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Résumé de l'article

Bien qu'il ait été officiellement considéré à l'époque comme un crime, le duel est devenu de plus en plus répandu en Amérique latine à la fin du XIXe siècle et au début du XXe, surtout dans le milieu politique, celui-là même qui rédigeait, interprétait et appliquait la loi. La contradiction n'est pas passée inaperçue chez certains contemporains, qui considéraient l'impunité des duels comme un grave problème et qui essayaient de concilier loi et réalité. L'article présente les arguments pour et contre la criminalisation des duels et montre comment le débat a soulevé des questions fondamentales sur le rôle de la loi dans une société en pleine modernisation.

The Duelling Debate in Latin America, 1870-1920: Repress, Legalise, or Just Look the Other Way?

D.S. PARKER

One day in late February 1873, the *comisario* of section 10 in Buenos Aires arrived at the home of Jacobo Varela to investigate reports that Varela had been involved in a duel with another young man, Julio Benites. Varela's brother met the policeman at the door and reported that Jacobo, being ill, lamentably could not see him. When asked if he knew anything about a duel, the brother replied that he most certainly did not. Yes, it was true that a sword wound had brought on Jacobo's illness, but it was an accident. Varela had slipped while playing with the weapon and had fallen on top of it, the blade entering his right side below the shoulder and passing through his body. The additional wounds on his hands had come when he attempted to pull the sword out.[1]

Evidently satisfied with this explanation, the *comisario* then went to the home of Julio Benites, who similarly denied that any duel had taken place. The reports in the newspapers, he claimed, "were an undignified and defamatory farce. He had been an intense friend of Don Jacobo Varela, and even though it's true that the two men had recently exchanged words, it did not go beyond that." As for the wound on the right side of his head, that had happened last Saturday the 15th, when upon leaving the theatre he had been attacked from behind by unknown individuals.[2]

After reporting these interviews to his superiors, the *comisario* was instructed not to proceed against the alleged duellists as the evidence was insufficient, but to continue investigating. As the days passed, more reports of the duel appeared in the newspapers, more police were sent out to interview witnesses, but no one would admit to seeing anything. On 8 March, police physician, Manuel Blancas, was sent to inspect the wounds of Varela and Benites, to determine if they were indeed caused by a duel. Blancas reported that he could not provide a definitive answer, because almost a month had passed since the

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1 Argentina. Archivo General de la Nación, Tribunal Criminal Serie 1, B4 1871-1874, "Benites, Julio y Jacobo Varela por desafío."

2 Ibid.

injuries had been inflicted and it was no longer possible to determine their cause. Unable, therefore, to prove a crime had been committed, the police gave up, and no action was ever taken against Benites or Varela.[3]

Was this a case of dedicated authorities bent on punishing wrongdoing but thwarted by a conspiracy of silence, or were the police merely going through the motions of an investigation that they had no intention of actually prosecuting? The fragmentary evidence invites us to guess the latter, but either way it probably makes little difference. Whether or not the police viewed duelling as a serious crime, clearly none of the participants or witnesses did. Furthermore, the police were constrained by the social position of their suspects. Benites and Varela were "young men both well-known in this society,"[4] members of respectable families, who had to be treated with respect, even deference, particularly when the investigating officers were their social inferiors. Because of who these men were, their word of honour was to be taken at face value, no matter how implausible their stories might be. Many of the basic tools of nineteenth-century policing in the city's poor neighbourhoods – summary arrest, paid informants, threats, beatings – were simply out of the question.[5] The police, in short, were powerless.

For different reasons, both supporters and opponents of duelling lamented the frequency with which the preceding scenario repeated itself. Duelling raised a number of unique dilemmas for the men charged with writing, debating, enacting, and enforcing the region's criminal codes. The duel had long been a crime in Spanish colonial law, and none of the penal codes adopted by the independent nations of Spanish America sought to change that fact. Yet the impunity of the duel in actual fact, and the complicity of the police and judiciary in that impunity, raised serious questions about the efficacy and impartiality of the legal system. The experts who wrote those criminal codes, the parliamentarians who debated them, and the judges and officials sworn to enforce them, all understood and many were troubled by the implications of the duel. Duelling was a crime committed not by other people, not by a "criminal class," but by respectable people like themselves. Indeed, nowhere was the culture of honour and of the duel more firmly entrenched than in the world of politics, among the class of public professional men who dedicated their lives to affairs of state, including matters of law. So when senators, congressmen, legal scholars, journalists, and other shapers of public opinion took up the question of duelling, they confronted the criminality of their own actions and those of their friends.

3 Ibid.

4 Ibid.

5 Thomas Holloway, *Policing Rio de Janeiro: Repression and Resistance in a 19th-Century City* (Stanford, 1993), provides an unflattering but convincing picture of police behaviour in nineteenth-century Rio, where the arbitrary abuse of the poor was habitual. Other Latin American cities may have been different in degree, but not in kind.

But even more than that, they confronted the difficult relationship between law and society at a time when the political, economic, and demographic changes that accompanied export-led modernisation and the triumph of liberalism had begun to erode the hierarchical foundations of Spanish American society, sparking new demands for citizenship and genuine legal equality. The juridical questions raised by duelling were many and complex: are penal codes supposed to reflect and defend the existing values of a society or is it the duty of law to do even more, to forge a better, more moral, more civilised order? Does the law enforce class privileges, or can the law create a society of equal citizens? Does the state even have the ability to impose its will on the rich and powerful? Spanish Americans were by no means unique in confronting such issues: similar debates raged on and off in France, Germany, Italy, Spain, and other parts of Europe.[6] In Spanish America, however, the stakes in the debate were arguably higher: these were nations that had only recently begun to escape the anarchy of the post-Independence era, and where armed uprisings, coups, or even revolutions could still break out seemingly at any moment. These were nations whose laws and constitutions were of recent mint and where essential questions of political and legal organisation remained stubbornly unresolved. These were highly patriarchal nations with long histories of slavery and caste privilege, where ideas of citizenship and equality before the law were weakly developed and hotly contested. And perhaps most of all, these were nations in which the ideal of a centralised and interventionist state clashed with a reality of ineffective public institutions, eternal fiscal crises, unprofessional armies and police, and privatised power. In late nineteenth-century Latin America, perhaps more than in any other place and time, the boundaries between the public and private spheres, between order and privilege, law and custom, were boundaries in flux, rife with conflict. In such a context the duelling debate opened up, surely even more than in Europe, a moral and philosophical Pandora's box: What is civilisation? What is barbarism? When is violence justified? What is the proper relationship between law and custom? What is honour? Duelling highlighted these questions as few other issues could, precisely because it was a "crime" committed by the very people who wrote the laws and because, rightly or wrongly, it was a crime that so often went unpunished.

6 Sources in English include: Ute Frevert, *Men of Honour: A Social and Cultural History of the Duel* (Cambridge, MA, 1995), Ch. 1; Kevin McAleer, *Dueling: The Cult of Honor in Fin de Siècle Germany* (Princeton, 1994), 23-34; Robert A. Nye, *Masculinity and Male Codes of Honor in Modern France* (New York, 1993), 173-82. French, Spanish, Italian, and German tracts on duelling are too numerous to list; those sources that were written in or translated into Spanish and were discussed by Latin American authors will be cited where relevant.

Barbarous Crime or Social Necessity?

