

ORDER AND DISORDER IN THE COURT: *Press Law, Politics, and the Sedition Trials of Chile's Early Republic, 1813–1851*

ABSTRACT: This article explores the phenomenon of the sedition trial in the early history of the Spanish American republics, focusing on sedition trials that occurred in Santiago de Chile from the late 1820s to the early 1850s. Sedition trials were governed by laws enacted in the wake of Chile's political independence to protect and regulate the freedom of the press. Because of the way press laws were written, sedition trials were conducted in front of juries composed of active citizens. As such, they constituted a dramatic break with the judicial tradition of Spanish colonial rule. The article argues that sedition trials were instrumental in the dynamics of political conflict, but only when the national government allowed them to operate without interference, which was not always the case. When sedition trials had integrity, as they did for a period in the 1840s, they became a public space in which citizen-journalists and publishers participated in establishing the boundaries of political speech. However, as one might expect, government officials also used the charge of sedition to silence their opponents. Sedition trials can thus be seen as a form of political warfare that has not been fully appreciated by scholars.

KEYWORDS: sedition, juicio de imprenta, jurado de imprenta, freedom of the press, press law, republicanism, Chile, nineteenth century

In 1846, in the aftermath of a series of contentious press trials in Santiago, a manual was published to inform writers, printers, and potential jurors about the state of Chile's laws regarding the freedom of the press.¹ The manual's creator, Juan Bautista Alberdi, was a prominent Argentine exile then practicing law and journalism in Chile. Alberdi had firsthand experience with Chile's press

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1. J. B. Alberdi, *Legislación de la prensa en Chile, o sea, Manual del escritor; del impresor y del jurado* (Valparaíso: Imprenta del Mercurio, 1846). The Imprenta del Mercurio published a second edition of Alberdi's manual in 1847, which included an appendix containing the full text of the new press law enacted on September 16, 1846. See J. B. Alberdi, *Legislación de la prensa en Chile, o sea, Manual del escritor; del impresor y del jurado, con un apéndice que contiene la nueva ley sobre la prensa, puesta en concordancia con nuestras leyes anteriores y con otras de países extranjeros* (Valparaíso: Imprenta del Mercurio, 1847). All subsequent references in this article correspond to the second edition of 1847.

trials. Two years earlier, as editor of the newspaper *El Mercurio*, he had stood accused of libel in a Valparaíso courtroom.²

Alberdi dedicated a section of his manual to the “historical development of the freedom of the press in Chile.”³ He focused in particular on the complex system of juries and trials codified by Chile’s two main press laws: the 1828 and 1846 Laws on the Abuse of Press Freedom. A second edition of Alberdi’s manual, published a year later, provided readers with the full text of both laws and offered commentary on how the 1828 law compared with press legislation in other countries (the 1846 law had just been enacted). A fierce critic of the Rosas dictatorship then dominating Buenos Aires, Alberdi looked on the Chilean system with admiration. In Chile, he wrote, the freedom of the press was not one of “those sterile freedoms that exist only as written in the law code.” Instead, he insisted, the freedom of the press in Chile “exists in fact and natural right, in law and custom, in thought and reality. . . it affects the character of the entire nation.”⁴

There are a number of important studies of the history of press freedom in Chile, but little has been written about the country’s system of *jurados de imprenta* (press juries) and *juicios de imprenta* (press trials) that protected and regulated that vital civil right.⁵ Scholars of Latin American history have not fully reckoned with the complicated system of press trials that developed in nineteenth-century Chile and other Spanish American republics. Passing references can be found in the historical literature, but only a few scholars have undertaken more systematic studies of the phenomenon.⁶ While the roots of the press trial lie in the principles espoused by the Cádiz Constitution of 1812, legislators in Spanish America’s early republics were forced to grapple independently with the question of how best to protect press freedom and at the same time place some reasonable limits on its practice by citizens. In Chile and other Spanish American republics, local officials adapted Spanish, French,

2. Francisco Laborde, *Estudio crítico: Juan Bautista Alberdi* (Madrid: Fundación Ignacio Larramendi, 2014), 26–27. See also the pamphlet *Defensa del Mercurio por el doctor Juan Bautista Alberdi en la noche del 5 de junio de 1844* (Valparaíso: Imprenta del Mercurio, 1844).

3. Alberdi, *Legislación*, 14–27.

4. Alberdi, *Legislación*, 24.

5. Those studies include Raúl Silva Castro, *Prensa y periodismo en Chile, 1812–1956* (Santiago: Ediciones Universidad de Chile, 1958), 1–126; Ricardo Donoso, *Las ideas políticas en Chile*, 2nd ed. (Santiago: Editorial Universitaria, 1967), 344–380; Gonzalo Piwonka Figueroa, *Orígenes de la libertad de prensa en Chile: 1823–1830* (Santiago: RIL Editores, 2000); and Ana María Stiven and Gabriel Cid, eds., *Debates republicanos en Chile*, Vol. 2 (Santiago: Ediciones Universidad Diego Portales, 2013), 343–376.

6. See for example Gonzalo Piwonka Figueroa, “Los juicios por jurado en Chile,” *Revista de Historia del Derecho* 20 (2008): 133–146; and Patricio Ibarra Cifuentes, “Liberalismo y prensa: leyes de imprenta en el Chile decimonónico, 1812–1872,” *Revista de Estudios Histórico-Jurídicos* 36 (2014): 292–313. See also José Santos Torner, *Reminiscencias de un viejo editor* (Valparaíso: Imprenta de la Librería del Mercurio, 1889), 48–53, 130–136.

and Anglo-American legal thought to meet their needs, creating a diverse set of judicial traditions.⁷

This article focuses on sedition trials, which formed a subset of all press law cases that occurred in these decades. It does not address trials dealing with accusations of defamation (*injuria*) in which individuals used the press trial to adjudicate matters of personal honor.⁸ In this sense, it diverges from historian Pablo Piccato's pathbreaking work on the defamation trials of Mexico's República Restaurada (1867–77).⁹ Whereas Piccato looked at contests over honor between citizens, this article examines trials that pitted citizens against state prosecutors in an ongoing contest to define the limits of political speech.¹⁰

In her highly regarded synthesis of Spanish America's nineteenth-century political history, Hilda Sabato made a compelling argument about the relationship between the freedom of the press, the formation of public opinion, and the emerging practices associated with electoral politics in the region's newly established republics.¹¹ For Sabato, the rise of print and the emergence of the press were inseparable from the political battles that shaped Spanish America's early republics. "The press was," she wrote, "a political arena" and "an instrument of practical politics."¹² This was because the circulation of printed materials—especially short-lived, partisan newspapers—created a public space for actors from diverse social backgrounds to work out the boundaries of public

7. On the judicial traditions of nineteenth-century Latin America, see Roberto Gargarella, *The Legal Foundations of Inequality: Constitutionalism in the Americas, 1776–1860* (New York: Cambridge University Press, 2010).

8. It is difficult to determine the exact number of accusations that were made against Santiago residents for violating the press laws of this period, due to the fragmentary nature of the judicial records. The Santiago criminal archive contains no record of press cases prior to 1833. Piwonka, using Volumes 15 and 16 of the *Sesiones de los cuerpos legislativos de la República de Chile, 1811–1845*, 37 vols. (Santiago: Imprenta Cervantes, 1886–1908) and contemporary newspapers, identified 14 specific accusations of the abuse of press freedom in Santiago between 1827 and 1833. (In some instances the accused could face multiple accusations at a single trial.) See Piwonka, *Orígenes*, 95–149. Using records from the criminal archive of the Department of Santiago, contemporary newspapers, and historian Diego Barros Arana's incredibly detailed *Un decenio de la historia de Chile, 1841–51*, 2 vols. (Santiago: Editorial Universitaria, 1905–06), I have identified 26 additional accusations of the abuse of press freedom in Santiago between 1833 and 1851. That adds up to a total of 40 accusations brought forward in Santiago between 1827 and 1851. Of those 40 accusations, 11 were for sedition (27.5%), 22 were for defamation (55%), six were for blasphemy and/or immorality (15%), and one was for publishing without a license (2.5%). On the number of Santiago press trials, see also Ibarra, "Liberalismo," 308–309.

9. See Pablo Piccato, *The Tyranny of Opinion: Honor in the Construction of the Mexican Public Sphere* (Durham: Duke University Press, 2010); and Piccato, "Jurados de imprenta en México: el honor en la construcción de la esfera pública, 1821–1882," in Alonso, ed. *Construcciones impresas*, 139–165.

10. According to the 1843 edition of the Spanish Royal Academy's *Diccionario de la lengua castellana*, *sedición* was defined as "Tumulto, levantamiento popular contra el soberano o la autoridad que gobierna" and *sedicioso* as "el que causa alborotos y sediciones."

11. Hilda Sabato, *Republics of the New World: The Revolutionary Political Experiment in Nineteenth-Century Latin America* (Princeton: Princeton University Press, 2018), 132–162.

12. Sabato, *Republics*, 149. Paula Alonso made a similar claim in the introduction to her edited book on the press in nineteenth-century Latin America. In post-independence Latin America, she wrote, the press was "*una de las principales formas de hacer política*." See Alonso, ed. *Construcciones impresas: panfletos, diarios y revistas en la formación de los estados nacionales en América Latina, 1820–1920* (Buenos Aires: Fondo de Cultura Económica, 2004), 8.

opinion, by which Sábato meant the “institutions and practices” that, within the constitutional republican form of government, made it possible for citizens to express their political sentiments to their representatives in government. Such a working out process was a critical part of “the formation of a political public sphere.”¹³ This article follows Sábato’s carefully considered approach to the relationship between public opinion and active citizenship in Spanish America’s early republics.

Adding to Sábato’s claims, this article argues that alleged seditionists in three highly publicized cases of the 1840s used the press trial as a platform for the promotion of the political opposition’s views to an audience of city residents, including those of the popular classes. Such trials became notable public events during which the accused writer, printer, or editor could speak directly to citizen jurors. Often, these trials produced courtroom drama and, occasionally, post-trial rioting in the streets. Chilean historian Iván Jaksic made this same observation about press trials almost 30 years ago, when, in the context of a masterly article on Domingo Sarmiento’s role in the Chilean press of the 1840s, he discussed a few notable press trials and looked at their impact on Santiago politics.¹⁴ Adding to Jaksic’s insightful comments, this analysis of the sedition trials carried out in Santiago between 1827 and 1851 will show that for a brief but significant moment in time they became public spaces in which print culture, republican law, public opinion, and the Chilean state converged and interacted. However, the article will also demonstrate that those who valued order over the freedom of the press ultimately compromised the independence of press juries and corrupted the integrity of press trials.

