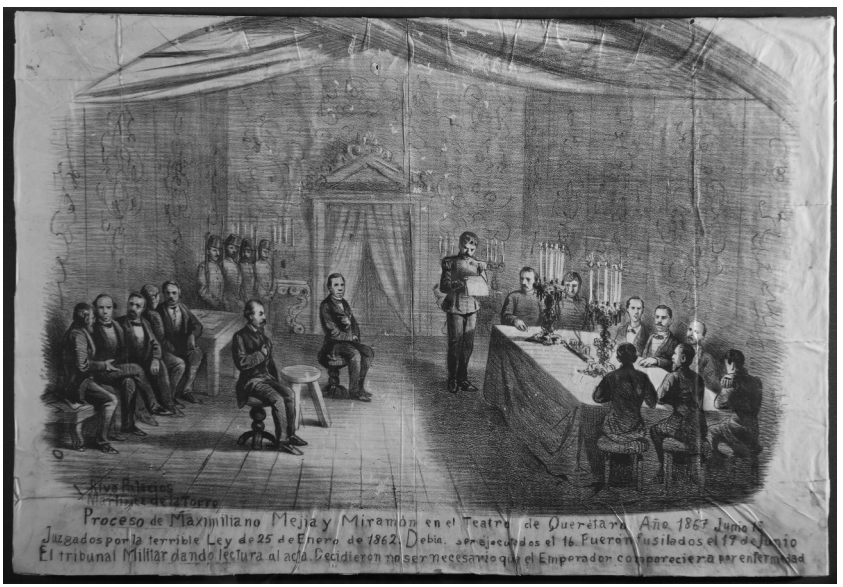
49 See above (n 47).

50 B Hamnett, La ejecución del emperador Maximiliano de Habsburgo y el Republicanismo Mexicano, in L Jauregui and JA Serrano Ortega (eds), Historia y Nación. Actas del Congreso en Homenaje a Josefina Zoraida Vázquez (El Colegio de México, undated) 242–243.

51 See Manuel Aspiroz (1836–1905): un poblano en la encrucijada de la historia patria, in *El Tiempo Universitario* (Año 2 número 18, Puebla, 1999).

52 Magallón Ibarra (n 5) 379–387.

perpetration. Maximilian did not directly execute the armed invasion; he arrived in Mexico and was crowned "emperor of Mexico". By accepting being emperor of Mexico, Aspiroz argued, he executed the plans of Napoleon III to establish a monarchy in Mexico, and then by waging war against the Republicans he enabled the continuation of Napoleon's plans.[53]



Riva Palacios Martínez de la Torre, drawing of the military trial against Maximilian of Habsburg, Queretáro, 1867. Source: Mediateca Instituto Nacional de Antropología e Historia, Lugares INAH – Proceso de Maximiliano

53 ibid 373–374.

6. Finding the truth: the versions of the accused

6.1. Maximilian of Habsburg

For four days, the accused were interrogated by the Chief Prosecutor, Aspiroz, where they were held prisoners, not yet in the theater.[54] The first to be interrogated was Maximilian of Habsburg. He contested the court's jurisdiction and remarked that, as a Habsburg, he had immunity, and as such he could only be handed as a prisoner of war to an Austrian warship. In his view, the charges against him were political, and therefore a court-martial was not the competent forum. As a result, Maximilian refused to answer any of the questions posed by the prosecutor. As for the jurisdiction of a military trial, he claimed the only competent authority would be the Mexican Congress (since the crime was of a political nature), or at least an ordinary high tribunal, comparing his case to that of the ex-President of the Confederacy, Jefferson Davis.[55] In his opinion, as Mexico lacked competent tribunals (as they were not yet institutionalized due to the war), no authority could judge the cause. He further warned that pursuing such a military trial would harm the perceptions of the "civilized world" towards Mexico.[56]

Maximilian insisted that he was the elected emperor by the will of the Mexican people as he had received numerous "letters of adherence", which had been examined and studied by a group of "English jurists", who had concluded that the election of Maximilian as emperor had been legitimate.[57] In Maximilian's view, the "letters of adherence" represented the Mexican will to become a monarchy. In his account, he described how he had come with no army (even though the French army constantly held battles against the Republicans to occupy territory) and how the people had cherished him.[58]

54 J Villalpando, Maximiliano frente a sus jueces (Escuela Libre de Derecho, México, 1993) 31–43.
55 Magallón Ibarra (n 5) 404–405.
56 ibid 405.
57 ibid 398.
58 ibid 403.