The practice of settling matters of honour through an exchange of sabre blows or pistol shots seemed anachronistic to many, yet the frequency of duelling between 1880 and 1920 cannot possibly be explained as a mere remnant of the colonial past. Quite the contrary: if anything, duels were on the rise, as yet another French cultural import captured the imagination of Latin American high society. There were at the very least 164 duels in Cuba between 1880 and 1893, leading to eight fatalities and causing injury a full three-quarters of the time.[7] In Argentina and Uruguay (and probably several other countries as well), duelling did not reach its apogee until the twentieth century, particularly during and after World War I. A minimum of a hundred duels were fought in Argentina between 1904 and 1927, 30 of them with pistols,[8] and these statistics, based entirely on reports in the newspapers, failed to count a significant number of duels between the not-so-famous or between gentlemen who, for one reason or another, wished to avoid publicity.[9] Even when men did not actually come to blows, duelling protocol ruled virtually all conflictual interactions between individuals of a certain social standing; the instinctive response to an insult or affront was to call one's seconds and demand "satisfaction." In short, the culture of honour and of the duel formed an integral, natural part of upper-class and, in some places, even middle-class life.

At the same time, however, opponents of duelling became increasingly vocal, ridiculing the assumption that honour could be preserved through bloodshed, and employing a discourse of modernization, rationality, and social control. How, they asked, could the masses be expected to submit to the rule of law if society's own leaders refused to do the same? Duelling, for its critics, was a throwback to the militarism and anarchy of the early nineteenth century, and represented the baseness and barbarism of an Iberian heritage best forgotten. How could nations progress towards civilisation when their own elites immersed themselves in a cult of violence, however ritualised?

Positions on duelling underscored fundamentally different visions of right and wrong, of progress and barbarism, of the meaning of honour, and of the relationship between the public and private spheres. Perhaps because these were so deeply personal questions of culture and values, the sides in the debate often defied predictable political lines. Anticlerical liberals tended to embrace

7 Agustín Cervantes, *Los duelos en Cuba* (Havana, 1894), esp. 118.

8 César Viale, *Jurisprudencia caballeresca argentina: nueva edición corregida y aumentada* (Buenos Aires, 1928).

9 Normally duellists did not shun the press, because part of the purpose was to demonstrate publicly one's willingness to defend one's honour. However, a desire for secrecy might arise if the original offence was of a particularly sensitive nature, or if the authorities at that particular moment were attempting to take a hard line against the duel.

duelling culture far more than conservatives, in part because the Catholic Church vehemently opposed the practice. Socialists gave the most reasoned and eloquent critique of duelling, yet some individual socialists were inveterate duellists and could not imagine abandoning the duty to defend their honour at sword or gun point when called upon to do so. The many opinions on duelling were further confused by the complexity of the issue. The debate raised several separate questions, all of them interconnected: is duelling a barbarous act or a social necessity? If duelling is wrong, is it nevertheless a mistake to criminalise a practice that society refuses to condemn? If it is correct to criminalise the duel, exactly what kind of crime is it?

Opponents of duelling attacked the practice on many fronts. To begin with, they believed the duel to be a moral abomination, a means to commit murder with impunity. In the words of one Mexican critic, duelling was a "perverse custom that human depravation inherited from times past," a "bloody preoccupation, forever anathema to the Catholic Church, [yet] sustained by so many modern barbarians in Civilization's midst as a means to defend and restore honour."[10] Indeed, the Church's formal denunciation of the duel had been unwavering for more than half a millennium, going back at least to the Council of Valencia in 1229 and strongly confirmed by the Council of Trent, which ordered the excommunication of duellists and seconds and denied ecclesiastical sepulture to those killed in duels.[11] Those who believed that only God had the right to give and take life were unswayed by the contention that duelling was not murder because both participants voluntarily chose their fate. Some critics of duelling made a similar moral case on secular grounds, arguing that because society had a fundamental interest in protecting its members, the duel violated an intrinsic social imperative. "The right to integrity and to life," argued one Uruguayan congressman, "is not a right that one can waive."[12]

Compelling as the moral arguments against duelling might be, it was more common for opponents to attack it on juridical grounds. For an impressive number of legal scholars and political leaders, the most objectionable thing about duelling was that it was a private, entirely extralegal manner of settling conflicts that should instead be heard in the courts. That duelling ultimately involved the attempt to kill or maim another human being made it even worse, of course, but the duellist's principal sin was in defying the law and disregarding the legitimately constituted powers of the state. This was the argument, for example, of two Peruvian legal scholars, writing in 1877. Quoting the influential French jurist, André-Marie Dupin, they asked:

10 Juan M. Rodríguez, *El duelo: Estudio filosófico-moral* (Mexico City, 1869), 5.

11 José Borrás, *El duelo: Estudio histórico-crítico* (Madrid, 1888), 23.

12 Representative José Salgado in República Oriental del Uruguay, *Diario de sesiones de la H. Cámara de Representantes*, Vol. 270, 9 May 1919, p. 406. See also Ricardo Heredia, *Lecciones de derecho penal filosófico* (Lima, 1884), 92-93.

> Is the duel anything except the destruction of public order? What does the duellist do, except to completely reject civil society, its laws and its tribunals, in order to appoint himself legislator, judge, and executioner of his own cause, imposing, by his own private authority, the death penalty for the most trivial offences . . .?[13]

Alejandro Groizard y Gómez de la Serna, a Spanish theorist frequently cited by Spanish Americans, went so far as to argue that because duellists fight by mutual consent and willingly accept the possibility of death or injury, the *only* real victims are state and society. Duelling, in his words, "replaces social justice by individual justice, or better said, by private vengeance, . . . bringing confusion to the organs of public authority and alarm to the society, contributing to a contempt for the law and for legal institutions."[14] Society is victimised even when no one is injured, Groizard continued, because duelling attacks the right of all citizens to enjoy peace and public order.[15]

The legal argument against duelling also focussed on the question of double standards. After all, opponents of the duel asked, how did a formal challenge between two aristocrats really differ from a knife fight between two street toughs? In both cases, conflicts were settled through bloodshed, laws were ignored, private vengeance prevailed, and an unofficial code of masculine honour usurped the authority of the state.[16] Yet the upper-class duellist rarely if ever faced the justice of the courts or the condemnation of his fellows, while the lower-class fighter, if caught, could generally anticipate arrest, abuse, and incarceration. Mexican parliamentarian, Francisco Bulnes, nicely captured this double standard in an 1894 speech, which is worth citing at some length:

> Fact: a man has fought with another and has killed him. The judge of the *gente decente* (respectable people) looks at his fine suit and says: this must have been a duel. The judge of the descamisados ("shirtless ones") reads article 533 of the Penal Code: "Riña (a fight) is defined as a confrontation by actions, not words, between two or more persons . . . ."
>
> Fact: there are four persons who attended the preparations for the fight, provided the weapons and arranged the conditions of the encounter. The judge of the *gente decente* sees the presence of seconds as proof that this was a duel.

13 M.A. Fuentes and M.A. de la Lama, *Diccionario de jurisprudencia y de legislación peruana* (Lima, 1877), 226-27.

14 Alejandro Groizard y Gómez de la Serna, *El código penal de 1870, concordado y comentado*, Vol. 4, 2nd. ed. (Madrid, 1912), 681.

15 Ibid.

16 On informal duelling and masculine honour codes among the lower classes in rural Brazil, see John Charles Chasteen, "Violence for Show: Knife Dueling on a Nineteenth-Century Cattle Frontier," in *The Problem of Order in Changing Societies: Essays on Crime and Policing in Argentina and Uruguay, 1750-1940*. Lyman L. Johnson, ed. (Albuquerque, 1990), 47-64.

