

THE DEBATES ABOUT DEATH PENALTY: ECUADOR (1857-1878)

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Death penalty as the most severe punishment was applied in Ecuador as in the other Latinamerican countries since the colonial epoch. During the Republic the first Ecuatorian Penal Law Code (1837) establishes 19 cases for the application of the death penalty. In 1850 the liberal Pedro Carbo presented a proposal of project of abolition of the death penalty for the political crimes which was approved. This position was integrated as well in the Conventions of 1852 and 1861 till the President García Moreno re-established it in his famous Black Letter. In 1878 the National Assembly introduced the abolition of the death penalty for the political and common crimes, with the exception of military crimes and the assesination of the father or mother, considered atrocious crimes. With the arrival of the Liberal Revolution the inviolability of life was consecrated in the Political Chart of 1906, with the death penalty abolited for all cases. With regard to the form of application, in 1837 the execution through garotte was mentioned, but it also established that till this device is adopted inmates would be put to the sword.

Around 1857, the discussions about death penalty were reactivated in Ecuador with reference to the execution of an Indian and, one month later, the suicide of the woman who had declared in his favour, and had positioned in favour of the abolition of the death penalty. As regards women, no case of public execution is know, society applied for them mecanisms of coercion and moral sanction that lead to death. The conference has the objective to recover the debate on abolition of the death penalty during the years 1857-1878, as death penalty as such but as well the "moral death" applied to women who committed a crime and transgressed the established order.

The death penalty and the moral execution

In the city of Cuenca, 20 April 1857, the indigenous Tiburcio Lucero was executed fue ajusticiado el indígena Tiburcio Lucero, patricide convicted to gallows:

"The seething crowd forming a closed mass on the 1st Street opened giving way to the procession out of jail in the Plaza Mayor and heading to the square of San Francisco ... The prisoner was guarded by soldiers who did nothing to prevent the abuses clowed that blasphemed at the convicted and sometimes threw stones... He wore a white robe, stained at intervals with bloodstains and they had tied his hands to a dry palm ... the hoarse box stroke mournfully as much as the prayers of the good death of the chaplain... The feed of the Indian, shackled, were impeding his walk; he stumbled and to make him walk speedier the soldiers behind him pricked him with their yataghans... A cross presided over the firing squad... and there against the wall of the convent of San Francisco, the gallows...They lifted the Indian to the post... and tied him with twisted stripes of ox skin..., he was blindfolded with a black strip... The drums rolled and amid the village ... sounded the shots. Law was fulfilled..."¹

A few days after the death of Lucero, the indigenous executed, the poet Dolores Veintimilla de Galindo published her writing "Necrología", in which she condemns death penalty. She starts her writing by saying:

"It is not at the grave of a grandee, not at the grave of a powerful, not at that of an aristocrat that I shed my tear. ¡No! I shed them at the grave of a man, that of a husband, a father of five children, who did not have for them more patrimony than that of the work of his arms."

The last verse says:

¹ Así relata el ajusticiamiento G.h. Mata (1968:190—191)

"May your body rest in peace there, poor fraction of persecuted class; while your spirit, looked at by the angels as their equal, may enjoy the divine heritage that the Father common had prepared for you. Plead to the Great All that soon a more civilized and humanitarian generation than the present one comes to erase the death penalty from the homeland of your ancestors".

Reactions came soon. The fact that she had dared to make public her non-conformity with the death penalty, defended still by the Catholic church, was inconceivable for her detractors and constituted the moment of overflowing of the moral persecution with her as the target as freethinker receiving poets of the city in her home. In anonymous leaflets (attributed by some authors to Fray Vicente Solano²) they did not only criticize her harshly for defending Lucero "as crime should be expiated before God and before men" but they defamed her honor and reputation up to a point when she committed suicide, finalizing her life. Society at that moment had other repressive channels, different from the legal ones but as efficient as these exercised in daily life as micro powers aiming at isolating, harassing and undermining the internal strength of the individuals. The death of Dolores Veintimilla would provoke emotions similar to the gallows: those of a social system vindicated in its moral principles.