6.2. Tomás Mejía

In contrast to Maximilian of Habsburg, Tomás Mejía was more generous with his answers. The prosecutor intended to find out why Tomás Mejía had continuously fought on the conservative side and why he insisted on not recognizing the Constitution of 1857 and the legitimacy of the Republican government. Mejía declared that he had defended the imperial government as he had thought it would put an end to the anarchy the country had suffered.[59] Ending anarchy was also his reason for waging war against the Republican government. As to why he continuously held arms against the Republic after the civil war, Mejía argued he was always persecuted by the Republican forces, and so there was no choice left for him, but to withhold armed resistance.

In the case of Mejía, Chief Prosecutor Aspiroz deployed the same mode of participation as with Maximilian, except that he was not considered to be an instrument of Napoleon III but of Maximilian of Habsburg. In this sense, similarities can be reckoned with the notion construed in the Nuremberg Trials, that "wars of aggression" are committed through an organization.[60] According to the prosecutor, Mejía had served as an instrument of war and thus contributed to the destruction of national institutions and the further persecution of Republicans.[61]

6.3. Miguel Miramón

In the case of Miguel Miramón, the prosecutor was interested in interrogating him about his participation in the civil war (1857–1861) and his reluctance to recognize the Republican Constitution of 1857. According to the prosecutor Aspiroz, the complicity of Miramón with all those who rebelled during the civil war contributed to the "[...] horrors of the war [...] and the disruption of peace".[62] The inquiries made by the prosecutor constitute an attempt to set a narrative about the civil war, in the case of Miramón decisively so, as he was named president by the conservative

59 ibid 365.
60 See S Sayapin, The compatibility of the Rome statute's draft definition of the crime of aggression with national criminal justice systems (2010) 81 Revue internationale de droit pénal 165–187.
61 Magallón Ibarra (n 5) 379.
62 ibid 383.

faction, while the Republican Constitution had never ceased to be in effect. Highly relevant for the Republicans was also clarifying what is referred to as the "massacre of Tacubaya" (1859), where Miramón allegedly ordered the execution not only of Republican prisoners of war but of unarmed civilians and even the doctors who were aiding the injured.[63]

Regarding his enrollment during the French occupation and the reign of Maximilian, as he was sent to Prussia by Maximilian in 1864, he was charged for his role in the Empire during its last six months.[64] His enrollment was decisive as he was named chief of the military by Maximilian of Habsburg. Nonetheless, Miramón could not be charged with being an accomplice of the French Intervention as the French forces had already retired when he assumed his position as chief general.[65]

7. The Trial hearings

7.1. Defense arguments

The trial hearings bear witness to the tensions at the time, between the "law of nations" (as a derivative of natural law) and positive law, since the defense lawyers mainly argued for the application of natural law instead of the Law of 1862 (positive law). Natural law was indeed anathema to the Republican liberal project as it sustained the divine right of Spain to have possession of the Americas.[66] It is then logical that the Law of 1862 was an attempt to codify domestically the law of nations and specifically the laws of war. Therefore, the public prosecutor, as representative of the Republican government, argued for the enforcement and application of positive law.

Equally, the trial hearings brought to the fore considerations that appear regularly in war trials such as sovereign immunity, jurisdiction, validity of domestic law, selectivity, partiality, victor's justice, revenge, and the nature of an armed conflict. In this regard, it could also be argued that the "search

63 This incident is also popularly known as the "Martyrdom of Tacubaya", as it happened in a quartier of Mexico City called Tacubaya. See the contemporary account by A Garza Ruiz, Los Mártires de Tacubaya (México DF undated) http://cdigital.dgb.uanl.mx/la/1020004825/1020004825.PDF (accessed 2.9.2023).

64 Magallón Ibarra (n 5) 386–387.

65 ibid 387.

66 See B Juárez, El Presidente Interino Constitucional de la República a los Mexicanos (Palacio Nacional de Veracruz, 31 de Octubre de 1858) https://www.memoriapoliticademexico.org/Textos/3Reforma/1858MBJ-PteInt.html (accessed 2.9.2023).

for truth" within a trial also involves interpreting legal terms. What proves to be crucial during this historical period, is that as the tensions between natural and positive law were still ongoing, the trial of Maximilian was not only about finding or revealing the truth about certain events but also about reaching a consensus on the applicable law and concepts.