In Chile, as in other parts of Spanish America, there was no need for press laws prior to 1812 because there were no printing presses capable of producing books, pamphlets, or newspapers. It was José Miguel Carrera, the key military commander and political leader of the first phase of Chile’s War of Independence, who brought the first modern printing press to the country in 1811. Carrera viewed the printing press as an instrument of war and revolution, just as important as the cannons on the battlefield. He thus sought to promote press freedom in the provisional constitution of 1812 and, more

13. Sábato, *Republics*, 13, 160. Following Piccato’s research on press trials in nineteenth-century Mexico City, Sábato claimed that the press juries of the era were largely “free from official pressures,” except “during moments of great political tension, such as wars and revolutions” (151). This article contains evidence that further confirms that finding.

14. See Iván Jaksic, “Sarmiento and the Chilean Press, 1841–51,” in *Sarmiento: Author of a Nation*, Tulio Halperin Donghi et al., eds. (Berkeley: University of California Press, 1994), 31–60. Within that article (38–39), Jaksic briefly discussed the Álvarez, Bilbao, and Godoy trials that are the subject of a subsequent section of this article. An earlier Spanish version of that article appeared in the Chilean journal *Historia*. See Jaksic, “Sarmiento y la prensa chilena del siglo XIX,” *Historia* 26 (1991–92): 117–144.

explicitly, in a decree issued in the name of Santiago's Junta de Gobierno on June 23, 1813. That decree established the basic legal framework for the adjudication of press cases in the Chilean republic. It is important to note that under Spanish colonialism all publications had been subject to censorship by Church and state authorities. Carrera's decree was thus a radical departure from the past when it stated, "From this day forward there will be complete and absolute freedom of the press . . . [prior] review and approval are hereby abolished."¹⁵

The 1813 decree made the newly established Senate responsible for "keeping vigil" over the freedom of the press, which included selecting juries that would rule on any potential "abuses" of press freedom committed by writers or publishers. Those abuses could occur in three broad areas: threatening public safety, questioning the doctrines of the official state religion, or attacking the new, independent system of government. In practical terms, as long as the Santiago junta controlled the only printing press in the country—as it did at that moment—the freedom of the press was more of an ideal than a reality.

According to the 1813 decree, when an accusation of the abuse of press freedom was made, the Senate's Junta Protectora de la Libertad de Imprenta would select two separate juries of seven prominent citizens each. These juries would judge the accusation. The introduction of the practice of trial by jury was, in itself, an innovative aspect of the 1813 decree. Jury trials were not a part of the Spanish colonial tradition, which followed a more "inquisitorial" approach to trials that allowed judges to dominate the courtroom.¹⁶ According to legal scholars Andrés Harfuch and Cristián Penna, numerous nineteenth-century Latin American constitutions attempted to put the jury trial into practice. In most cases, however, those attempts did not have a significant impact on Latin American legal culture until the final decades of the twentieth century. The one exception to that claim, they noted, came in the area of press trials by jury, which were written into the constitutions of several Spanish American countries in the decades following independence.¹⁷

In the system established by Carrera's 1813 decree, the first jury would evaluate the validity of the accusation whereas the second jury would issue a verdict on the guilt or innocence of the accused. The law required the Junta Protectora to compile a list of potential jurors annually (it is doubtful, however, that such

15. *Disposiciones relativas a la libertad de la prensa: Decreto de la Junta de Gobierno con acuerdo del Senado, en 23 de junio de 1813*. Quoted in Ibarra, "Liberalismo," 299. See also Piwonka, *Orígenes*, 95–96; and Alberdi, *Legislación*, 16. The decree still required *censura* for religious publications.

16. Andrés Harfuch and Cristián Penna, "El juicio por jurados en el continente de América," *Sistemas Judiciales* 17:21 (2018): 112–120.

17. Harfuch and Penna, "El juicio," 114 n3.

lists were ever compiled). Potential jurors had to be literate adult property-owning men recognized as prominent members of society. Overall, it is fair to say that the 1813 decree on press freedom established the basic legal framework of the press trial in Chile, although it made the Senate the guardian of the system.

The decade following Carrera's 1813 decree was a politically turbulent one, to say the least. Through it all, Chilean legislators continued to defend the principle of press freedom. It does not appear that any press trials actually occurred prior to 1827. The political atmosphere in the country must have been too unstable for such complex judicial procedures to be carried out. After a brief period of Spanish reoccupation of Chile (1814–17), the Army of the Andes liberated most of the territory from Spanish rule in 1817–18. A period of rule by Supreme Director Bernardo O'Higgins followed, until he was driven from power by provincial uprisings in 1822. In the wake of O'Higgins's ouster, legislators issued a second press freedom decree in 1823 that further defined the workings of the press trial system initiated a decade earlier.¹⁸ Under this second decree, abuses of press freedom were defined according to three degrees of severity: minor (*leve*), serious (*grave*), and very serious (*gravísimo*).

As was the case with the 1813 decree, however, political instability and another bout of constitutional reform soon overturned the 1823 decree. Later that year, representatives gathered in Santiago to ratify a new constitution. The Constitution of 1823 was the only constitution of its era that restored a form of censorship (in this case involving a panel of seven "censors"), but the highly moralistic document did not last long. Soon after Chile's second supreme director, Ramón Freire, took control of the republic, the Constitution of 1823 was nullified and the regulation of press freedom reverted to the 1813 and 1823 decrees, which meant the restoration of the press trial system.

The earliest example of a sedition trial identified for this article took place in Santiago in August 1827. As Gonzalo Piwonka Figueroa explained in his unrivaled study of the origins of the freedom of the press in Chile, it was Vice President (later President) Francisco Antonio Pinto's frustration with the workings of the press trial system in 1827 that influenced his administration's decision to carry out the law's comprehensive reform in 1828.¹⁹ Piwonka is the only historian to look meticulously into the press trials of the late 1820s. This section of the article draws on Piwonka's work on the development of the press trial system during what he called the rise of "journalistic guerrilla warfare" in

18. Piwonka, *Orígenes*, 100.

19. Piwonka, *Orígenes*, 121.

1827–30, a period in which Chile experienced escalating political strife, civil war, and, finally, regime change.²⁰

On August 1, 1827, Vice President Pinto, as the acting head of state, sent a letter to the congress accusing the editor of the Santiago newspaper *El Verdadero Liberal* of sedition. The editor, a French resident of Santiago named Pedro Chapuis, aligned himself politically with the federalists. Specifically, Pinto referred to the paper's July 31, 1827, article "Acontecimientos de Talca," which purported to be a news report on a recent military uprising in the city of Talca, about 150 miles south of Santiago.²¹ The principle cause of the rebellion, which was put down by forces loyal to the government, was the administration's failure to pay the troops, a complaint voiced repeatedly by the opposition press in those years. In Pinto's view, the paper crossed the legal line between reporting on a rebellion and taking the rebels' side. The article, wrote Pinto, represented a "proclamation or incitement to insurrection against the Government."²² In the name of the "conservation of order and public tranquility," declared Pinto, we must apprehend Chapuis and bring him before the proper authorities.²³

But who were the proper authorities? According to Pinto, the law required that the matter be forwarded to the Junta Protectora de la Libertad de Imprenta, the body initially established by Carrera's 1813 decree and then reauthorized by Freire in 1823. But there was a problem with that solution. According to Pinto, the Junta Protectora was not properly constituted at that moment. Without delving too deeply into the legal details of the administration's argument, it is safe to say that Pinto identified irregularities in the composition of the Junta Protectora of 1827 and demanded the formation of a new one.²⁴ He also argued that, due to the delay required to deal with the formation of a new junta, he would ask a criminal judge to issue an order for Chapuis's arrest, which was promptly carried out. Thus, as Chapuis sat in solitary confinement ("*incomunicado*") legislators ordered the creation of a new Junta Protectora. Eventually, the new junta was formed, juries were selected, and the case went to trial. Piwonka tells us that the first jury absolved Chapuis of the crime, primarily because the government's order to imprison the editor did not follow the proper procedure and was viewed as excessively harsh by jurors.²⁵ Piwonka added that this case, which ended in great frustration on the part of the

20. Piwonka, *Orígenes*, 118.

21. "Acontecimientos de Talca," *El Verdadero Liberal*, July 31, 1827. The article was reprinted in *Sesiones de los cuerpos legislativos de la República de Chile, 1811–1845*, Tomo XV, 1827–28 (Santiago: Imprenta Cervantes, 1892), 27.

22. Pinto's statement appeared in *Sesiones de los cuerpos legislativos*, Tomo XV, 26.

23. *Sesiones*, Tomo XV, 26. See also Piwonka, *Orígenes*, 121.

24. *Sesiones*, Tomo XV, 26. See also Piwonka, *Orígenes*, 120–124.

25. Piwonka, *Orígenes*, 124.

government, was a major impetus behind the comprehensive reform of the press law a year later.

Pinto's frustration led to the enactment of a new press law, the *Ley sobre abusos de libertad de imprenta*, on December 14, 1828. The new law followed up on a key article of the recently ratified Constitution of 1828.²⁶ That article stated, "All men may publish their thoughts and opinions. The abuses committed through this medium will be judged according to a particular law and evaluated by a jury."²⁷ Alberdi, the Argentine exile, dedicated his press law manual to President Pinto, calling the 1828 legislation "the law that organizes in an extensive manner the constitutional principle of the freedom of thought."²⁸ The new press law built upon the system of press juries and trials begun under Carrera in several key areas. The following section of the article provides an analysis of the way the press trial system worked according to the 1828 law, which remained in effect with few modifications until 1846.²⁹

The 1828 law assigned responsibility for the creation of press juries to local authorities in the municipality in which the alleged abuse occurred. Every year, on December 1, the "municipal body" in which a printing press was located was required to "appoint" 40 individuals to serve as potential press trial jurors for the upcoming year, with those names then published in the local newspapers.³⁰ Potential jurors had to be 25 years old and own property in the municipality (their literacy was simply assumed). Priests, lawyers, scribes, and public employees were excluded from jury service, which also required active citizenship, making apparent the link between suffrage rights and press jury service. As Alberdi noted in his manual, "The naming of the Juror and the Jury as such was derived from the oath [*juramento*] that was demanded of the jurors."³¹

In the case of Mexico City's press trials, Piccato claimed that there was a large gap between the number of potential jurors (men who qualified under the law) and the number of men who actually served, suggesting to him that the municipal officials entrusted with the annual selection of jurors "just listed people they knew."³² Without a comprehensive list of all the press trial jurors it is

26. *Ley sobre abusos de libertad de imprenta (promulgada el 14 de diciembre de 1828)*. Reprinted in Alberdi, *Legislación*, 30–57. See also Ibarra, "Liberalismo," 304–305; Piwonka, "Los juicios," 137–140; and Piwonka, *Orígenes*, 102–109.