> The judge of the descamisados: "Article 5 of the Penal Code: 'Those who aid the authors of a crime in its preparation, providing the instruments, arms, or other means to commit it, or giving instructions, or facilitating its preparation or execution in any way . . . are responsible as accomplices.'"
>
> Fact: the meeting takes place, in which the seconds have arranged the conditions of combat. The judge of the *gente decente* sees this as further proof that this was a duel – precisely this is what characterises a duel and makes it different from a *riña*, that there was prior agreement on conditions, following the customary rules for such cases. The judge of the *descamisados*: "What a monstrosity, daring to make an illicit contract, an agreement to arrange a crime, a pact whose objective is homicide!"
>
> Fact: between the challenge and the meeting two days pass. "Fourth proof of a duel," says the judge of the *gente decente*: "it is necessary for the seconds to talk, to discuss, to confer, no doubt about it." The judge of the *descamisados*: "Article 515 of the Penal Code: 'There is premeditation when the accused intentionally causes an injury after having reflected or having been able to reflect on the crime he is about to commit.'"
>
> . . . Result: the duellist is generally absolved of the penalty of five years' prison for homicide, and is considered more honourable than ever; while the poor man who commits the same crime in a fight . . . is sentenced to twelve years for homicide in *riña* with premeditation and advantage, and is disgraced for life. This is justice in a Mexican democracy that bows before the privileges of the frock-coat."[17]

Few critics of the double standard were as eloquent as Bulnes, but almost everywhere similar arguments appeared in one form or another.[18]

Underpinning the anti-duelling position, no matter which specific argument a critic might use, invariably lay the belief that the duel was a barbaric anacronism, an atavistic legacy of the past. As one Uruguayan senator put it: "at the heart of all this is nothing more than a weakness in the character of our latin race, given that the duel has only been able to take root in [our race] and not in other races that are highly civilised and march at the forefront of civilization and progress."[19] Most cited the British as the quintessential example of an advanced and civilised people who had abolished the duel without any loss of

17 "Dictámen de la sección 2a. del Gran Jurado Nacional," *Revista de Legislación y Jurisprudencia* 7 (1894): 386-88.

18 Senator Emilio Frugoni in República Oriental del Uruguay, *Diario de sesiones de la H. Cámara de Senadores*, Vol. 120, 5 August 1920, p. 201-202; Representative de Tomaso in Argentina, Congreso Nacional, *Diario de sesiones de la Cámara de Diputados*, 1917 vol. 4, 21 August 1917, pp. 120-21; Rodríguez, *El duelo*, 23.

19 Senator Joaquín Secco Illa in República Oriental del Uruguay, *Diario de sesiones de la H. Cámara de Senadores*, Vol. 120, 5 August 1920, p. 193. See also Senator Frugoni, *Diano*, 191-92.

honour, and without ceasing to be a nation of "gentlemen."[20] Those who focussed on the duellists' usurpation of the powers and duties that properly belonged to the state often conceded that private, informal justice had been a social necessity at some unspecified time in the past. But with the impressive march of civilisation, they argued, the rule of law had replaced the law of the jungle and people now had a legal means to defend themselves from defamation or insult.[21] In a modern, cultured world where laws were respected, there was simply no place for potentially deadly armed combat in defence of one's personal honour.[22] Even if the laws against slander, libel and insult were deficient, as some critics were quite willing to admit, civilised men had a duty to work to strengthen and improve those laws, not to demean the legal order by acting in utter disregard for those and all other laws.[23]

Defenders of the duel, however, argued that laws and courts could not possibly provide an effective recourse for those whose honour had been outraged and whose name had been sullied by an insult or affront. The problem was not just that libel laws were ambiguous and the penalties were insufficient. It went much deeper than that: for many duelling advocates, damage to one's honour simply *could not* be repaired through the legal process. As one Uruguayan parliamentarian put it: "A man of honour, worthy of esteem in the society in which he lives, worthy of respect from the members of his family, does not turn to [the courts] because the sting that a slap produces on the cheek of an honest man cannot be removed by a few months in jail or a handful of gold."[24] And not only was legal action of no use; many argued that bringing an affront or a case of defamation to the attention of the authorities only compounded the original

20 Senator Frugoni, *Diano*, 191. See also Rep. Juan B. Justo in Argentina, Congreso Nacional, *Diario de sesiones de la Cámara de Diputados*, 1917, Vol. 4, 21 August 1917, p. 126. On British duelling and its abolition by the mid-1800s, see: Donna T. Andrew, "The Code of Honour and its Critics: The Opposition to Duelling in England, 1700-1850," *Social History* 5 (1981): 409-34; and Anthony E. Simpson, "Dandelions on the Field of Honor: Duelling, the Middle Classes, and the Law in Nineteenth-Century England," *Criminal Justice History* 9 (1988).

21 Carlos A. Greco, *Ante el duelo: estudio de carácter jurídico, ético y social* (Montevideo, 1949), 11. Rodríguez, *El duelo*, 24.

22 Argued Argentine Socialist Senator del Valle Iberlucea: "A civilization based on law and justice cannot allow blood to cleanse." *Código penal de la nación argentina, ley no. 11.179: Edición oficial* (Buenos Aires, 1922), 273.

23 Rep. Salgado in República Oriental del Uruguay, *Diario de sesiones de la H. Cámara de Representantes*, Vol. 270, 9 May 1919, p. 403; Emilio Pedemonte, *Comentarios del código penal (parte especial)*, 2nd. ed. (Montevideo, 1953), 313.

24 Rep. Duvimioso Terra in República Oriental del Uruguay, *Diario de sesiones de la H. Cámara de Representantes*, Vol. 270, 9 May 1919, p. 410.

offence by subjecting the victim to scorn as a coward and by providing the offender a forum in which to repeat the slander.[25]

For its advocates, therefore, the only satisfactory recourse in such circumstances was the duel. The duel theoretically provided a way for gentlemen to settle their disputes in private, through the intervention of trusted confidants (their seconds), whose first duty was to find a peaceful and decorous solution to the matter. The intervention of seconds gave the offending party a chance to retract the offence, and retractions were by no means uncommon. If no amicable agreement could be reached, the seconds were entrusted with ensuring that the conditions of the duel were both even-handed and in proportion to the original offence (the less serious the affront, the less perilous the conditions). And supporters argued that the ultimate advantage of the duel, unlike a lawsuit or libel prosecution, was that the restoration of honour did not depend in any significant way on the outcome of the confrontation. The very fact of having appeared on the duelling ground, willing to die for one's honour, was *prima facie* proof of that honour. A cleanly fought duel ideally (and, according to advocates, commonly) resulted not in death or disfigurement but in reconciliation, the restoration of mutual respect as men of honour, and the "cleansing" of the stain caused by the original insult or affront. No lawsuit or libel prosecution was capable of producing the same effect.[26] If the potential cost was the occasional death or serious injury, it was a price worth paying. In the words of one Uruguayan congressman: "an individual who has lost his life in defence of his honour continues to be respected by the society in which he lived, and continues to dignify the family to which he belonged, because . . . a name passed on unblemished is worth more than a coffer full of money."[27]

The concept of honour that underpinned the pro-duelling case cannot be addressed here,[28] but one point is crucial: few advocates openly defended the

25 Rep. Argerich in Argentina, Congreso Nacional, *Diario de sesiones de la Cámara de Diputados*, 1900, Vol. 1, 13 July 1900, p. 285. See also the Exposición de Motivos of the Código Penal de 1891, cited in *Código penal de la nación argentina, ley no. 11.179*, pp. 184-85; Samuel F. Sánchez and José Panella, *Código argentino sobre el duelo* (Buenos Aires, 1878), 12-14; Rep. Ramírez in República Oriental del Uruguay, *Diario de sesiones de la H. Cámara de Representantes*, Vol. 271, 28 May 1919, p. 132; Pablo Piccato, "El duelo y la política en el México revolucionario," (manuscript, 1997), 4-5; Antonio Tovar, *Código nacional mexicano del duelo* (Mexico City, 1891), 13-15.