The death penalty and the sovereign power

We know from Foucault (1980) that in the ancient Regime of Europe the performance of an execution responded to a 'regulated practice' with proper logics, with the aim to arouse terror in the public present in the act and reaffirming that way the sovereign power. We assume that the case of Ecuador during the mid Nineteenth century, the application of the death penalty, obeyed the objective of punishment and lesson in the context of a State that had been constituted in a fragile way and a reality where the indigenous rebellions³, political riots and disputes for power covered most of their history and were permanent. This exacerbated during the period and served to lay the foundation of sovereign power as well as to deepen the "reason of State".

1878

The discussion about the death penalty constituted an important aspect in the polemics between liberals and conservatives during the Nineteenth century. In the perception of the contemporaries, abolition responded to a humanitarian desire, a more democratic political project. The main argument of the abolitionists, which became evident at the Constitutional Assembly in 1878, consisted in the absolute inviolability of human life, and in the replacement of the death penalty by a penitentiary system or the deportation to the Archipelago of Galápagos. Pedro Carbo, who took part in this discussion, suggests that the death penalty does not correspond to the principal objectives of punishments which are "the reparation and the correction and reform of the delinquent and that through the penitentiary system delinquents can acquire a trade and working habits, and at the end of their sentence be corrected and reformed."⁴ (f.86). On the other side, the conservatives claim that the death penalty is the most exemplary punishment, most efficient in restraining crimes due to the terror it inspires, (f.87), ...that the reform of the delinquent is not all the objective of punishments but, fundamentally, dispel all crimes from society (f.88)... that with the abolitionist law the inviolability of life is not guaranteed, but the impunity of the major crimes, as the penitentiary system does not exist amongst us".

The relation between the discourse about delinquency and social sectors appears as well in this discussion. While the liberals have a more "positivist" approach as they claim that "the capital punishment always affects the ignorant, poor and miserable portion of society to which the beneficial

² Fray Vicente Solano (Cuenca, 1791-1865) fue un prolífico publicista de la Orden Franciscana. Publicó varios textos y revistas en los que polemizó con escritores liberales defendiendo a la Iglesia católica: El Eco del Azuay (1828); Baturillo, El Telescopio y La Alforja (1829); La Escoba (1854). Precisamente en esta última revista por defender la pena de muerte polemizó con la poetisa Dolores Veintimilla de Galindo, contribuyendo a su suicidio (Perez Pimentel, Rodolfo, www.diccionariobiograficoecuador.com)

³ A1 respecto ver Informes del Presidente y del Ministro del Interior al Congreso de 1873.

⁴ Diario de Debate de la Asamblea Nacional de 1878.

action it should have spread to improve their situation, instructing and educating them, has not outreached” (f.93), the conservatives are of the opinion that “the death penalty is necessary to restrain the ignorant classes of society who do not do it due to the dread about the punishment, different from the educated of morality, who restrain themselves more for fear of the public opinion and of the dictation of their consciences” (f 89b).

Who is right in that debate? Or, putting it in other words, how do these positions live together and are confronted in a specific time and context? As we see, there are two differentiated perspectives that define diverse political projects, and at the same time we assist a process of construction of State which makes the resource of death penalty more or less necessary. It is difficult to know if the State of that time was sufficiently spread to maintain society and the so called criminal sectors under permanent surveillance, and if the death penalty was “necessart” or not for the development of the reason of State. At the same time the change of system of punishments to another one based on “control and rehabilitation of the delinquent” contributed to the major development of the State machinery. The abolition of the death penalty contributed to generate the image of a civilized, non violent, State. Looking at it from a historical contemporary perspective, the door was opened for a diverse domination, where the State pretended to shelter or protect the individual and society as a policy of public order and control.

As regards the application of the death penalty for women, so far I could not find information, with the exception of the colonial period, when various indigenous women were executed during the indigenous riots and the execution of Rosa Zárate next to Nicolás de la Peña in the pro-independent process. Nevertheless, there were mecanismos related to confinement and the “moral death”, as well as symbolic executions as the onces practiced, in a later period against Zolia Ugarte de Landivar.