27. Quoted in Alberdi, *Legislación*, 20; and Piwonka, *Orígenes*, 104.

28. Alberdi, *Legislación*, 1.

29. It is worth noting that a comparison of Chile's 1828 press law with the one enacted under Mexican president Guadalupe Victoria that same year reveals strong similarities, directing us again to the laws' common roots in the liberal constitutionalism of Napoleonic Spain. See Piccato, *Tyranny*, 34–35.

30. *Ley sobre abusos*, Article 29.

31. Alberdi, *Legislación*, 40.

32. Piccato, *Tyranny*, 51.

impossible to make such a determination for Santiago. It is clear, though, that Chilean press law intended to put decision-making power in these cases in the hands of the prominent men living in the almost exclusively urban or urbanizing neighborhoods where print shops, civic associations, and educational institutions of all sorts were being established. As we will see, however, intensified political polarization led to the corruption of these locally instituted proceedings.

When an accusation was filed with the appropriate local magistrate, government officials in that municipality would then select the names of nine jurors and two alternates by “lottery” (*sorteo*) from the annual list of 40. Those 11 men would then be summoned for service the following day by the presiding judge in the case. Failure to appear for jury duty, without a legitimate excuse, was punishable by a fine of 100 pesos. Assuming that the minimum number of jurors was achieved, the presiding judge would then administer an oath, asking jurors “on your honor and good conscience” to “rule truthfully and legally” on the question before them.³³ After swearing their oath, jurors received a copy of the accusation and a copy of the publication in question. With those materials, the jury then deliberated privately until reaching a verdict on the accusation’s validity by majority rule (note the contrast to the US jury trial, which requires that jurors reach a unanimous decision). If the verdict was negative, the case was dismissed. But if the verdict was positive, the judge would order the print shop administrator (“*impresor*”) responsible for the allegedly abusive publication to appear in court.³⁴

The minimum number of jurors was not always easily achieved, however. It often took several attempts to form a jury. Piccato described the selection of jurors as the “direst practical problem” for Mexico City’s press trial system of the 1860s and 1870s.³⁵ In Chile, despite the fact that unexcused jurors faced a hefty fine, some did not appear in court. The case files in Santiago’s criminal archive often reveal the difficulties judges faced in summoning selected jurors for service. In a March 1836 defamation case against the editor of Santiago’s *El Barómetro*, for example, it took several attempts to secure the correct number of jurors and alternates, due to those selected being out of town or formally requesting to be excused from service.³⁶ Moreover, even after the first jury ruled that the accusation against *El Barómetro* had merit, the judge still had to deal with the accused editor’s request to recuse several members of the second jury. In

33. *Ley sobre abusos*, Article 42.

34. *Ley sobre abusos*, Article 47.

35. Piccato, *Tyranny*, 49.

36. Juicio de imprenta seguido por D. Pedro de Alcántara San de Niz por publicaciones en *El Barómetro* (1836), Archivo Judicial de Santiago, Expedientes Judiciales (Criminales), Juicios de Imprenta, caja 928, leg. 1623, no. 11.

another defamation case, against the author of an article published in the Santiago newspaper *El Siglo* on April 30, 1844, the accused again used his right to recuse —“without alleging a motive”—up to ten potential jurors.³⁷ Generally, however, the judges assigned to overseeing these jury trials were ultimately successful in their efforts to bring all parties together.

Once convened, the trial entered a new phase centered on the question of editorial responsibility. According to the 1828 law, printers were expected to provide the court with the name of the person who wrote the article being accused. If the printer named the author, that person would be called to testify. If the alleged author appeared in court and if he took responsibility for the publication in question, the judge would order his immediate imprisonment (with the possibility of bail). If, however, the person named by the printer did not appear, or did not take responsibility for writing the accused words or phrases, the printer was obligated to prove the article's authorship. In the absence of such proof, the judge would hold the printer accountable as the “*editor responsable*” and order his imprisonment (again with the possibility of posting bail) for the duration of the upcoming trial.³⁸ As we will see in two of the cases discussed below, printers sometimes found themselves in front of juries because of the way this part of the law was written.

If the first jury voted in favor of the accuser, it was time for the second jury to commence. The second jury's job was to rule on the guilt or innocence of the accused publication. This jury was bigger, now including 13 jurors and four alternates. Like the first jury, this one was selected through a public lottery conducted by municipal officials. Following the selection of names, the second jury met in a courtroom the next day and swore its oath. After that, the accuser (or his attorney) made his statement to the jury. This opening statement was followed by the statement of the accused (or his attorney). After the accused's statement, jurors could ask questions of either side, after which the presiding judge would issue a final summary of the case. The jury would then retire to a private chamber to deliberate and reach a verdict by majority rule. Once the presiding judge read the verdict, there was only one thing left to do: either the accused was absolved of the crime and released, or was not, in which case the judge would immediately impose the required sentence.³⁹

37. Acusación por D. Juan Esteban Muñoz contra D. Buenaventura Grez como autor de un artículo publicado en el N. 22 del Siglo (1844), Archivo Judicial de Santiago, Expedientes Judiciales (Criminales), Juicios de Imprenta, caja 921, leg. 1612, no. 3.

38. *Ley sobre abusos*, Articles 48–50. On the question of determining editorial responsibility for accused publications, see Corinna Zeltsman, “Defining Responsibility: Printers, Politics, and the Law in Early Republican Mexico City,” *Hispanic American Historical Review* 98:2 (2018): 189–222.

39. *Ley sobre abusos*, Articles 53–68.

The 1828 press law established the rules for conducting press trials for nearly 20 years. The political regime that enacted the law did not share the same fate. Within a year of the passage of the 1828 Constitution and its corresponding press law, a coalition of merchants, landowners, military officers, and church officials rebelled against the Pinto administration and its liberal reformist allies in the legislature. The resulting Civil War of 1829–30 dramatically changed the direction of the Chilean republic. The Constitution of 1833, for example, well known for the repressive tools it placed in the hands of the president, replaced the 1828 Constitution. Diego Portales, a powerful merchant, played a leading role in organizing the new regime, so much so that the post-1830 regime often bears his name. Yet this new Portalian regime did not make any immediate changes to the press trial system established under Pinto.⁴⁰ However, as we will see, press trials became a new form of political warfare during the years of the Portalian regime. This was particularly true from 1840 to 1845, when opposition writers and publishers launched a series of rhetorical attacks on the Portalian regime, setting in motion the peak moment of the sedition trial in Chilean history.

A few months after the 1829–30 civil war ended, the new regime made its first accusation of sedition against a Santiago writer, editor, or publisher. By this time, the conservative coalition led by Portales had defeated the Constitutionalist army on the battlefield, taking control of state power in Santiago. Many of Pinto's supporters were either arrested or fled into exile, and many officers who fought on the side of the Constitutionlists were summarily discharged. In May 1830, the new regime granted itself "extraordinary powers" to deal with the possibility of ongoing subversion, especially watchful of the faction surrounding ex-Supreme Director Freire, who was plotting an invasion of Chile from exile in Peru. Technically, Chile's 1828 press law was still in effect, but Portales and his allies expressed deep concerns about the threat to "public tranquility" posed by the opposition press. It did not take long for the opposition to test the limits of political speech under the new regime.

The vehicle for that test was the newspaper *El Defensor de los Militares Denominados Constitucionales*, launched at the end of June 1830 by the eminent Spanish intellectual—and principle author of Chile's 1828 Constitution—José Joaquín de Mora. The initial purpose of Mora's paper was to advocate for the rights of the military officers summarily discharged ("*dados de baja*") by the new regime who, in Mora's view, had merely done their duty to uphold the country's legitimate government. Within months, however, *El Defensor's* attacks

40. A bill to restrict press freedom was introduced in the Senate in June 1839, including increased sentences for those convicted, but it did not become law. See Barros Arana, *Un decenio*, Tomo I, 69–70.

on the new regime's repressive stance toward press freedom intensified and the government's toleration of the paper ended.

Following the procedure spelled out in the 1828 press law, a government prosecutor issued the first of two accusations of sedition in the third degree against *El Defensor* in mid September 1830. This first accusation followed the publication of a satirical article titled "Turquía," in which the author lambasted the Turkish sultan's hypocritical plan to celebrate the annual Tulip Festival while his political enemies rotted in prison.⁴¹ The government read the article (with good reason) as a barely veiled attack on Chile's chief executive as the country prepared to celebrate Independence Day on September 18. Following the accusation, it was necessary to form the first jury. But here the government ran into a problem: after several attempts, municipal officials could not get a sufficient number of jurors to appear in court. As a result, the case had to be postponed while the government addressed the problem legislatively.⁴²

But that accusation was soon disregarded. On September 21, three days after the celebration of Chile's independence, the prosecutor issued a second accusation of sedition against *El Defensor*. This second allegedly seditious article, titled "Diesiocho de setiembre [sic]," was published on the date of the national celebration.⁴³ This time, municipal officials managed to form the first jury, which promptly found cause to proceed to trial. After the first jury's verdict, the administrator of the Imprenta Republicana (the press responsible for publishing *El Defensor*) appeared in court. When asked for the name of the editor responsible for the article in question, the print shop owner named the printer Anacleto Lecuna. Even though the prosecution knew that Lecuna was not the author of the article, without proof of the article's authorship legally there was nothing else to do: Lecuna was put in prison (he could not post bail) and the second jury selection moved forward.

A month later, on October 21, 1830, the second jury found Lecuna guilty of sedition in the third degree. He was sentenced to four years in prison, the maximum penalty. For our purposes, there are two important aspects of the trial. First was the nature of Lecuna's defense, strung together in a series of

41. "Turquía," *El Defensor de los militares*, September 10, 1830. See also Diego Barros Arana, *Historia general de Chile*, Tomo XVI y Último (Santiago: Imprenta Cervantes, 1902), 7–11, including the lengthy footnote on pages 10 and 11; and Piwonka, *Orígenes*, 139–141.