26 Sostenes Rocha, in prologue to Tovar, *Código nacional mexicano del duelo*, iv.

27 Rep. Terra in República Oriental del Uruguay, *Diario de sesiones de la H. Cámara de Representantes*, Vol. 270, 9 May 1919, p. 410. Similar sentiments appear in Tovar, *Código nacional mexicano del duelo*, 9.

28 The work of anthropologist Pitt-Rivers remains an indispensible starting point. Julian Pitt-Rivers, *The Fate of Shechem or the Politics of Sex: Essays in the Anthropology of the Mediterranean* (Cambridge, 1977), esp. Ch. 1. My own impression is that the idea of honour invoked by those who justified the duel often differed substantially from the motivation behind *specific* duels, but this remains only an impression pending the completion of further research.

duel as a particularly good thing. The only way to make sense of the duelling debate is to understand that even the most ardent duellists were often publicly defensive about the practice, which they painted as a necessary evil, as the only way to prevent the graver ills of calumny, insult, and defamation of character. Furthermore, most advocates of the duel were extremely sensitive to the criticism that settling matters of honour by private combat undermined the rule of law and the authority of the state. They marshalled several arguments to counter the charge, a charge they took most seriously. First, they pointed out that because the anti-duelling laws conflicted with society's conscience and went universally unenforced, it was the empty prohibition, not the duel itself, that undermined the rule of law and the authority of the state. This point will be discussed in more detail below.

Second, most duellists and duelling advocates were extraordinarily punctilious in their adherence to the "rules" of honour as they appeared in the duelling codes of the day. To the untrained eye, the numerous published tracts on duelling, beginning with Count Chateauvillard's famous *Essai sur le duel*, published in 1836, might appear to be the equivalent of etiquette books, explaining, step-by-step from the initial offence to the final denouement, exactly how a challenge should be made, seconds chosen, arms and conditions decided, and the duel carried out.[29] But duelling codes were not written like etiquette books; they were written like legal codes, and the striking resemblance was in no way accidental. In the minds of most duellists, rigid adherence to the code of honour was the only thing that separated a legitimate duel from a common crime, noble defence of honour from barbarous murder. The rules of honour ensured that the seconds would diligently seek reconciliation, that the offended party would have the choice of weapons, that the conditions of combat would reflect the severity of the original affront, that each duellist would have a physician present, and that the fight would take place in conditions of scrupulous equality, with no chance for any subterfuge or unfair advantage.

In determining the types of offences that justified a duel and the kinds of weapons and conditions that were permitted and prohibited, the authors of these codes very carefully sought to create a framework in which duels would be grave enough matters to inspire respect, yet still avoid serious bloodshed whenever possible.[30] For example, some codes disallowed duelling with

29 There are a number of Spanish translations of Chateauvillard, which was translated into several other languages as well. See, for example, *Ensayo sobre la jurisprudencia de los duelos por el Conde de Chateauvillard, traducido del francés y seguido por comentarios y preceptos adicionales a dicha obra por D. Andrés Borrego* (Madrid, 1890); Luis Ricardo Fors, *Arte del testigo en duelo* (Buenos Aires, 1913), 57-93.

30 Julio Urbino y Ceballos-Escalera, Marqués de Cabriñana, *Lances entre caballeros* ([Barcelona?], 1900), 346, 375-76; Ventura Oreiro, *Reglas del duelo: precedidas de un prefacio sobre el duelo en general y un bosquejo histórico del mismo* (Buenos Aires, 1890), esp. 85-89.

revolvers, whose rifled barrels made them far more accurate than the traditional smooth-barrel duelling pistols.[31] Other codes prohibited certain kinds of swords deemed too deadly for use.[32] Almost all codes explicitly banned duels to the death, or duels in which the conditions, such as an exchange of multiple shots at close range, made death the most likely outcome. And the codes explicitly sought to ensure that honour was the only possible motive, by prohibiting any duel between debtor and creditor, for example.[33] In short, duelling codes provided a set of quasi-legal guidelines designed to "civilise" the duel and attenuate its effects. These codes were written precisely in the form of laws and effectively enjoyed all the force of law, at least among the community of duellists. This is not to say that the "laws of honour" were never violated: like other laws they were, especially in the heat of battle. But duellists held their transgression to be just as criminal as the violation of other laws, and at least one code explicitly declared that an offender was to be considered a "felon."[34]

It may seem strange that these codes, compiled and written by private individuals, debated in no legislature and passed by no government, should be treated with all the reverence of actual law – indeed with greater reverence than some laws. Yet this legalism was essential to the pro-duelling case, and the more thoughtful duellists took it seriously indeed.[35] The authors of some codes of honour actually tried to simulate the process of drafting a genuine legal code: they formed a "commission" of notables, including congressmen, top military officials, and other important public figures, to which they submitted the draft for comment and criticism. The "report" of the commission then appeared as a foreword or appendix to the published version.[36] Other codes came accompanied by long lists of individuals who had given it their "vote" of endorsement.[37] And in one case, an author tailored his code of honour so that it would conform to the concrete duelling provisions of the Uruguayan and Argentine criminal codes. Articles from the criminal codes and the duelling code appeared inter-

31 Sánchez and Panella, *Código argentino sobre el duelo*, 56. Tovar, *Código nacional mexicano del duelo*, 31, considered smooth-barrel pistols preferable, "if available."

32 One such example was the "florete sin botón" (triangular *épée* without safety tip), prohibited in Luis Ramos Yzquierdo, *Código del duelo extractado y traducido de varios autores nacionales y extrangeros* (Cienfuegos, Cuba, 1889), 60-61.

33 Rep. Ramírez in República Oriental del Uruguay, *Diario de sesiones de la H. Cámara de Representantes*, Vol. 271, 28 May 1919, p. 127.