Overall, the defense lawyers argued that the Law of 1862 was not applicable as no direct participation in the intervention could be proven and, therefore, the three defendants were not traitors; if at all, they could be charged for consistently adhering to the conservative party, and this could only qualify as a political crime. As for Maximilian, he could not be considered a traitor, as his fatherland was not Mexico but Austria. Additionally, the court would be incompetent as Maximilian was a monarch of the Habsburg family and therefore not subject to domestic criminal law. But most importantly it was argued as a defense that Maximilian was driven by a mistake of fact as he believed the Mexican people had wanted a European monarch to rule them.[67] As for Maximilian, the main argument of the defense centered on the incompetence of the court-martial.

In the case of Tomás Mejía and Miguel Miramón, the defense argued that, from the charges and questions formulated by the Chief Prosecutor, it could be concluded that the purpose of the trial was to charge them for their involvement in the civil war between conservatives and liberals. However, the question arose as to "[...] what benefit would [be brought] by recalling past grievances? If it would just reanimate old hate and feelings of vengeance".[68] Furthermore, the defense argued that having sympathy for a political idea should not be a crime, it would be a crime of conscience or at most a political crime. In this regard, the defense lawyers focused on Art. 13 of the Constitution which banned the death penalty for political crimes. Further elaborating on the moral inadequacy of the penalty, the death penalty would be contrary to the "humanitarian" and "liberal" values of the Republic. The death penalty would neither restore nor reinsert the offender in society. The death penalty would also lead to the continuation of terror suffered by the population in the course of war.[69] Killing the accused would not restore the confidence in the Republic among the population, nor would it put to an end the conservative convictions of the people. Executing adversaries could not bring peace to the nation. The fears expressed by

67 Magallón Ibarra (n 5) 548–549.
68 ibid 514–515.
69 ibid 479.

the defense lawyers, that execution would equal revenge for the past, not retribution, were also illustrated by historical cases, recalling the execution of Louis XVI and the period of "terror" in revolutionary France.[70]

The defense lawyers also claimed the dangers of enforcing the Law of 1862, as in nearly all cities and villages that were occupied by the French, the Mexican population collaborated in some way or another. The question arose whether all Mexicans would be tried for treason.[71] Could a wave of imprisonments and executions lead to terror as during the French Revolution?[72] The defendants also posed the dilemma, that if not all were to be prosecuted and punished, justice would in turn be selective.[73]

If the three accused were to be charged, – the defense lawyers argued – domestic positive law was not applicable. Invoking extensively Vattel's doctrine, the defense lawyers put forward that when two belligerent parties held hostilities within the nation, the latter was equal to a war between states.[74] The defense lawyer Eutalio Ortega also brought to the equation an important element of the concept of "internal armed conflict", namely that hostilities between two belligerent parties within a state are equal to war when they happen *regularly* (emphasis added).[75] He also established the difference between a civil war and a rebellion, concluding that the Reforma War was a civil war and, therefore, the only way to put an end to it was – like in international conflicts – through treaties, disqualifying the trial as a way to give closure to the conflict.[76]

In the legal reasoning of the defense lawyers, as war between two belligerent parties equaled war between states, there was no authority over them by which they could be judged. As a result, they were only constrained by the usages of war.[77] The defense lawyers adhered to natural law, further

70 ibid 542.
71 ibid 513. Compare the opening statement by Robert H Jackson, "Second Day, Wednesday, 11/21/1945, Part 04", in Trial of the Major War Criminals before the International Military Tribunal. Volume II. Proceedings: 11/14/1945–11/30/1945. [Official text in the English language.] (Nuremberg: IMT 1947) 98–102.
72 Magallón Ibarra (n 5) 542.
73 ibid 513.
74 ibid 469–470, 477–478, 512–513.
75 ibid 488. The framing of Eutalio Ortega resembles the "non-state armed conflict" requirements set out by the Appeals Chamber of the ICTY in the Tadic case, "protracted violence" being one of these requirements. See ICTY, The Prosecutor v Dusko Tadić, IT-94–1-AR72, Appeals Chamber, Decision, 2 October 1995, para 70.
76 Magallón Ibarra (n 5) 540–541.
77 ibid 468–469.

adding that as no superior authority was above the belligerents "[...] the only law they are subject to is *ius gentium*, which is the supreme law of nations, and is equal to natural law".[78] In their view, the parties to a war lived in a natural state and as a result, no positive law was applicable. According to this view, the death penalty would also not apply to the case, as violations of the laws of war were punished collectively and not individually.[79] In this regard, the defense lawyer's argument obscured the fact that the enforcement dilemma of the "law of nations" was resolved by the Law of 1862 criminalizing violations to *ius ad bellum* and *ius in bellum*. Additionally, collective punishments were being replaced by individual criminal punishment, which represented a more humane option for punishment as it was suffered solely by those who caused the harm.