42. To deal with the problem, the government passed a modification to the 1828 press law that increased the number of potential press trial jurors in each municipality from 40 to 60. Alberdi confirmed this change in his manual. It does not appear that the change was permanent, however, as the trials of the 1840s went back to drawing juries from pools of 40 potential jurors. See Alberdi, *Legislación*, 40; and Piwonka, *Orígenes*, 142.

43. "Diesiocho de setiembre," *El Defensor de los Constitucionales*, September 18, 1830. Note the difference in the paper's name on this special date. See also Barros Arana, *Historia general*, 11; and Piwonka, *Orígenes*, 143.

depositions to the presiding judge made from his prison cell prior to the trial.⁴⁴ Lecuna seems to have been well acquainted with the 1828 press law. In his September 25 deposition before the judge, he pointed to a number of “remarkable defects” in the court’s application of the law.⁴⁵ He questioned, for example, the composition of the first jury, which he claimed was illegally constituted due to the presence of Antonio Garfias, a public employee and “dependent of Minister Portales,” on the jury.⁴⁶ He also argued that the list of 40 potential jurors from which the first jury was selected had been manipulated by the government and had never been published in the local newspaper as required by law.⁴⁷ Based on these irregularities, Lecuna asked the judge to refer the case to the Appeals Court for nullification. In his mind, this was a clear violation of “public liberties, principally the one [the freedom of the press] that guarantees all others.”⁴⁸ The judge, however, denied Lecuna’s request to send the matter to the Appeals Court.

The other important aspect of this case was the government’s blatant violation of the law, which tells us something important about its attitude toward civil liberties at this early stage in its consolidation of power. In another deposition, given the day after the guilty verdict, Lecuna highlighted the fraudulent nature of the trial. His accuser, for example, did not appear in the courtroom to present the accusation in person. The trial was not announced to the public, he added, and thus no audience was present at its secret proceedings. Most disturbing of all was the fact that because of the secrecy surrounding the date of the trial, his attorney could not be present at the trial. When he, having no legal representation available, attempted to introduce into the record a defense of the accused article that had been published a few days earlier in *El Defensor*, the jury refused to consider it.⁴⁹

We can thus conclude, based on the sedition trial of the printer Lecuna, that, while the Portalian regime would continue to follow the formalities of the 1828 law, it also showed that it was willing to violate the spirit of the law when the regime’s leadership felt public order was threatened. As Gonzalo Piwonka put it, the

44. *El Defensor* published several of the legal documents related to Lecuna’s trial during its brief reappearance in January 1831. See “Documentos importantes,” *El Defensor de los Militares*, January 26, 1831. See also Barros Arana, *Historia general*, 11.

45. Lecuna’s September 25, 1830, deposition was one of the “important documents” included in *El Defensor de los Militares*, September 26, 1831.

46. Lecuna deposition, September 25, 1830.

47. Lecuna’s point about the government’s manipulation of the pool of potential jurors in Santiago echoed *El Defensor*’s editorial position at the time. One can assume that the paper’s editors, including Mora, were giving their colleague Lecuna legal advice. It is worth noting the fact that Mora himself did not step forward as the author of the allegedly seditious article, allowing the charge to fall on the printer. Mora fled the country for Peru in February 1831.

48. Lecuna deposition, September 25, 1830.

49. Lecuna deposition, October 22, 1830.

government's hammering of the opposition with accusations of sedition, combined with its willingness to manipulate the selection of press juries, had the effect of "silencing the press" for the better part of the following decade.⁵⁰

The Santiago press did eventually find its voice, but only after several years of renewed foreign war—in Peru (again) fighting the forces of the Peruvian-Bolivian Confederation—and domestic wartime dictatorship. In the wake of Chile's decisive victory in the Battle of Yungay in January 1839, the country's ruling elite began a process of reconciliation with its political enemies, several of whom now returned from exile. The following section of the article provides a detailed examination of the sedition trials of three prominent members of the political opposition that occurred between 1840 and 1845.⁵¹

We begin with the trial of Juan Nicolás Álvarez, a man who occupies a hallowed place in the historiography of press freedom in Chile. In the words of Chilean biographer Pedro Pablo Figueroa, Álvarez "initiated . . . a true revolution in the art of writing for the people, being the founder of modern journalism in the republic."⁵² While the claim that Álvarez was the first modern journalist in Chilean history is debatable, his significance in the history of Chilean press trials is not. Born in the northern city of La Serena in 1810, Álvarez finished his basic studies there before moving to Santiago to further his education. He arrived in the capital in the mid 1830s, enrolling first in the prestigious Liceo de Chile and then continuing his studies at the Instituto Nacional, the country's foremost educational institution, where he studied law at the Academia de Leyes y Práctica Forense. He was still a law student when he launched his first newspaper, *El Diablo Político*, in June 1839.

The idea to launch the newspaper appears to have originated in the law school. According to historian Diego Barros Arana, Álvarez and another law student hatched the plan as a way of provoking the government into a sedition trial. In other words, Álvarez was seeking a public confrontation with the regime over its authoritarian practices. He was particularly enraged by the *consejos de guerra permanentes* (permanent wartime tribunals) imposed by Portales on all provinces of the country during the war against the Peruvian-Bolivian Confederation from 1837–39. According to José Victorino Lastarria, then a

50. Piwonka, *Orígenes*, 137.

51. Thus far I have not located the records of the most famous press trials of the era. They are not in the Santiago criminal archive. My search for those records is ongoing. That is the case with regard to the three trials discussed in this section of the article. Fortunately, contemporary newspapers provided extensive coverage of these trials, including the publication of both accusations and defenses. Barros Arana also provided detailed accounts of these trials in *Un decenio*, Vol. 1, 81–91, 483–497, and Vol. 2, 65–84.

52. Pedro Pablo Figueroa, *Diccionario biográfico de Chile*, Vol. 1, 4th ed. (Santiago: Imprenta Barcelona, 1897), 65.

professor at the law school, Álvarez and a colleague turned to him in 1839 for an introduction to the owner of the Imprenta Colocolo, which had published Lastarria's 1838 newspaper *El Nuncio de la Guerra* (only two issues) during the Confederation War.⁵³

In January 1840, just six months after *El Diablo Político* came on the scene, the leading opponents of the government announced their return to the electoral arena with the founding of the Sociedad Patriótica (Patriotic Society) in Santiago. The aim of the Patriotic Society was to unite the opposition around a set of objectives and a slate of candidates for the upcoming congressional elections. In order to do so, the group reasoned, it needed to develop a coordinated print campaign to spread its political message and recruit voters.⁵⁴ This is where Álvarez's role as the most outspoken young critic of the government coincided with the objectives of the Patriotic Society. Álvarez not only had a newspaper, *El Diablo Político*, but he also had control of a printing press, the Imprenta Colocolo, which the leaders of the Patriotic Society intended to utilize to produce flyers and leaflets aimed at city voters, especially the artisans and civic guardsmen whose votes had been a source of contention since the late 1820s.

Álvarez's paper announced the formation of the Patriotic Society on January 23, 1840, provoking an immediate response by the government, which promptly accused him of sedition and defamation in the third degree. In the allegedly seditious and defamatory article, Álvarez wrote that Portales and his allies had committed a "great political crime" by replacing the Constitution of 1828 with their own authoritarian charter.⁵⁵ This statement led to the accusation of sedition. He also denounced the "emergency powers, banishments, imprisonments, and, I would add, murders [that occurred] under the influence of that monstrous power."⁵⁶ That statement led to the accusation of defamation, filed by the prosecutor in the name of Portales, who had been murdered in 1837 during a military insurrection.

The first jury voted in favor of proceeding to trial on both charges. The trial began at 10:00 am on February 10 in the main courtroom of the city. Hundreds of people gathered, spilling out of the courtroom gallery into the surrounding plaza. Álvarez spoke on his own behalf during the trial. In defending himself against the accusation of sedition, he argued for the illegality of the 1833

53. José Victorino Lastarria, *Recuerdos literarios: datos para la historia literaria de la América española y del progreso intelectual en Chile*. 2nd ed. (Santiago: Librería de M. Servat, 1885), 58–59.

54. On the Patriotic Society's electoral strategy, see Barros Arana, *Un decenio*, Vol. 1, 81.

55. "Sociedad Patriótica," *El Diablo Político*, January 23, 1840.

56. "Sociedad Patriótica," *El Diablo Político*, January 23, 1840.

Constitution on a number of grounds, mostly having to do with the legal procedures required for reforming the constitution (quoting Thomas Jefferson and Benjamin Constant along the way).⁵⁷ In defending himself from the accusation of defamation, he pointed to the execution of three opposition leaders from Curicó by one of the wartime military tribunals imposed on the country by Portales. In short, he doubled down on the “criminal” and “murderous” nature of the regime’s foundations.⁵⁸

For our purposes, the more significant part of Álvarez’s defense was the interaction he had with jurors and spectators during the trial. At several points, for example, he spoke directly to the jurors. “Not only are you going to judge a journalist accused by the prosecutor of sedition and defamation,” he pleaded to the 13 men of the jury who would decide his fate, “but, rather, you are going to try the constitutional offenses and legal assassinations that caused the accusation.” “You are called upon to reach a verdict,” he stated, then added, “Do not forget that you are the representatives of public opinion and that your sentence will be the one delivered by this jury.”⁵⁹ According to one eyewitness account of the trial, the large crowd reacted raucously to the statements of both accuser and accused. Things got so loud that the presiding judge ordered the bailiffs to clear the courtroom.⁶⁰

By noon, the statements were over and the jurors retired to deliberate. They came back at 3:30 and delivered their verdict: by a 7–6 vote, not guilty of defamation, but guilty of sedition, in the first not the third degree. The judge, applying the 1828 press law, sentenced Álvarez to pay a 200-peso fine or go to jail for 30 days.⁶¹ After the fine was paid (presumably by a member of the Patriotic Society’s board of directors), Álvarez left the courtroom with what was perceived by the crowd as a victory. Outside in the plaza shouts of “Long live the people!” and “Death to the ministers!” could be heard.⁶² Guards from the nearby prison were called in to disperse the crowd. Later that night, the secretary of the Patriotic Society hosted a banquet in Álvarez’s honor. It must have been a triumphant moment for the young lawyer. A new era of the sedition trial was under way.⁶³

57. “Defensa,” *El Diablo Político*, July 23, 1840.