34 Tovar, *Código nacional mexicano del duelo*, 34.

35 Cabriñana, *Lances entre caballeros*, 13.

36 Tovar, *Código nacional mexicano del duelo*, iii-xii, 3-5.

37 Sánchez and Panella, *Código argentino sobre el duelo*, 91-107; Tovar, *Código nacional mexicano del duelo*, 65-69.

spersed throughout the document, underscoring the author's clear intention that the two very different kinds of "laws" be given equal weight.[38]

Those charged with writing and enforcing actual criminal laws in Latin America were no doubt hesitant to treat the codes of honour with the reverence their authors sought, yet adherence to the "laws of honour" could and very often did have a major impact on how the authorities and the legal system dealt with duelling cases. First of all, many Spanish American criminal codes made a clear distinction between a "regular" duel, which at minimum required the intervention of seconds, and an "irregular" duel, which deviated from normal protocol in some significant way. Regular duels were treated juridically *as* duels, while irregular duels fell under the general, and less lenient, provisions for homicide or assault.[39] Penal codes followed the honour codes' lead in other ways as well: some severely punished any duellist who could be proven to be motivated by an interest other than the defence of honour, while others specifically criminalised dangerous duels, duels to the death, or duels in which one of the participants received an unfair advantage.[40]

Finally, whether or not a specific penal code distinguished legally between regular and irregular duels, authorities who were normally loathe to prosecute duelling cases could suddenly take a duel very seriously if they became convinced that a serious breach of the honour code had occurred. Such was apparently the case, for example, with a notorious duel in Porfirian, Mexico, in which Colonel Francisco Romero killed José C. Verástegui. This duel was one of the first in decades to merit a full-blown investigation and prosecution, including a debate in the House of Representatives over whether or not to strip Romero and three of the participating seconds of their parliamentary immunity.[41] More needs to be known about the politics underlying the debate, but the available record seems to indicate (protests to the contrary notwithstanding) that the case against Romero hinged on the allegation that duelling protocol had been violated in significant ways. First, Romero allegedly refused to reveal to his seconds the nature of the affront that Verástegui had committed against him, thus leaving them unable to judge the seriousness of the offence as they and

38 Dr. Pedro Federico Coral Luzzi, *Código de honour con las leyes relativas al duelo: ajustado a la codificación penal de las Repúblicas O. del Uruguay, Argentina e ibero-americanas* (Montevideo, 1950), 11-18, 46-57.

39 Mario Ramírez Boissón, *Estudio sobre el duelo: parte jurídico penal* (Santiago, 1960), 90-91. Pedemonte, *Comentarios del código penal*, 322.

40 On the treatment of these issues in Argentine penal codes, see Sebastián Soler, *Derecho penal argentino*, Vol. 3 (Buenos Aires, 1951), 182-83; on the Mexican codes of 1871 and 1931, Celestino Porte-Petit, *Delitos contra la vida y la integridad corporal* (Jalapa, 1944), esp. 202-203; on the 1863 Peruvian code, José Viterbo Arias, *Exposición concordada y comparada del código penal del Perú de 1863*, Vol. 3 (Lima, 1902), 117-20.

41 "Dictamen de la sección 2a del gran jurado nacional," *Revista de Legislación y Jurisprudencia* 7 (July-September 1894): 351-52.

Verástegui's seconds negotiated the conditions of the duel.[42] Second, the weapons used were the rifled-barrel revolvers prohibited by some codes, though not by all, and there was evidence that the duel had deviated from standard practice in several other ways as well.[43] Romero's defenders focussed on refuting those allegations rather than challenging the material fact that he had shot and killed another man, even though in theory Mexican law should have condemned him to prison either way. And his defence made complete sense: after all, if these all important provisions of the honour code had in fact been breached, the implication was that Romero had perhaps employed the guise of a duel to perpetrate murder.[44] The Romero/Verástegui case abundantly illustrates how the codes of honour enjoyed quasi-legal status in the minds of many Latin American authorities.

The code of honour helps us to understand how duellists could repeatedly violate the law and yet paradoxically see themselves as the law's defenders. By adhering to a legalistic protocol and joining in the condemnation of those who violated that protocol, duelling advocates contested the charge that they were placing themselves above the law, usurping the powers of the state, and becoming the "legislator, judge, and executioner" of their own cause. The code of honour also served as a way for duelling advocates to defend themselves from the charge that they were beneficiaries of a legal double standard. When opponents like Francisco Bulnes argued that there was no difference between a duel and a street fight, duelling supporters pointed to the code of honour as proof that the two had nothing whatsoever in common. Because a properly executed duel demanded an attempt at reconciliation first and safeguarded fair and appropriate conditions of combat if reconciliation failed, the code of honour was not an instigation to violent crime, but society's best defence *against* violent crime.[45] One Argentine congressman in 1917 went so far as to argue that if ordinary citizens could be instructed in the "laws" of honour and duelling etiquette:

> we would be able to prevent half of the deaths that occur in the country, almost all of them produced in bar fights [*"peleas de almacén y de pulpería"*], in the Sunday get-togethers of the common people. [If] everyone knew that by settling their disputes in strict accordance with the provisions of the code they would be exempt from criminal responsibility, . . . the duels that would occur would be carried out in a much less dangerous and definitively more civilised manner.[46]

42 Ibid., 355-56.

43 *El General Sostenes Rocha ante el jurado popular con motivo del duelo verificado antre los señores Verástegui y Romero* (Mexico City, 1895), 8-34, 44-46.

44 Ibid., 39-40, 51.

45 Rep. Terra in República Oriental del Uruguay, *Diario de sesiones de la H. Cámara de Representantes*, Vol. 271, 21 May 1919, p. 44; Rep. Ramírez, Diaro, 28 May 1919, pp. 126-29.

46 Rep. Demaría in Argentina, *Diario de sesiones de la Cámara de Diputados*, 1917 vol. 4, 21 August 1917, pp. 124-25.

For its champions, therefore, a properly conducted duel could not be a crime, because the code of honour was designed to prevent any possibility of criminal intent. By the same token, the duel could not be an act of barbarism, because the code was also a fundamentally civilising force. Adherence to protocol forced a man to dominate his momentary anger; to submit to the arbitration of seconds; to meditate on the offence committed and its proper reparation; to confront his adversary coolly, face to face, in conditions of rigid equality; and to accept the outcome of the duel as final. In short, although the duel might appear on the surface to be an act of violent passion, the rules of honour actually made the duel a quintessential exercise in self-control and domination of violent passion.[47] Or this, at least, was the argument.

The Question of Criminality

Both advocates and enemies of the duel, as we have seen, took their positions seriously and considered their arguments very carefully. Yet this fundamental question – whether the duel was right or wrong – in actual fact rarely dominated debate. Far more time was spent questioning whether or not it was proper or even possible to criminalise a practice that society generally condoned and that lawyers, generals, senators, and even presidents engaged in regularly. As we have seen, opponents found nothing more galling than the fact that duellists could kill or maim with impunity, making a farce of the penal code's supposed protection of the individual's right to life and physical integrity. Supporters, for their part, were no less troubled by the fact that an unenforced and unenforceable law technically branded them as criminals, and they, too, argued that the empty prohibition undermined the legitimacy of society's basic laws and institutions.

In Uruguay, for example, this question of respect for the law underpinned a 1908 bill to decriminalise the duel entirely. (A modified version of the bill was approved in 1920, making Uruguay unique in its leniency.) The author's justification of the 1908 bill chose deliberately not to address the question of the morality or immorality of the duel, and focussed instead on the social and moral cost of maintaining laws that no one enforced:

> In this opportunity it is of little importance to me whether or not [the duel] deserves punishment, whether or not it is considered theoretically a crime; what fundamentally matters is that the application of our anti-duelling statute goes against "the still powerful force of certain social sentiments," and as a result the law is not enforced, the police authorities do not deign to observe it, and more serious still, even the judges do not duly implement it.

47 Rep. Terra in República Oriental del Uruguay, *Diario de sesiones de la H. Cámara de Representantes*, Vol. 271, 21 May 1919, pp. 44-45.