Finally, the legal defense of Maximilian retrieved historical precedents to support their argument for not executing Maximilian of Habsburg. These precedents ranged from Charles I of England, Louis XVI, and Charles X of France, to the fromer President of the Confederacy, Jefferson Davis.[80] In a way, by retrieving these historical and contemporary cases, the defense lawyer was construing a trajectory of trials, and as such, rooting the history of international criminal law.[81] Invoking historical cases also adheres to the practice of lawyers to retrieve "the past for support of legal positions in the present".[82]

In addition, the defense of Maximilian constantly argued that the trial lacked impartiality,[83] unable to deliver justice as a "victor's trial".[84]

78 ibid 463, 469, 477–478.

79 ibid 504.

80 Retrieving cases from different corners of the world, was a feature of the Republics of the new world. See N Miller, Republics of Knowledge. Nations of the Future in Latin America (Princeton University Press 2020) 222–226. The manifesto of Benito Juárez of the year 1858 is also a case in point, where he also retrieves the cases of Ireland and India as a counterpoint to the apparent liberties achieved by the British Empire. See Juárez (n 66).

81 As J Iverson did in his article about unknown historical cases in the history of International Criminal Law, see Iverson (n 1).

82 L Benton, Beyond anachronism: histories of international law and global politics (2019) Journal of the history of international law 7, 32.

83 Magallón Ibarra (n 5) 564.

84 In this regard, the defense argument is similar to that posed by Judith Shklar in her book Legalism in which a political trial is degraded since: "The Judge will be subservient to the prosecution, the evidence false, the accused bullied and rules of law and procedure ignored". See Shklar (n 2) 149.

Finally, the legal defense put the whole trial into question, as to its efficiency in solving disputes between nations, ending war, and bringing peace. The "[...] problem of perpetual peace between nations is that, until now, no nation has – through the means of their constitutions – solved the problem of solving social schisms peacefully. [...] The only solution so far has been through force. The solution among nations has been signing a treaty or subjugation."[85]

7.2. Closing statement of the public prosecutor

After the moral arguments made by the defense lawyers and their plea to apply "natural law" and not "positive law", the public prosecutor squared neatly and logically the acts and omissions of Maximilian, Miramón, and Mejía to the definition of crimes drawn in the Law of 1862. As he stated in the pre-trial phase, the French Intervention was: a) an unjust war in its cause; b) an illegal war in its form; and c) a "barbarian" war in its execution. Aspiroz argued, "[...] the conduction of war continued in a manner just as it started, without the formalities that the laws of the civilized nations demand, with Maximilian as the aggressor".[86] According to Aspiroz, Maximilian did not recognize the belligerent status of the Republicans and executed prisoners of war, as well as those who collaborated with the Republicans, also collectively punishing those communities who did not aid the imperial army.[87] After the French army retired, – according to Aspiroz – Miramón and Mejía received the command of Maximilian's forces, extending unnecessarily an armed conflict and inciting human loss.[88]

Maximilian was charged with thirteen crimes. The first and main charge was serving as an instrument to Napoleon III in his plan to invade Mexico and establish a monarchical government. The French Intervention – Aspiroz citing the writings of Grotious and Vattel to support his claim – was an illegal war as no formal declaration of war preceded.[89]

As stated before, the armed intervention was the main crime from which the other charges derived. The illegality of the war not only derived from

85 Magallón Ibarra (n 5) 541.
86 "Esta Guerra continuó haciéndose de la misma manera que había comenzado, sin las formalidades del derecho que observan las naciones civilizadas, siendo de considerarse que Maximiliano era el agresor", ibid 564.
87 ibid.
88 ibid 571–572.
89 ibid 567.

the lack of a declaration of war but also from the breach of the Preliminaries of La Soledad, according to which the parties were obliged to not occupy Mexican territory.

The third charge, formulated by Aspiroz, consisted of the seizure of the rights of a sovereign and freely constituted power by Maximilian, also "[...] according to Vattel" a crime against the law of nations.[90] Not only did Maximilian seize power, but he also disposed through armed violence of the rights and lives of Mexicans, a crime according to Art. 4 of the Law of 1862.