58. “Defensa,” *El Diablo Político*, July 23, 1840.

59. “Defensa,” *El Diablo Político*, July 23, 1840.

60. Lastarria, *Recuerdos*, 60–64. The eyewitness was Lastarria’s friend and fellow law professor, Antonio García Reyes.

61. Barros Arana, *Un decenio*, Vol. I, 85.

62. Lastarria, *Recuerdos*, 62.

63. Álvarez’s moment did not last long, however. That same night, February 10, 1840, the government declared a state of siege in Santiago in order to deal with an alleged “conspiracy” to assassinate General Bulnes, the leading presidential candidate and likely successor of President Prieto. The government claimed to have witnesses who placed Álvarez at the center of the conspiracy. That episode, however, goes beyond the scope of this article. Suffice it to say

The next sedition trial we want to examine is that of an even younger law-student-turned-government-critic, Francisco Bilbao. His June 1844 trial riveted the attention of the Santiago public. Like Álvarez, Bilbao studied law at the Instituto Nacional in Santiago. Unlike Álvarez, Bilbao belonged to one of the most prominent families associated with the overthrown Pinto administration. He spent much of his youth living in exile with his family in Lima, where several members of the Pinto administration (including his father, Rafael Bilbao) ended up after the conservative takeover.

Bilbao's breakout moment in the Santiago press occurred when his essay "Sociabilidad chilena" was published on June 1, 1844, in the magazine *El Crepúsculo*.⁶⁴ That essay resulted in him being accused of blasphemy, immorality, and sedition in the third degree under the 1828 press law. Bilbao's infamous essay offered a dissection of Chilean society—from religion and education to familial relations and political history—from the perspective of a youthful devotee to the revolutionary republicanism of the 1840s. The essay was directly modeled on the book *Modern Slavery (De l'esclavage moderne*, 1839), written by the excommunicated French priest and radical republican writer Félicité Robert de Lamennais. Bilbao applied the concept of modern slavery to various aspects of Chilean society. It is beyond the scope of this article to examine the full content of Bilbao's essay, which has been studied by generations of scholars.⁶⁵ I focus instead on the way Bilbao used the medium of the press trial as a platform for spreading his critique of Chilean society, culture, and government to the Santiago public.

On June 13, 1844, the prosecutor issued his accusation of Bilbao, almost two weeks after the article's publication. During those two weeks, Church officials took the lead in attacking what they perceived as Bilbao's outrageous ideas about marriage, Saint Paul, and other tenets of the Catholic faith. *La Revista Católica*, founded just a year earlier by the archbishop of Santiago, sounded the alarm about the "heretical, Protestant, immoral, and subversive" young law student in a ten-part series of "Refutations of Bilbao."⁶⁶ There appears to have been some debate among ecclesiastical authorities on how best to control the

here that Álvarez survived the 1840 conspiracy investigation and eventually resumed publication of *El Diabolo Político* for a few more months.

64. Francisco Bilbao, "Sociabilidad chilena," *El Crepúsculo*, June 1, 1844. The essay has been reprinted many times. A recent example is Sergio Grez Toso, ed. *La "cuestión social" en Chile: ideas y debates precursores, 1804–1902*. (Santiago: DIBAM, 1995), 63–91.

65. One of the most insightful of these studies is the chapter "Los límites de la polémica: 'Sociabilidad chilena' por Francisco Bilbao," in Ana María Stüven, *La seducción de un orden: las élites y la construcción de Chile en las polémicas culturales y políticas del siglo XIX* (Santiago: Ediciones Universidad Católica de Chile, 2000), 251–282.

66. "Refutaciones a Bilbao," *Revista Católica*, June 18 through November 1, 1844.

situation, but once the prosecutor delivered the accusation the issue was out of the Church's hands and into those of the jury.

In his indictment of the author of "Sociabilidad chilena" for sedition, the prosecutor pointed to a passage that appeared toward the end of the essay in which Bilbao referred to the "despotic" nature of the 1833 Constitution: "the constitution that organized the Republic in such a despotically unitary way. . . that legally organizes despotism, destroying all of the guarantees conquered by republicanism."⁶⁷ That was the allegedly seditious part of the essay. The first jury met on June 17 and ruled in the prosecution's favor. The trial occurred on June 20 in the same courtroom as the Álvarez trial four years earlier, opening, again, at 10:00 am with the gallery filled to capacity. According to one spectator, armed soldiers were positioned throughout the courtroom.⁶⁸ Anti-Bilbao protesters organized by Santiago clergy occupied the plaza, along with groups of artisans and students from the Instituto Nacional who supported Bilbao. After the prosecutor read the accusation, the 21-year-old Bilbao spoke in his own defense.

Bilbao's oration to the jury famously framed the trial as a contest between tradition and innovation, a case of the feudal past attempting to hold back the liberal and democratic future. Bilbao's defense was so clearly framed, especially given the short amount of time he had to prepare it (less than three days), that one wonders whether it was his intention all along to provoke such a confrontation with state authorities. Recall that Lastarria claimed that Álvarez had such an intention in 1840. In the absence of any definitive proof of that claim with respect to Bilbao, it is significant that Bilbao mentioned the Álvarez trial explicitly in a footnote to "Sociabilidad chilena" having to do with the Portalian regime's use of emergency powers. "I refer to the jury of *El Diablo Político*," he wrote, and continued, "The jury declared the writer [Álvarez] innocent and, therefore, the government [of Portales] to be a murderer."⁶⁹ Bilbao was thus keenly aware of that previous trial in which a fellow law student had scored what was perceived publicly as a victory for the freedom of the press.

Whether or not he had intentionally provoked the accusation, Bilbao emphasized the historic importance of the trial in his defense, repeatedly telling jurors that their verdict would be remembered—and judged—by future generations.

67. Bilbao quoted the accusation in his defense. See "Defensa del artículo 'Sociabilidad chilena,'" in Pedro Pablo Figueroa, *Obras completas de Francisco Bilbao*, Vol. 1 (Santiago: El Correo, 1897), 71–6.

68. "¡Viva la libertad!" *El Siglo*, June 21, 1844. This letter to the editor, written by "un ciudadano de la barra," observed, "Soldados armados estaban colocados en diferentes puntos. Este aparato militar representaba la época en que la fuerza dominaba a la razón, a la justicia, a la libertad."

69. "Sociabilidad chilena," *El Crepúsculo*, June 1, 1844, 32 n1.

“Gentlemen [of the jury],” he stated, “history extends its hand to collect your sentence. I do not say this to threaten you; but, rather, so that your conscience does not disregard the solemnity of the trial in which we find ourselves.”⁷⁰ He cast his accuser as “the hand of fourteen declining centuries” of Catholic feudalism and Spanish colonialism.⁷¹ The prosecutor, he declared, “seeks to cover himself with the dust of Spanish law,” whereas the jury “removes that dust with its breath.”⁷² It was up to the jury, he argued, to decide whether he had committed an act of sedition or, instead, had simply employed his constitutional right to voice his support for the sovereignty of the people, which he believed was the only foundation of legitimate government authority: “Sedition, gentlemen [of the jury], is not what I have invoked. Have I proclaimed a violent attack? . . . Have I said: people, rise up and smash the chains that oppress you? Have I called on [the people] to fight; have I raised the flag of sedition? No, gentlemen, I have not done or said such things.”⁷³ Instead, Bilbao positioned himself as “the enemy of sedition,” the voice of humanity warning those in power of the need to democratize the republic before a violent revolution of the oppressed became inevitable.⁷⁴

The trial concluded around 2:00 pm and the jury moved to deliberate privately. The judge, whom Bilbao had repeatedly antagonized during his defense, ordered Bilbao to await the verdict in the plaza. According to Bilbao’s brother, that decision was driven by the judge’s desire to expose the “innovator” to the hostile crowd, but the decision backfired when the students and artisans stepped in to protect Bilbao from his detractors, shouting, “Long live the defender of the people!”⁷⁵ Bilbao was then called back to the courtroom to hear the verdict: guilty of blasphemy and immorality in the third degree—not guilty of sedition. The judge imposed the required sentence of a 1200-peso fine or 180 days in prison. At that point, the crowd took up a collection to pay the fine and keep Bilbao out of prison. When he emerged from the courthouse, his supporters greeted him as a hero, carrying him on their shoulders through the streets of the city center.⁷⁶

Another press trial thus ended in a celebration of the accused. Bilbao, like Álvarez before him, confronted the power of the state over the adjudication of press

70. Bilbao, “Defensa del artículo,” 79–80.

71. Bilbao, “Defensa del artículo,” 59.

72. Bilbao, “Defensa del artículo,” 59.

73. Bilbao, “Defensa del artículo,” 76.

74. Bilbao, “Defensa del artículo,” 76.

75. Bilbao, “Vida de Francisco Bilbao,” xxxi.

76. Barros Arana, *Un decenio*, Vol. 1, 500–502. In the aftermath of the trial, the Instituto Nacional expelled Bilbao and the government burned the copies of “Sociabilidad chilena” it had collected (citing a legal precedent from the early colonial era).

freedom. In the process, he used his press trial as a platform to present a radical critique of the Chilean republic to a large and diverse audience of city residents. While the jury decided that he was guilty of the gravest form of blasphemy and immorality in his writing, it did not find him guilty of sedition. Clearly, jurors were not simply ruling in favor of the government's accusations. Judging from the results of the Álvarez and Bilbao trials, the judicial process established by the 1828 press law had some degree of integrity.