> A law in these conditions is a law that perturbs society; it is a disruptive law, it is a law that, without repressing or preventing the duel, causes the judges charged with its enforcement to make a farce of their august mission, refusing to proceed in some cases, accepting as true the most absurd declarations of innocence in other cases, and in all cases refusing to prosecute.
>
> . . . Maintaining these penal dispositions obliges our criminal judges to only pretend to perform their duties, and opens them to public discredit as less than upright, impartial, and worthy of the post they exercise.[48]

These ideas were seconded by Representative Juan Andrés Ramírez in a 1919 debate on the modified version:

> All of us today share the same complicity, because no one sincerely sees [duellists] as immoral or criminal men; nobody refuses to shake the hand of a duellist, or to invite one into his home, or to sit one down at his table. Duelling raises absolutely no social alarm, . . . and therefore, to sustain criminality in a situation where society impels the crime and later abets the criminal, is purely and simply a true hypocrisy.
>
> . . . Periodically, our magistrates decide that a law against duelling exists. They make one, two, three attempts to enforce it and then give up, understanding that it is absolutely impossible to make the laws effective. Is it possible, then, to say that it strengthens the dignity of the administration of justice, that it favours public order, that it moralises the society, to fight to sustain laws that oblige the judges either to subject themselves to ridicule or to disregard duties that their position obliges them to carry out?[49]

Opponents, as we have seen, firmly agreed that the impunity of duelling undermined respect for the law. Indeed, both sides diagnosed the legal dilemma identically. But opponents challenged the assumption that the laws against duelling went unenforced because they were unenforceable. Whereas supporters saw magistrates powerless to assert their authority, opponents saw complicit magistrates who willfully refused to prosecute the powerful. Whereas supporters believed that public opinion unanimously agreed that duellists were not criminals, opponents argued that the public opinion cited by Ramírez was nothing more than his own personal opinion and that of other like-minded aristocrats.[50] Civilised nations such as England, they argued, had successfully abolished the

48 República Oriental del Uruguay, *Diario de sesiones de la H. Cámara de Representantes*, vol. 194, 16 May 1908, pp. 168-69. The quotation marks denote a passage cited from the authors of Uruguay's 1888 penal code.

49 Rep. Ramírez, *Diaro*, 82-83.

50 This argument appeared as early as 25 years before the 1919-1920 debate, in Alfredo Vásquez Acevedo, *Concordancias i anotaciones del código penal de la República Oriental del Uruguay* (Montevideo, 1893), 292-94. Vásquez Acevedo was frequently cited on this point for decades thereafter.

duel, and there was no inherent reason why Uruguay could not do the same. The only thing lacking was political will.

Perhaps most interesting of all was the position of those who stood in between the two extremes, the many who agreed that duelling was an anachronism in need of abolition yet remained averse to the idea of treating duellists as criminals. As one frequently cited Spanish expert put it: "It is difficult to determine how duellists should be punished: since they are honourable men it would be cruel to deprive them of their liberty, yet fines are useless."[51] Unable to countenance either stricter repression or total impunity, these moderates found themselves in the uncomfortable position of having to accept and even defend the gap between law and practice. They sought a magic balance between repression and realism, in much the same way that modern parliamentarians confront the issue of smoking. Then, as now, that balance proved illusory.

The moderates were many, and included not only those who had never fought a duel, but also a surprisingly large number of active duellists, themselves ambivalent about the morality and efficacy of the practice in which they engaged. All shared the general belief that the duel was wrong but was also inevitable, a sort of original sin that could not be abolished until people's ideas of honour changed, or until effective legal sanctions could be devised that would rid the society of insult and defamation. They did not, however, accept the idea that the laws on duelling should legitimise the practice. In the words of Uruguayan congressman Ismael Cortinas:

> I can accept that the duel is a necessary evil; but even accepting that, I believe that we cannot in any way give up the right to try, by means of the law, to make sure that this necessary evil has the fewest possible repercussions, . . . because that is the mission that the people entrust us with as their representatives.
>
> . . . To do otherwise . . . would be to declare that humanity is incorrigible and that there does not exist even the remotest possibility of fostering an acceptable system of human conduct. Luckily, not everyone thinks this way, and there are those who believe that through concerted propaganda and persistent action we can come to moderate the aggressive instincts inherent in human nature, subordinating them to the tranquil and serene judgements of reason and justice.[52]

In some ways, the distance separating Cortinas from Ramírez was slight. Both men publicly described the duel as an unfortunate practice, and both agreed that the prosecution of duellists under existing statute was unlikely,

51 Luis Jiménez de Asua and José Antón Oneca, *Derecho penal conforme al código de 1928* Vol. II, *Parte especial* (Madrid, 1929), 173.

52 Rep. Cortinas in República Oriental del Uruguay, *Diario de sesiones de la H. Cámara de Representantes*, Vol. 271, 9 May 1919, pp. 57-58

given the state of public opinion. The two men therefore differed not in their view of the duel, but in their view of the law itself. For Ramírez, law had to reflect social reality, and any law that lacked public support undermined the legitimacy of all laws. For Cortinas, law should spring from the enlightened legislators' sense of right and wrong. For Ramírez, the purpose of criminal law was to codify what society as a whole already believed to be correct behaviour, and to protect that society from those who would violate the norm. For Cortinas, the purpose of criminal law was to improve society, to civilise it, to make it better than it was. Cortinas understood that it would take time for that general moral improvement to come (indeed, he himself had fought at least one duel), and he was less bothered by good laws going unenforced than he was by unfortunate habits and prejudices acquiring the force of statute. The position of Ramírez, the duelling advocate, was paradoxically the less elitist of the two: in arguing that law was a product of society rather than a tool to improve it, he rejected Cortinas's assertion that the legislator was a sort of superior being with a moral duty to decide what was best for the people. Indeed, this position had a surprisingly liberal pedigree, stretching back to Rousseau and Montesquieu.[53]

Was Ramírez sincerely concerned about the erosion of respect for laws and magistrates, or were his arguments little more than an ingenuous smokescreen? Many opponents of legalisation believed it was the latter, and wondered out loud why there was no similar clamour to legalise other seldom-punished crimes such as gambling, abortion, and prostitution. Certainly duelling was unique inasmuch as it was by virtual definition a crime of "gentlemen," and the "public" that refused to condemn the duel carried rather more weight than the public that refused to condemn more typically lower-class "crimes" such as vagrancy and public disorder.[54] In other words, the very definition of "public opinion" employed by duelling advocates betrayed a highly class-bound construction of social reality.[55]

In my view, however, class prejudices alone do not adequately explain why the criminality of the duel posed such a difficult problem for so many people. In Spanish America as elsewhere, the duel raised several unique legal questions that permanently divided the community of experts, and this in turn made duelling an especially difficult crime to repress. First and foremost was the inability of penal scholars to agree on exactly who or what the duel was a crime

53 Mariano Molla Villanueva, *El duelo: tesis* (La Plata, Argentina, 1906), 74-77.

54 On the question of the criminalisation/decriminalisation of abortion in Uruguay: Graciela Sapriza, "Mentiras y silencios: el aborto en el Uruguay del novecientos," in *Historias de la vida privada en el Uruguay* Vol. 2, *El nacimiento de la intimidad 1870-1920*. José Pedro Barrán, Gerardo Caetano and Teresa Porzecanski, eds. (Montevideo, 1996), 115-45.