Of relevance is the way Chief Prosecutor Aspiroz deployed the doctrine of Vattel in order to justify the treatment of Maximilian of Habsburg as a common criminal.[91] Aspiroz started building his argument by saying that Maximilian had continued the conduction of hostilities in the way the French army had done, authorizing abuses and excesses against the civilian population that the law of nations did not authorize. In his reading of Vattel, if the enemy did not follow the customs and usages of war – including a formal declaration of war –, he was not entitled to be respected as a belligerent and therefore could be treated and punished as a robber and a pirate.[92]

The sixth charge consisted of inviting subjects of other nations to change the form of government, as described in Art. 1 (3) of the Law of 1862. Maximilian did so, as he engaged volunteers from Austria and Belgium in his army.[93] Lastly, an important enforcement of the laws of war were the charges made against Maximilian for decreeing a law in 1865, in which he ordered the execution of all those who opposed the Empire, even prisoners of war, within 24 hours.[94] Aspiroz divided this charge into two different criminal acts: the first being ordering the decree and the second execut-

90 ibid 569.

91 Interestingly enough, the doctrine of Vattel was also deployed when Napoleon was taken prisoner in 1815 and the question arose whether he should be treated as a prisoner of war, pirate, or *hostis humanis generis*. On this point see E Fiocchi Malaspina, L'eterno ritorno del Droit des gens di Emer de Vattel (secc. XVIII-XIX), L'impatto sulla cultura giuridica in prospettiva globale (Global Perspectives on Legal History 8, Max Planck Institute for European Legal History, Frankfurt am Main 2017) 149–150.

92 Magallón Ibarra (n 5) 570. On war declarations and manifestoes in the thought of Vattel, see Kalmanovitz (n 27) 86–93.

93 Magallón Ibarra (n 5) 570–571.

94 Ley para castigar las bandas armadas y guerrilleros, 3 de Octubre de 1865, in México a través de sus constituciones (vol II, Cámara de Diputados LXIII Legislatura 2016) 425–428.

ing the decree. The doctrine of Vattel was again retrieved by Aspiroz to underline the grave violation of the law of nations as "[...] an enemy that surrenders and gives up arms is not to be executed, and quarter should be given".[95]

Finally, Aspiroz cleared the accusations of the legal defense of charging Mejía and Miramón with crimes that happened before the Law of 1862 was in place. The crimes committed by both defendants during the civil war (1858–1861) were punished by the law of 1856, which criminalized acts of rebellion. The Law of 1862 would apply to all acts related to the French Intervention. Firstly, as perpetrators of the voluntary service given to foreign troops to accomplish the invasion (Art. 1 (2), (4), and (5) of the Law of 1862).[96] Secondly, by accepting the position of chief generals under the command of Maximilian of Habsburg, they contributed to the continuation of war and to the violations of individual rights as punished in Art. 4 of the Law of 1862.[97]

As we can see, Chief Prosecutor Aspiroz assumed that his role was not only prosecuting the accused and arraigning a trial but also contributing to the broader objectives of the trial which were: a) didactic (the public would learn how justice was executed), b) reconciliatory (between the opposing parties, conservatives and liberals), and c) peacemaking. But most importantly, it set the precedent in the case that European powers attempted to interfere with violence in the internal affairs of the country.

8. Conclusion

As the above narration of the trial against Maximilian of Habsburg has shown, the so-called "civilized world" had to witness how a monarch and the monarchy went to trial under a Republican government.

Regarding the trial itself, we might ask ourselves whether the objective of such a trial was seeking the truth. Or was the objective rather to install a new order through law? For the public prosecutor, the truth was self-evident, the imperialists started a war, the French forces advanced in Mexican territory, the Mexican Republican government had to flee from Mexico City, and even as the trial was taking place, Mexico City was still being

95 Magallón Ibarra (n 5) 571.
96 ibid 574.
97 ibid 566.

sieged and fought over. Thus, for Aspiroz, it was not about finding the truth, but rather revealing the truth. Consisting of a) exhibiting the fact that a European power did not comply with basic principles of the law of nations, such as the right to self-determination and equal sovereignty; b) that the Mexican Republic was capable of enforcing the law of nations – and therefore capable of being a sovereign nation – and c) that no one would stand above Mexican law, not even a prominent member of the Habsburg monarchy.[98]