Santiago's next major sedition trial took place about a year later, in September 1845. In this case, the protagonist was not a law student but a retired army officer, Colonel Pedro Godoy. Born into an elite family in Santiago in 1801, Godoy attended Chile's newly established Academia Militar when it opened in 1817. He then fought in the battles that liberated Chile, Peru, and Bolivia from Spanish rule between 1818 and 1825, continually rising in rank. When the wars ended, he aligned himself politically with the Pinto administration. He was subsequently discharged from the army, in 1830, and went into exile across the border in Mendoza, Argentina, but then returned to Chile to join the army's 1838 campaign against the Peruvian-Bolivian Confederation, which brought him back—temporarily—into the good graces of the government. In 1840, following the government's indictment of *El Diablo Político*, Godoy took up Álvarez's cause, playing a key editorial role in the newspaper *Guerra a la Tiranía*, which faced its own press trial for the defamation of President Prieto in March 1841.⁷⁷ His vehement opposition to the Portalian regime reached new heights in July 1845, when Godoy founded *El Diario de Santiago*, which became the leading voice of the opposition during the electoral campaign of 1845–46, and the source of the next sedition trial.⁷⁸

The indictments of Godoy were announced on September 4, 1845: one for the defamation of the Municipality of Santiago, and one for sedition, both in the third degree. Godoy had predicted such a fate just a few days earlier, when he speculated on exactly how many accusations would be made against him.⁷⁹ The indictments, however, were based on two letters to the editor published in *El Diario* on August 28, not on Godoy's actual writings. The allegedly seditious letter, written by "G. Victoria," was titled, "Las Guardias Nacionales de Santiago en el Presidio: El Cazador."⁸⁰ It purported to tell the story of Juan José Becerra, a *cazador* or scout assigned to Battalion No. 1 of the Santiago

77. Barros Arana, *Un decenio*, Vol. 1, 153–164. See also the articles "Jurado de imprenta. Defensa" and "Sentencia," in *Guerra a la Tiranía*, March 12, 1841.

78. Barros Arana, *Un decenio*, Vol. 2, 62–65. See also María Angélica Illanes, "Del mito patriótico al positivismo militar: el pensamiento del Coronel Pedro Godoy," in Mario Berríos, *El pensamiento en Chile, 1830–1910* (Santiago: Nuestra América Ediciones, 1987), 27–44; and Figueroa, *Diccionario*, Vol. 2, 45–48.

79. "Honor a la Municipalidad de Santiago. Acusación de los Serenos," *El Diario de Santiago*, September 4, 1845.

80. "Las Guardias Nacionales de Santiago en el presidio. El Cazador," *El Diario de Santiago*, August 28, 1845.

Civic Guard, who, the letter claimed, had been assaulted by police officers, taken to prison, and forced to sweep the streets with common criminals. The author of the letter expressed his contempt for the unjust treatment the guardsman received. “Only under despotic and barbarous governments like Russia and Barbary [Coast],” he complained, “is it possible for a soldier or civic guardsman to be marched through the streets with a broom in his hands while surrounded by [government] minions.”⁸¹ The clear implication was that this punishment was an insult to the civic virtue of guardsmen.

The prosecution, on the other hand, made the case that the cazador letter had “incited disobedience of the law” and the “disruption of public order.”⁸² Specifically, the accusation referred to the letter’s incitement to disobey the city’s statutes on policing. The central issue, from the prosecution’s point of view, was the letter’s refusal to recognize the legitimacy of Becerra’s punishment. By publishing the letter, the editor of *El Diario de Santiago*, Godoy, was implicitly endorsing that refusal.

The first jury met on September 5, 1845, and sided with the prosecutor. The trial was scheduled for September 12. During the weeklong buildup to the trial, Godoy denounced the accusations in the pages of *El Diario* as the covert maneuvering of his government opponents, even as he “counted on the rectitude of the jury” to deliver a fair verdict. “The jury is entirely Chilean, the presiding judge is Chilean, the accuser is Chilean,” he wrote confidently, “and the Chilean jurors will know how to preserve the freedom of the press.”⁸³ Moreover, Godoy encouraged the public to attend the trial, during which he would personally defend the accused article, even though he was neither its author nor the printer responsible for its publication: “We invite our friends and all those who love freedom in Chile to attend the trial.”⁸⁴

The effort to recruit spectators proved effective. When the trial commenced on September 12, the crowd was so large and boisterous that the judge halted the proceedings and rescheduled it for the next day. On the following day, city police were deployed to block the entrances to the plaza surrounding the courtroom building. Nevertheless, the crowd arrived and pushed through the police barricades, urged on by key allies of Godoy. The courtroom gallery swelled with spectators, who, as in the trials of Álvarez and Bilbao, interrupted the proceedings to make their feelings about the case known.

81. “Las Guardias Nacionales de Santiago en el presidio. El Cazador,” *El Diario de Santiago*, August 28, 1845.

82. “Acusación,” *El Diario de Santiago*, September 12, 1845.

83. “Acusación de los Serenos,” *El Diario de Santiago*, September 9, 1845.

84. “Acusación de los Serenos,” *El Diario de Santiago*, September 9, 1845.

After the reading of the accusations against *El Diario*, Godoy rose to address the jury. He told the jurors that the cazador letter had been delivered in person to his print shop by “a decent person, a poor, old man who, if not made respectable by his clothing, was made so by his seriousness and composure.”⁸⁵ He went on to explain that this man was a *sereno* (night watchman) in the city and the father of two sereno sons.⁸⁶ Godoy argued that, far from inciting disobedience, he had determined that the letter “deserved the public’s consideration, as it dealt solely with matters of general interest.”⁸⁷ After a long defense against the charge of defamation, he took up the accusation of sedition, again making the case that publishing the letter was not an act of sedition but, rather, an act of public information. “We firmly believe,” he stated, “that one would have to be crazy to find sedition or its provocation in the simple relation of an isolated fact. . . . Where then is the sedition, the provocation of disobedience of the governing authorities?”⁸⁸ In closing his defense, Godoy returned to the crucial role of the jury in protecting writers and publishers from such unjust treatment at the hands of the state. “We look to this worthy tribunal, the only popular institution left to us, to this jury,” he concluded, “for the satisfaction of what is owed to us, not only because of the innocence of the accused, but also for the obvious benefits that [the letter’s] publication has given to the people of Santiago.”⁸⁹

In the end, the jury voted, by a 7–6 margin, to absolve *El Diario de Santiago* of the crimes of sedition and defamation. It was another victory for the accused, another defeat for the government. Outside the courthouse, the rowdy crowd confronted the police in yet another scene of post-trial jubilation. Godoy’s allies, who had earlier been seen urging the crowd to break through the police barricades to get into the courtroom, now provoked what was described by the government as a “riot.”⁹⁰ The crowd pulled up cobblestones from the plaza and hurled them at police. In the end, the police were able to restore order only when a heavy rain sent the protesters home.⁹¹

Looking back at these three press trials of 1840–45, we can clearly see that opposition writers and publishers were learning to use them as a platform to

85. “Defensa,” *El Diario de Santiago*, September 12, 1845.

86. “Defensa,” *El Diario de Santiago*, September 12, 1845. The charge of defamation had to do with the city’s failure to pay the serenitos for the previous three months. The letter was titled, “La justicia ni a Dios teme,” *El Diario de Santiago*, August 28, 1845.

87. “Defensa,” *El Diario de Santiago*, September 12, 1845.

88. “Defensa,” *El Diario de Santiago*, September 12, 1845.

89. “Defensa,” *El Diario de Santiago*, September 12, 1845.

90. Barros Arana, *Un decenio*, Vol. 2, 69–70.

91. Several of the leading figures of the Santiago opposition, including Godoy, were arrested following the post-trial riot. The Interior Ministry then conducted a far-reaching conspiracy investigation that lasted for the rest of the year. The disturbance of public order following the trial came as a shock to many of the city elites, who responded to the situation by establishing a new association in the city, La Sociedad del Orden.

broadcast their views to the Santiago public and thereby wage political warfare on the government. Taking advantage of the rules laid out in the 1828 press law, Álvarez, Bilbao, and Godoy made their cases directly to juries of their fellow citizens—and it worked. Remarkably, all three were either absolved of the crime of sedition (Bilbao and Godoy) or had the severity of the crime reduced from the third to the first degree (Álvarez). Again, this demonstrates that the press trial system put in place in 1828 had some measure of integrity. It was not, in other words, a rubber stamp for the national government. If it had been, all three of the accused would have been convicted of sedition and sent into exile (Bilbao went voluntarily). These three cases show us that press juries were not automatically willing to convict journalists of sedition unless there was a clear instance of their instigating an armed revolt, which was clearly not the case here. As we will see in the next section of the article, the government was so dismayed by this series of embarrassing defeats that it decided to take matters into its own hands.

On September 16, 1846, President Manuel Bulnes signed into law the new *Ley sobre abusos de la libertad de imprenta*, replacing the law that had guided the country's adjudication of the freedom of the press since the end of 1828.⁹² Several of its articles were formulated in direct response to the trials of Álvarez, Bilbao, Godoy, and other alleged seditionists. As Jaksic wrote, "To a great extent, these incidents provoked the harsher press law of 1846."⁹³ The following section of the article reviews its more punitive approach to abuses and restrictive attitude toward the conduct of press trials, as well as the 1846 law's similarities to the law of 1828.

Let us first focus on the similarities between the two laws. The new law preserved the basic framework of press juries and trials that had been in place since 1813. This would be the case until the reform of 1872, when legislative changes were introduced that made press trials virtually disappear.⁹⁴ Following the framework laid out in the 1828 law, the potential abuses of press freedom remained the same: these included blasphemy, immorality, sedition, and defamation, although instead of dividing such abuses into three degrees of severity the new law simply provided for a range of fines and prison terms. There would also still be the sequence of two juries of citizens called upon to decide the

92. *Ley sobre abusos de la libertad de imprenta* (Santiago, September 16, 1846). Reprinted in Alberdi, *Legislación*, appendix, 4–26. See also Barros Arana, *Un decenio*, Vol. 2, 104–109; Jaksic, "Sarmiento," 57 n25; Piwonka, "Los juicios," 140–142; and Ibarra, "Liberalismo," 306–307.

93. Jaksic, "Sarmiento," 40.

94. The 1872 press law preserved several aspects of the traditional press trial system, but also made changes to it. Barros Arana claimed that the 1846 law was not enforced after 1849, but I have found records of press trials from the 1850s. Press trials were not formally eliminated in Chile until 1925, with the passage of a new constitution. See Barros Arana, *Un decenio*, Vol. 2, 109; Piwonka, "Los juicios," 142–145; and Ibarra, "Liberalismo," 305–307.

validity of any allegation of abuse. Jurors would continue to be selected from the list of 40 potential jurors appointed annually by local officials in each municipality in which a printing press existed. The main thing that changed with regard to these juries was the number of jurors required for each jury. Instead of nine jurors and two alternates (first jury) and 13 jurors and four alternates (second jury), the new law reduced those numbers to four and two and seven and three, respectively.⁹⁵ The 1846 law thus made it easier for the state to assemble the required juries and, at least potentially, more easily control their composition.