55 Pablo Picato goes so far as to argue (following Habermas) that the duel in Mexico was a key factor in the creation and legitimation of a "public sphere" restricted to the community of "men of honour." Picatto, "El duelo y la política en el México revolucionario," esp. 15-17.

against. There were three major schools of thought: 1) that the duel was a "crime against persons," meaning, obviously, that the person killed or injured in a duel was the victim against whom a crime had been committed; 2) that the duel was a "crime against public order," meaning that society as a whole was the victim, and both duellists were culpable; or 3) that the duel was a "crime against the administration of justice," because when duellists settled disputes of honour by their own hand, they usurped powers that properly belonged to the courts.[56] This was by no means a purely academic matter of where the duel appeared in the penal code: the definition of the crime directly affected how, and under what conditions, duellists might or might not be prosecuted.

For example, if the duel was considered a crime against public order or against the administration of justice, then the legal rationale for punishing the mere issuance or acceptance of a challenge became a good deal stronger. All participants in a duel could be held equally culpable, including the seconds and the attending physicians, no matter what the outcome of the encounter. Some legal experts felt that such an interpretation was necessary if you wanted to be at all serious about repressing the duel. After all, only by viewing the duel as a crime against society or against the state could you successfully combat the argument that both duellists voluntarily chose their fate. Furthermore, if the law considered the challenge as great a crime as the duel itself, then police were empowered to intervene energetically before any duel actually took place, and to proceed against the seconds as well. In other words, this interpretation gave the authorities many of the preventive and repressive tools they otherwise might lack.

The problem was that most opinion-makers found this legal interpretation unconvincing. First of all, it was hard to make a realistic case that the duel disturbed public order, when most duels took place in isolated spots during the wee hours of the morning with little danger to anyone but the participants.[57] The usurpation of authority argument was in some ways the stronger one; however, in the many cases where duels arose for offences too trivial to be considered crimes, it was hard to argue that any function of the state had been undermined.[58] Furthermore, as another theorist cleverly pointed out, if duellists were to settle defamation cases privately by hitting each other with sticks or running a foot race, it would be difficult to contend that their behaviour was

56 Boissón, *Estudio sobre el duelo*, 94-115; Alfredo J. Molinario, *Derecho penal, segundo curso: el libro II del código penal argentino (títulos I a VI)* (La Plata, Argentina, 1943), 138-40; Eusebio Gómez, *Tratado de derecho penal*, Vol. 2 (Buenos Aires, 1939), 223-26; Armando M. Raggi y Ageo, *Derecho penal cubano: el Código de Defensa Social, estudio teórico-práctico* (Havana, 1939), 367-68; Evelio Tabío, *Comentarios al Código de Defensa Social*, Vol. 8 (Havana, 1950), 297-99. Those who looked to European models noted that the Italian penal code chose to treat the duel as a crime against the administration of justice.

57 Molinario, *Derecho penal*, 138.

58 Gómez, *Tratado de derecho penal*, Vol. 2, p. 225.

criminal, even though the usurpation of public authority was clearly manifest.[59] In the end, opponents of duelling were left with one and only one viable legal rationale for criminalisation: that the violence of the duel and the possibility of death or serious injury made the practice a "crime against persons." The problem with defining the duel as a crime against persons, however, was that the legality or illegality of the duel became more dependent upon the outcome of the encounter.

Some legal experts were deeply troubled by the idea that chance should play such an important role in determining the criminality of the duel.[60] Yet this legal interpretation arguably mirrored the majority public's general sense of right and wrong in such matters. When a duel resulted in death or serious injury, the public outcry could at times lead to a call for some kind of prosecution.[61] In the majority of duels, however, the physicians stopped combat after the first significant sign of blood and then, if we are to believe the satirical accounts, the combatants went off to have a sumptuous banquet to celebrate their reconciliation. Only the most dedicated opponents of duelling believed that anyone deserved to be treated as a criminal in such circumstances. Indeed, most of those who thought about the issue believed that duelling was a serious social ill and that duelling under perilous conditions should be a crime, yet those very same people were just as likely to approve of the conduct of individual duellists and seconds, and to support the general approach that the codes of honour applied to the settling of personal conflicts. Certainly, few had any inclination to prosecute seconds who conscientiously carried out their duties as conciliators.

Two Uruguayan duels, both fought in the first half of 1908, illustrate perfectly this ambivalence. In the first, infantry lieutenant Arturo Gomeza killed another officer in a duel fought with revolvers. The conditions of the duel were extraordinarily severe; the men were to exchange shots at a hundred paces and then advance three paces with each subsequent shot until one of them was hit. Gomeza, furthermore, was well-known for his marksmanship. When details of the duel came out, the local press unanimously called for the arrest of both Gomeza and the seconds who had agreed to such dangerous terms, and the papers harshly criticised a slow and uncertain prosecution.[62] In the second, a

59 Jiménez de Asúa and Oneca, *Derecho penal*, 174.

60 Jiménez de Asúa and Oneca, *Derecho penal*, 173-74.

61 Rep. Salgado in República Oriental del Uruguay, *Diario de sesiones de la H. Cámara de Representantes*, Vol. 270, 9 May 1919, pp. 398-400.

62 *El Pueblo* (Paysandu, Uruguay), 3 June 1908, p. 8; *La Tribuna Popular* (Montevideo), 27 June 1908, p. 2; *El Paysandu*, 15 June 1908, p. 2; 19 June 1908, p. 2. The 19 June editorial, reprinted from *L'Italia al Plata* (Montevideo), explicitly contrasts the dilatory prosecution of the Gomeza duel with the unfair detention of one of the seconds in a first-blood sabre duel between two congressmen in Montevideo that very same month.

first-blood sabre duel between two university student leaders left both with only minor cuts. In an obvious effort to teach them a lesson and to set an example, the judge had both duellists and two of the seconds detained, and requested that the other two seconds be stripped of their parliamentary immunity. To make matters worse, he sent the prisoners to jail rather than holding them at the police station, forcing them to endure harsh conditions in rather rough company, and then took his time signing their release papers, arguing that the men should not be treated differently from anyone else. In this case, the reaction of the press was entirely different. The judge's actions were widely denounced as arbitrary and irregular, even abusive.[63] "Never has [a judge] proceeded in such a manner with persons of a certain [social] condition," complained El Siglo, noting that these "distinguished university students . . . have been treated . . . with a rigour previously only employed with individuals accused of serious crimes."[64]

It is easy to understand why makers of public opinion should treat these two duels so differently, yet herein lay the problem for prosecutors. In moral terms, considering both the intent of the participants and their adherence to the letter and spirit of the "laws of honour," the two duels were indeed quite different. In legal terms, however, both fell under the same article of the penal code, making them in effect the same crime. If judges and prosecutors left the second duel unpunished, as most people believed they should, they risked undermining their authority to prosecute the first.

Responses and Outcomes

This moral ambivalence contributed to the duel's continuing impunity, but it also gave rise to a variety of proposals designed to further tame the duel, as legislators across the region sought the elusive chimera of honour without violence. Some wanted to prohibit newspapers from publishing the formal "acts" of duels, a widespread practice that critics believed dignified the practice and incited some people to issue challenges gratuitously, in order to win a name for themselves.[65] Others called for more concerted anti-duelling propaganda, and almost everyone spoke in favour of legal reforms that would promote the aggressive and effective prosecution of defamation, insult, and other "crimes against honour."

Perhaps the most popular proposed reform was the establishment of "tribunals of honour," committees that would hear and rule upon the kinds of conflicts that ordinarily might be settled on the duelling ground. Honour courts apparently originated in the German army in the early nineteenth century, and a series of government decrees between 1821 and 1897 greatly expanded their

63 *La Tribuna Popular* (Montevideo), 18 May 1908, p. 6.

64 *El Siglo* (Montevideo), 21 May 1908, p. 1.