The trial of Maximilian was also about displaying and enacting international law. Showing proficiency in the language of international law was particularly relevant as a condition for being considered a "civilized nation". The main offenders of sovereignty and peace were not "non-European barbarians", but Napoleon III and Maximilian of Habsburg. The idea of a military trial substituted the act of revenge for a rational, transparent, and legal process. Through the trial, the liberal Republicans aimed at signalizing that the Mexican Republic "[...] was worthy of being free [...] and able to defend its sovereignty".[99]

The trial put into practice novel legal ideas to enforce the laws of war, particularly the doctrines of Emmerich de Vattel. As Walter Rech has shown, Vattel drew a "two-tiered approach to international law enforcement".[100] As shown in the previous account, the interesting outcome of the application of Vattel's theory in the Maximilian trial is that it was used to contest European hegemony, not to justify it.[101] Moreover, as the enforcement of international law through a military trial stemmed from a non-European state, it critically situated the development of international law in Europe as a "hierarchized international law" in opposition to a "universalist international law" – to which the Mexican Republican liberals ascribed.[102]

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98 ibid 556–566.

99 Juárez (n 4).

100 See Rech (n 35) 225–226.

101 Walter Rech underlines that the application in the European context of Vattel's theory for punishing unequally "uncivilized international criminals [...] turned out to possess a hegemonic and oppressive character"; ibid.

102 As clearly put by special envoy to the US, Matías Romero in a speech given at a banquet in his honor in New York on October 2, 1867: "I don't think nature has formed different bodies of laws for each folk or for each family of peoples called races. In my opinion, it is more natural to suppose that providence governs the human race by the same code of laws, equally applicable to the Anglo-Saxon race, as to the Latin, to the Indians, and to the Africans." In Banquete dado en obsequio del

Notwithstanding the claims of partiality and politicization made by the defendants, it cannot be denied that the trial was a truly novel advancement to confront the causes, actions, and effects of war in the form of a dialogue between the public prosecutor, the defendants, and their lawyers. Furthermore, this dialogue would be ordered through the formalities of legal proceedings. In this regard, the 1867 trial is an example of the constraining power that legal procedure has, as it created a non-violent space in which political and ideological enemies could be confronted. Additionally, through the device of "criminal law theory", the acts of the offenders would reveal themselves as willing to violate the nation's sovereignty, unleashing war and the loss of human lives, and the impossibility of the Mexican nation to constitute itself peacefully as a Republic supported by popular sovereignty.

Finally, as mentioned in the introduction, the trial serves as a device for the legal historian to gain a better understanding of biases and misconceptions in the field, leading us to question why some visions of international law gain more traction than others. As we can see from the previous sections, the vision that Mexican Republicans had about international law was based – among other things – on their interaction with European powers. As a result, it was a vision and project of international law based on practice and formal knowledge (as the numerous citations of European authors and cases evidence). It allows for a critical assessment of European international legal scholars of the time – it makes us question if they had any experience or interactions with the subjects they claimed were "semi-civilized" or "barbarian".[103] In addition, it makes us wonder if they were intellectually curious about the developments that were happening at the time in the realm of international law outside of Europe and the US.[104]

The trial also enables us to have a better understanding of the role of war trials in the history of international law and the patterns that are

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Señor Don Matías Romero, enviado extraordinario y plenipotenciario de México en los Estados Unidos por ciudadanos de Nueva York, el 2 de Octubre de 1867 (Imprenta del Gobierno en Palacio, México 1868) 56.

103 M Koskenniemi, The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960 (Hersch Lauterpacht Memorial Lectures, Cambridge University Press 2001) 127–136. On a recent account on the standard of civilization in the nineteenth century, see N Tzouvala, Capitalism as civilization (Cambridge University Press 2020) 44–87.

104 Especially in view, that the first issue of the *Revue de droit international et de legislation compare* was published in 1868. See Koskenniemi (n 103) 14.

present in this type of trial. One plausible conclusion of identifying these patterns could lead us to think that there is a practice in place of ordering or re-ordering the political system through military trials, as in the case of the Maximilian trial from monarchism to liberal republicanism. In this context, then, military trials might ultimately be seen as a legal expression of liberalism.[105]

105 The performing of legality might even be interpreted as a characteristic of liberalism. See S Moyn, Judith Shklar versus the International Criminal Court (2013) 4 Humanity: An International Journal of Human Rights, Humanitarianism, and Development 473, 473–500. On the idea of military trials as a "legalist expression" see Shklar (n 2).