The basic framework of the press trial was therefore unchanged. What changed was the new law's approach to punishment. The new press law wasted no time in setting forth its more punitive approach to abuses, in particular those that fell into the category of sedition. The law's very first article, for example, increased the sentence for sedition to a range of six months to six years imprisonment or exile, up from a maximum of four years in the 1828 law.⁹⁶ Those found guilty of sedition would also have to pay a fine in the range of 200 to 1000 pesos. This was not an either/or proposition. Whereas the 1828 law's punishments for abuses were either a fine or imprisonment, the new law imposed both a fine and imprisonment, not just in the case of sedition but also for all other abuses. In addition, the new law stipulated that fines could not be paid by "subscribers."⁹⁷ This was undoubtedly a direct response to the Álvarez and Bilbao trials, which had ended with their supporters contributing the funds required to pay their fines.

Beyond its more punitive approach to sentencing, the 1846 law also included three new articles having to do with what it defined as threats to social order or the state religion. Article 4, for example, introduced a new category of abuse that could be committed by the print media: "The defense of acts deemed criminal by law, the provocation or incitement of hatreds between the diverse classes of the State, will be punished by imprisonment from one month to three years and a fine of 50 to 1000 pesos."⁹⁸ This—the incitement of class hatred—was an entirely new category of abuse not present in previous legislation.⁹⁹ Another article of the new law addressed relations between the press and the Church (without using

95. *Ley sobre abusos*, Articles 37 and 50.

96. *Ley sobre abusos*, Article 1.

97. *Ley sobre abusos*, Article 16.

98. *Ley sobre abusos*, Article 4.

99. This article was most likely added in response to yet another sedition trial, one carried out in July 1846 against the radical printer Santiago Ramos, whose fiery columns in the pages of his newspaper *El Pueblo* led the government to declare a state of siege in the capital in March 1846. On Ramos's sedition trial, see the document "Contra don Santiago Ramos y don Manuel Espejo, por el delito que en la sentencia se expresa," *La Gaceta de los Tribunales*, October 3, 1846. Reprinted in *Republicanism popular: Escritos de Santiago Ramos, "El Quebradino," recopilación y estudio*, Vasco Castillo and Camilo Fernández, eds. (Santiago: LOM Ediciones, 2017), 324–325.

the word blasphemy), stating that “anyone who through the print media insults or ridicules the religion of the State, or its dogmas” will face the same punishment stipulated for sedition.¹⁰⁰ A third article (without using the word immorality) imposed the same punishment for “all insults made by the press against morality or traditional values [*las buenas costumbres*].”¹⁰¹ There could be only one reason for the addition of the latter two articles: Francisco Bilbao, whose 1844 press trial caused such an uproar in Santiago’s elite social circles.

In addition to its more punitive approach to abuses of press freedom, the 1846 law also took steps to make it easier for judges to control the courtroom during a press trial. As we have seen, this had become an enormous problem for the government during the peak years of 1840–45. Three articles gave the presiding judge in any press trial new powers. The first of these articles granted the judge the power to remove “the accused or the accuser” from the courtroom and send him to a prison cell if “by shouting or yelling or by any other means of causing a disturbance he became an obstacle to the free course of justice.”¹⁰² The second granted the judge the power to remove disruptive spectators and sentence them to up to a year in prison, depending on the severity of their “lack of respect for those who administer justice.”¹⁰³ The third article in this group granted the judge the right to limit the number of spectators allowed to attend a press trial if there were concerns about a potential disturbance.¹⁰⁴

In sum, the 1846 press law was the government’s response to the series of contentious press trials that occurred in Santiago in the first half of the 1840s. Those trials had been disastrous for a regime that prided itself on the preservation of order. The government showed that it could not control these trials: courtrooms became unruly, trials ended in riotous behavior on the part of spectators, and verdicts often went against the prosecution. Even when the prosecution achieved a guilty verdict, as in the Bilbao trial on the charges of blasphemy and immorality, supporters of the guilty party paid the fines and kept the convicted writer or publisher out of jail. Defendants became heroes in the eyes of those opposed to the Portalian regime and the social order it stood for. Yet the 1846 press law did not abolish the system of press juries and trials established by Chilean legislators more than two decades earlier. Press trials by jury would continue, but under a much more punitive set of rules and regulations.

100. *Ley sobre abusos*, Article 5.

101. *Ley sobre abusos*, Article 6.

102. *Ley sobre abusos*, Article 77.

103. *Ley sobre abusos*, Article 78.

104. *Ley sobre abusos*, Article 79.

After a few years of relative political tranquility following the 1846 elections, conflict resurfaced in 1850, when a new men's social and fraternal association known as the Sociedad de la Igualdad (Society of Equality) started a new political crisis in Santiago. In March and April of that year a small group of radicalized young professionals and university students joined with some artisan leaders and a few politicians associated with the liberal opposition to establish the Society of Equality. The younger generation of *Igualitarios*, as they were known, was deeply influenced by the French radical republicanism of the 1840s. Francisco Bilbao, who spent considerable time in Paris following his infamous press trial of 1844, returned to Chile in February 1850 and was instrumental in founding the Society of Equality. The artisans also embraced the group's vision of a democratic and social republic of men. Artisan involvement in the society was crucial to steering it toward the reform agenda of the urban popular classes. The older *Igualitarios*, by contrast, were less ideologically driven, and far less idealistic. They were part of a loose network of politicians, ex-military officers, and newspaper editors who had been working to overthrow the Portalian regime for two decades.¹⁰⁵

Manuel Montt, the hard-line minister who went after Álvarez's *El Diablo Político* in 1840 and Godoy's *El Diario de Santiago* in 1845, returned as interior minister for a third time in mid 1850, this time brought in to oversee his own election as the presidential successor to Bulnes. Given his role in the passage of the 1846 press law, Montt's political opponents must have known what was coming: a crackdown on the press, a more aggressive approach to the policing of protest, and the strong possibility of a state of siege declaration.

Nevertheless, the Society of Equality's board of directors established two newspapers in 1850 to broadcast the group's call for the "political regeneration of the republic." The first, *El Amigo del Pueblo*, ran from April to May 1850; the second was called *La Barra* and ran (with some interruptions) from June 4, 1850 to April 19, 1851. The latter date is significant: it marked the day before the armed uprising in the streets of Santiago led, in part, by members of the Society of Equality.¹⁰⁶ Following that uprising, which failed to achieve its goal of removing the government from power, neither *La Barra* nor the Society of Equality reappeared in Santiago. The Society of Equality did not have its own printing press; instead, the group's leadership relied on the Imprenta del Progreso to publish its newspapers. We thus have to see the government's 1851 indictment of the Imprenta del Progreso for sedition—and the trial that followed—as an

105. On the history of the Sociedad de la Igualdad, see James A. Wood, *The Society of Equality: Popular Republicanism and Democracy in Santiago de Chile, 1818–1851* (Albuquerque: University of New Mexico Press, 2011).

106. See Benjamín Vicuña MacKenna, *Historia de la jornada del veinte de abril de 1851: una batalla en las calles de Santiago* (Santiago: Rafael Jover, 1878).

extension of the political struggle between Montt's forces and those of the liberal opposition that gradually took control of the Society of Equality.

During the first seven months of its existence, the Society of Equality pursued its democratic reform agenda with energy and creativity. Francisco Bilbao was deeply involved in the association, whereas Álvarez and Godoy, two key figures in the sedition trials of the 1840s, do not appear to have been active in the club. As the association grew from several dozen to several thousand members and its voice became more strident in its calls for a new social compact for Chile, the society faced various forms of repression by the government. Surprisingly, though, the government did not shut down *El Amigo del Pueblo* or *La Barra* using the 1846 press law. Instead, Montt and his allies utilized the more potent political weapon handed them by the 1833 Constitution.

Montt declared a 90-day state of siege for Santiago on November 6, 1850, in response to the Society of Equality's refusal to abide by the Intendant of Santiago's October 25 ban on public meetings in the city. The battle between the intendant and the society had been brewing for weeks. *La Barra* disappeared the day after Montt's declaration, but, surprisingly, reappeared for two weeks in December while the *sitio* was still in effect. From December 16 to 31, *La Barra's* editors resumed their struggle against Montt's presidential candidacy. Then, on the final day of 1850, *La Barra's* editors announced that they were saying goodbye.

The farewell article began, "Today, December 31, 1850, the freedom of the press that has been sustained by juries has died."¹⁰⁷ The reason behind this dramatic claim, the article went on to explain, was Montt's manipulation of the annual selection of press trial jurors. Recall that by law such lotteries were to be carried out every December 1 in every municipality in the country that had a printing press. The law stated that municipal authorities were in charge of the selection process; Montt's opponents now claimed that he had intervened in that selection. According to *La Barra's* editors, "Beginning tomorrow [January 1, 1851], the jury elected by Montt begins functioning," which they assumed meant the end of any fairness or integrity in the press trial system.¹⁰⁸ "Free

107. "Despedida de La Barra," *La Barra*, December 31, 1850.

108. "Despedida de La Barra," *La Barra*, December 31, 1850. Historian Diego Barros Arana agreed with them. See Barros Arana, *Un decenio*, Vol. 2, 534. Barros Arana claimed that the manipulation of the pool of potential jurors in Santiago began under the previous minister of the interior, the powerful Manuel Camilo Vial, who led a rival faction within the governing coalition until he was ousted by Montt. Vial allegedly took this action in advance of the December 1, 1848, selection of jurors in order to control the outcome of a 1849 defamation trial of the editor of *El Corsario*, an anti-Vialista newspaper in Santiago. Montt was thus following Vial's lead, according to Barros Arana. See Barros Arana, *Un decenio*, Vol. 2, 287–288. Jaksic, echoing Barros Arana, agreed, arguing that the press trials of the late 1840s onward were mere "public exercises in oratory" whose results were predetermined by the government. See Jaksic, "Sarmiento," 57 n25.

speech is sedition,” the article continued, “because the executive [branch] punishes it as a crime.”¹⁰⁹

La Barra ceased publication on January 1 and did not resume until March 10. In the interim, a few young radicals in the Society of Equality set up an illegal underground printing press that they intended to use “to make a war of proclamations and leaflets” against the government.¹¹⁰ We know about this primarily because one of those young radicals was the great Chilean historian and statesman Benjamín Vicuña Mackenna, who kept a journal of his activities throughout this period. According to Vicuña Mackenna, the only people who knew about the underground press were “Manuel Bilbao [younger brother of Francisco], a printer, Santos Valenzuela, and I.”¹¹¹ In his diary, Vicuña wrote that on December 21, he secretly acquired a ramshackle printing press from the young editor of the *Imprenta del Progreso*. Vicuña stashed that press and the basic tools required to operate it in the house of his neighbor, who, he tells us, volunteered her home for the risky venture. At the time, Vicuña was also spending time in the artisan workshops of the city, bringing the workers news from the opposition and attempting to stir up their revolutionary sentiments.¹¹²

By the time *La Barra* resumed publication on March 10, 1851, the Society of Equality had become a mere appendage of the more mainstream opposition leadership in the legislature. Some members of the group were in prison; some had fled to their estates outside Santiago; others began plotting with dissident army officers to prevent Montt from seizing power in a fraudulent election. Then, on April 1, *La Barra* published the article that triggered the long-expected accusation of sedition. It was called “La elección es imposible.”¹¹³ The article revealed the editors’ thinking that there was simply no peaceful pathway to reform under Montt: “Down with this government! That is the public voice arising in the midst of its chains. Down with this government! That is the united and convinced cry of every noble and patriotic soul.”¹¹⁴

The prosecutor’s office posted the indictment on the door of the *Imprenta del Progreso* on April 3, 1851. It called on the “*editor responsable* of the newspaper titled *La Barra*” to appear in court for the selection of the first jury the next

109. “Despedida de La Barra,” *La Barra*, December 31, 1850.