65 República Oriental del Uruguay, *Diario de sesiones de la H. Cámara de Representantes*, Vol. 271, 21 May 1919, p. 55.

authority to rule on personal conflicts between officers.[66] In some places, *ad hoc* honour tribunals became an occasional appendage to the apparatus of the duel: when one party refused to recognise the legitimacy of another's challenge, or when the seconds could not agree on who had the right to choose weapons, they would ask one or more respected arbiters to study the history of the conflict and to rule on the point in dispute. Over time, the concept found favour even among the duel's most concerted opponents. In the early 1900s, the anti-duelling leagues that were being established in most major European cities endorsed these informal courts as an alternative to the duel.[67] In fact, many people joined the leagues *because* they saw in the league-run honour tribunals a respectable way for gentlemen to solve conflicts of honour without recourse to actual violence, yet still in accordance with the core values of the traditional honour codes.

Duelling opponents in Spain attempted in 1908 to legislate the creation of honour tribunals as a mandatory alternative to the duel.[68] The reform failed but the idea later caught on in several Latin American countries, where different versions were embraced by duelling supporters and opponents respectively. In Uruguay, for example, the decriminalization proposal supported by Juan Andrés Ramírez in 1919 appeared likely to go down to defeat until its supporters revised the bill by incorporating honour tribunals. In the amended version, the anti-duelling articles of the penal code remained on the books, with the stipulation that those provisions would cease to be applicable only in cases where an honour tribunal of three respectable citizens, one chosen by each side and the third chosen by the other two, had ruled that sufficient cause for a duel existed.[69] This compromise satisfied the moderates' desire that the duel continue to be a crime, at least in theory, and many moderates hoped that the honour tribunals would refuse to authorise duels in all but the most serious cases. In other words, the law as passed in 1920 held out a ray of hope that duels might actually decrease rather than increase in the wake of decriminalisation.[70]

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66 MacAleer, *Dueling*, 86-107; Frevert, *Men of Honour*, 53-68.

67 José Maria Barnuevo, "El duelo ante la razón y la ley," *Revista General de Legislación y Jurisprudencia* (Madrid) Vol. 110 (1907): 772-73.

68 *El Siglo* (Montevideo), 25 June 1908, p. 1.

69 Compare the 1908 and 1919 versions of the bill with the final text of the law passed in 1920. República Oriental del Uruguay, *Diario de sesiones de la H. Cámara de Representantes*, vol. 194, 16 May 1908, p. 167; Ibid., Vol. 270, 9 May 1919, p. 390; República Oriental del Uruguay, *1920 Registro nacional de leyes, decretos y otros documentos: publicación oficial* (Montevideo, 1921), 597-98.

70 See, for example, Rep. Ghioldi in República Oriental del Uruguay, *Diario de sesiones de la H. Cámara de Representantes*, Vol. 283, 4-5 August 1920, pp. 196-97. In the short run, the result of the reform does appear to have been a decrease in the percentage of "gentlemanly conflicts" that made it to the "field of honour," but the benefit was offset by an increase in the overall number of such conflicts.

The Mexican penal code of 1929 also incorporated the idea of honour tribunals with a crucial difference: unlike the Uruguayan precedent, Mexican honour tribunals could not rule that a duel was justifiable. Because the tribunals acted as a final authority in matters of honour, their purpose was explicitly to prevent duels while at the same time preserving all the conciliatory mechanisms of the traditional duelling codes. The new penal code made it legal for an offended party to issue a challenge to his antagonist, allowed both sides to name seconds to represent them, and freed the seconds of all legal responsibility if they succeeded in finding a decorous solution. If no conciliation could be reached, the law required that the seconds organise a tripartite honour tribunal. The tribunals thus allowed traditional customs to persist, insofar as conflicts of honour continued to be solved informally, rather than in the courts. If an actual duel occurred, however (in other words, if the antagonists failed to convene an honour tribunal or disregarded its ruling), that duel remained a crime.[71] Supporters of the reform hoped, under the new code, that these milder sanctions against duelling would finally actually be enforced.

Honour tribunals were an important innovation only to the extent that they illustrated the attempt by a few Spanish American nations to overcome the enormous gap between law and custom. Supporters hoped that the reform would curb or perhaps even abolish the duel itself, while at the same time remain true to the cultural values and practices that underpinned and legitimated the duel. The reform once again illustrated the ambivalence that the political elite felt toward a practice that, on the one hand, most agreed was a barbarous anachronism and a congenital weakness of their "race," yet on the other hand they continued to view as the only available way to defend their honour in the face of an affront. Most Spanish American nations, however, ultimately chose not to confront the complex legal dilemmas raised by the duel. Even in Mexico, the 1929 penal code ended up a dead letter, superseded by a 1931 code imposing criminal sanctions that again went largely unenforced.[72] Uruguay proved uniquely innovative in its approach to duelling, as it was in its approach to so many other things. Elsewhere, the duelling debate did not lead to concrete legal reform. This is not to say that duelling was any less a problem; contentious argument cropped up periodically in Argentina, Cuba, Peru, Chile, and many other places. And throughout the region, police continued to find themselves either powerless or complicit in their dealings with duellists.

In the end, duelling in Latin America was never successfully repressed, although the practice gradually died out. In some countries that death came sur-

71 Mexico (Federal District), Laws, Statutes, etc. *Código penal para el distrito y territorios federales* (Mexico City, 1929), 231-37.

72 Porte Petit, *Derecho penal mexicano*, 204. More precisely, the 1931 Penal Code ceased to name duelling as a specific crime, so homicide in a duel became actual homicide, with attenuating circumstances.

prisingly late: Peru's last reported duel occurred in 1958, Uruguay's in 1971, and only in 1990 did Uruguay formally repeal the 1920 decriminalisation law.[73] By that time, duellists had become something akin to museum relics, when not cause for gentle ridicule, although Uruguay may be somewhat of an exception to this rule.[74] Stories of celebrated duels are now standard fare in journalistic evocations of the "olden days," and in the process, of course, the duel as an institution and the controversy that surrounded duelling have both been successfully trivialised.[75]

But in the context of the late nineteenth and early twentieth centuries, there was nothing trivial about the duel or the duelling debate. Their importance lay on many levels: at the most human level, men often fought and sometimes either died or killed for the sake of honour. For the widows, children, and friends who mourned the dead, the duel was anything but trivial. But even more than that, the duelling debate highlighted widely divergent visions of the meaning and purpose of law in a modern society. At a moment when Latin America stood at the crossroads between patriarchal tradition and imported modernity, between the disorder of the post-Independence era and the "order and progress" of the *belle epoque*, between comfortable elite rule and the first stirrings of mass society, the duelling debate uniquely crystallised the contradictions of an age.

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73 Pablo O'Brien, "Los duelos en el Perú: cuestión de honor," *Somos* [Saturday supplement to *El Comercio*], December 1996; Roger Rodríguez, "Cuestión de honor," *Posdata* (Montevideo), 19 September 1997, pp. 24-25.

74 See the uproarious parody of Cabriñana's duelling code, published in Peru: Sofocleto [pseud.], *El código de honour del Marqués de Cabriñana: edición corregida, aumentada y deformada* (Lima, 1970). Still, the late and slow decline of duelling in some Latin American countries, and in Uruguay in particular, where some politicians and military men kept the culture of the duel alive as late as the 1980s, is a matter that deserves more attention.

75 For example: "Qué tiempos aquellos..." *El Sol*