110. “Diario de don Benjamín Vicuña Mackenna desde el 28 de octubre de 1850 hasta el 15 de abril de 1851,” *Revista Chilena de Historia y Geografía* 1:3 (1911): 466.

111. “Diario,” 466.

112. Vicuña Mackenna also believed that the Santiago jury pool had been corrupted by the government. “Todo el jurado le pertenece,” he wrote in his diary (466). He also noted that in the last week of December a number of prison guards and 40 soldiers of the Valdivia battalion had been imprisoned for reading *La Barra* (465).

113. “La elección es imposible,” *La Barra*, April 1, 1851.

114. “La elección es imposible,” *La Barra*, April 1, 1851.

day.¹¹⁵ That person should have been Manuel Castro, whom the accusation stated was registered as the editor of the paper, but he never appeared in court throughout the entire process (nor did the press's registered owner, Ricardo Ruiz). The 1846 press law stated that when the editor did not appear in court the responsibility shifted to the chief printer, who in this case was a man named José Santos Valenzuela. This was the same Valenzuela who had helped the young radicals operate their underground press a few months earlier.¹¹⁶ The government claimed to have searched for Valenzuela at his home on three separate occasions, but he could not be located. Thus, when the first jury was selected neither the accused nor his representative was present. The first jury ruled that the accusation had merit, and thus the case moved forward.¹¹⁷

Valenzuela was still not present when the second jury was selected, nor when the case went to trial on April 9. At the trial, in stark contrast to the highly contentious trials of the 1840s, the government prosecutor simply read the accusation aloud to the jury—to Montt's jury, if the editors of *La Barra* were correct. Vicuña Mackenna likened the jury to "a pack of trained bloodhounds."¹¹⁸ Nobody was there to speak for the accused. There was no audience filling the gallery. The judge did not bother to summarize the case before sending the jury to deliberate. The resemblance to the 1830 trial of the printer Lecuna was unmistakable. After brief deliberation, the jury found Valenzuela guilty of violating Article 1 of the 1846 press law. The judge fined him 1000 pesos and sentenced him to one year in prison.

Valenzuela apparently found out about all of this when he was arrested on the outskirts of Santiago on April 9. Court documents indicate that he had been out of town since at least the announcement of the second jury selection, the first time he was specifically named as the defendant. From his jail cell, Valenzuela named Antonio Pérez de Arce as the author of the article "La elección es imposible" and demanded his freedom.¹¹⁹ Pérez de Arce was quickly located and brought to court along with Valenzuela. He did not deny writing the article, which allowed Valenzuela to ask the judge to release him

115. Juicio de imprenta seguida por el Fiscal de la Corte de Apelaciones por publicaciones en *La Barra*, Archivo Judicial de Santiago, Expedientes Judiciales (Criminales), Juicios de Imprenta, caja 937, leg. 1644, no. 3.

116. Valenzuela was clearly a member of the Society of Equality. In his diary, Vicuña Mackenna mentions that on March 24, 1851, "el pobre cajista Valenzuela," along with Francisco Bilbao and three other Igualitarios, was fined 50 pesos by the Intendant of Santiago for violating the public meeting ban. See "Diario," 467.

117. Juicio de imprenta seguida por el Fiscal de la Corte de Apelaciones por publicaciones en *La Barra*. See also "Ha lugar" and "Juzgado del crimen," *La Barra*, April 7, 1851.

118. Vicuña Mackenna, *Historia de la jornada*, 437–438.

119. Juicio de imprenta seguida por el Fiscal de la Corte de Apelaciones por publicaciones en *La Barra*, Expedientes Judiciales (Criminales), Juicios de Imprenta, caja 937, leg. 1644, no. 20. See also Vicuña Mackenna, *Historia de la jornada*, 438.

and hold Pérez de Arce instead, but the judge ruled that too much time had passed since the sentence was handed down and that Valenzuela would stay in jail.

According to Vicuña Mackenna, the real author of the article was Manuel Bilbao, which makes perfect sense, given that he was known to be one of the paper's principal editors.¹²⁰ If correct, this suggests that the opposition was using Valenzuela and Pérez de Arce, or both, to keep the younger Bilbao out of prison. Such an attempt to manipulate the question of editorial responsibility reinforces the conclusions of Piccato and Zeltsman's studies of Mexico City press trials, in which they found that writers and/or editors often attempted to deceive juries as to the true author of an accused article.¹²¹ Valenzuela ultimately appealed the verdict to the Supreme Court, but, as far as I can tell, he failed in that endeavor. He must have been sitting in a Santiago jail cell when, just a week later, his former colleagues in the Society of Equality joined the failed insurrection of April 20, 1851 in the streets of Santiago.

When we step back to make sense of this case, we can clearly see that the political struggle between the government and opposition greatly shaped the entire episode. For one thing, recall that Montt and his allies carried out a major reform of the press law in 1846, specifically designed to prevent a replay of the Álvarez, Bilbao, and Godoy trials. The 1846 press law partially achieved that goal, but it appears that Montt was not satisfied to stop there. After coming back into the government as interior minister in mid 1850, Montt worked behind the scenes to control the selection of the 40 potential press trial jurors for the municipality of Santiago. That selection was carried out on December 1, 1850, under the conditions of the state of siege. According to Diego Barros Arana, after the publication of the names of those potential jurors, who were all known allies of Montt, the financial guarantors of the opposition press, including *La Barra*, were hesitant to renew their financial backing for fear of heavy fines and possible imprisonment.¹²² By law, such guarantors were needed to establish a printing enterprise. Barros Arana commented that *La Barra* and other opposition newspapers tried to avoid political extremism for a while, but eventually found it impossible not to confront what they saw as a tyrannical regime bent on denying their most basic constitutional right.

120. See Vicuña Mackenna, "Diario," 474; and *Historia de la jornada*, 438. In the latter, Vicuña Mackenna wrote, "Intentó el editor de *La Barra* el usual expediente de presentar como personero y autor responsable del escrito condenado a un cabeza-de-ferro llamado don Antonio Pérez de Arce."

121. See Piccato, "Jurados de imprenta," 146–151.

122. Barros Arana, *Un decenio*, Vol. 2, 534. Barros Arana noted that a second printer at the Imprenta del Progreso, Antonio Rodríguez, was tried and convicted as the *editor responsable* on a separate defamation charge in 1851 and that Valenzuela and Rodríguez were "tipógrafos de profesión, que eran inducidos a presentarse como autores o responsables de esos escritos."

In conclusion, this analysis of the sedition trials carried out in Santiago between 1827 and 1851 has shown that for a brief but significant moment in time they became public spaces in which print culture, republican law, public opinion, and the Chilean state converged and interacted. It has also demonstrated, however, that those who valued order over the freedom of the press ultimately compromised the independence of press juries and corrupted the integrity of press trials. For a brief moment that public space flourished as a platform for the opposition. Once Montt enacted the 1846 press law, however, the era of the contentious sedition trial came to a close. The formalities of such trials continued until the end of the 1850s, but the ones carried out under the Montt administration (1851–61) were not much different from the corrupt trials of the printers Lecuna in 1830 and Valenzuela in 1851.

Yet, for a fleeting moment in the 1840s, sedition trials generated a public space in which outspoken citizen-journalists tested the limits of political speech in the early republic. This was because sedition trials were press trials, and thus trials by jury. Those juries certainly did not represent all of the people of the city—women, children, priests, lawyers, and civil servants, as well as any adult man lacking property and literacy were formally excluded from jury service. Nevertheless, such trials allowed the voices of prominent adult male citizens to decide the fate of accused journalists, editors, and printers. In that sense, the press trial system constituted a bold departure from the judicial tradition of Spanish colonialism, and perhaps had more in common with the decision making processes of colonial *cabildos*, or town councils.

The sedition trial was not an imagined space, but rather a physical one that brought together various sectors of the adult male urban public in face-to-face judicial confrontations. Those confrontations were, of course, adjudicated according to a set of laws specifically designed by Chilean legislators to strike a balance between the freedom of the press and the responsibilities of publishers. The newly independent republican state had a strong presence in these confrontations. State prosecutors were responsible for initiating all accusations of sedition; state judges oversaw the formation of juries and presided over trials. As we have seen, at various times officials in the nation's executive branch intervened directly in the press trial system, from Vice President Pinto demanding action against an opponent in 1827 to Interior Minister Montt's interference in the selection of the 1851 press jurors for Santiago. Such instances of government intervention, which one might assume to have been the norm in nineteenth-century Spanish America, make the relative integrity of the Álvarez, Bilbao, and Godoy trials all the more surprising.

As we have also seen, those three critics of the Portalian regime took advantage of the rules spelled out in the 1828 Law on the Abuse of Press Freedom to broadcast

their views to a diverse group of city residents and thereby attempt to sway public opinion in their favor. In other words, they used their trials to engage in political combat with governing authorities. Álvarez referred to the jurors as the “representatives of public opinion” in his defense. Godoy called the jury “the only popular institution left to us.” The sedition trial can thus be seen as one of several forms of political warfare available to opponents of the government, as well as a potential repressive tool in the hands of the executive branch.

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