Emergencies without Emergency Powers: Extra-Constitutional Governance in the First Federal Republic
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Introducción

In this paper I will explore the performance of the liberal constitutional model that excluded emergency provisions between 1824 and 1834. I will establish that this omission did not preclude governments from taking action as they saw fit to face challenges of different nature. Finally, I will try to demonstrate that the absence of emergency powers in the 1824 constitution—a legacy of liberalism—led to de facto arbitrary rule. I will explore the particular institutional consequences of this omission in effective governance.

The first section of the paper provides the theoretical underpinning of my argument. The absence of legitimate emergency powers had several institutional consequences. One of them was to impair the constitution by calling into question its effectiveness. Illegal facultades extraordinarias also created incentives for political actors to attempt coups and thus hindered stable governance. The second part of the paper will analyze the 1824-1834 historical period. In 1835 the 1824 constitution was suspended by a centralist government that drafted seven constitutional laws. These laws, however, were even more adamant than the 1824 charter in their explicit condemnation of extraordinary faculties.

Emergency Powers: A Liberal Absence

The 1824 constitution went beyond the traditional exclusion of wide emergency powers typical of liberal charters. The Federal constitution did not include even the suspension of habeas corpus that the 1812 Cádiz constitution provided in article 308. Instead, article 112 of the 1824 constitution kept article 172 of the 1812 Spanish charter that provided for habeas corpus. According to Loveman, Mexican congressmen found in the 1824 document "sufficient latitude to incorporate a 'regime of exception' into the political system of the new republic." In his opinión, ambiguity in defining congressional authority in Article 49 resulted in "grants of emergency powers to executives despite the lack of clear constitutional specification of authority for such delegation." Article 49 read: "The laws and decrees that emanate from the Congress will have as their object: I. Sustain national independence and provide for

1. The president could not deprive anyone of his freedom, nor could he impose any penalty; but he can order the arrest of persons if required for the welfare and security of the federation, but they had to be brought before a magistrate within forty-eight hours. See Felipe Tena Ramírez, Leyes fundamentales de México, 1808-1992 (México: Porrúa, 1992): 184.

the conservation and security of the nation in its internal relations; II. Conserve the federal union, and peace and public order within the federation. Yet, contrary to what Loveman asserts, there was no ambiguity in the 1824 constitution regarding facultades extraordinarias: they had been openly debated and rejected by the majority of deputies in the Second Constituent Congress. No "regime of exception" was intended by the legislators that drafted the 1824 constitution. Article 49 was not interpreted as "giving cover" to the delegation of extraordinary faculties: the decrees of facultades extraordinarias never invoked article 49 as its legal basis. The argument that article 49 could be interpreted as authorizing such delegations was hardly even mentioned during the legislative debates. Instead, the argument most frequently used to justify extraordinary faculties was that of necessity. In other words, legislators were well aware that such faculties were anti-constitutional, but they thought that the ordinary provisions of the constitution were not enough to cope with emergencies. As Burgoa asserts, the drafters of the Constitutive Act and of the Federal constitution of 1824, did not foresee that abnormal cases might occur in the life of the country in order to create the juridical possibility that the Executive power be vested with extraordinary faculties to cope with the inherent upheavals typical of every emergency situation. In light of such constitutional omission, all the laws by which such faculties were decreed were in conflict with the principle of division of powers that was categorically, and without exceptions, embedded in the Constitutive Act and in the 1824 constitution.

However, as Tena contends, the following years made evident that such provisions were indeed necessary. The Executive was forced to employ extraordinary faculties, in spite of their absence in the constitution, to face social unrest. Yet, "once that the supreme law had been put aside, and lacking any regulation for the use of such faculties, the Executive went to extremes." Illegal extraordinary faculties had

3. Tena Ramírez, Leyes fundamentales, 173.
4. According to Ignacio Burgoa: "Not in the Constitutive Act, nor in the Federal Constitution of 1824 was the suspension of individual guarantees provided for abnormal and dangerous cases for the life of the country. Moreover... the sharply defined criterion of division of powers that both documents embraced made it impossible to suspend such guarantees, since in order for such suspension to take place it necessarily had to recognize the delegation of the legislative function to the Executive, which is the branch of government best suited to remedy a situation during an emergency." Ignacio Burgoa, Las garantías individuales (México: Porrúa, 1988): 209.
several negative political effects. First, once the government resorted to them, a high degree of uncertainty was introduced in the political system. Since these faculties were undetermined, the behavior of the government could not be predicted by the formal rules of the political game—the limits to legitimate state action became uncertain—thus, political actors had a powerful incentive to strike first, before an unpredictable government acted against them. Therefore, illegal extraordinary faculties did not deter, but instead encouraged revolts, or pronunciamientos. Among the powers that congresses granted to the executive was complete control over military affairs. What this meant in practice was that the presidents could remove, without further consultation with congress or state governors, local military chiefs from their local strongholds. Often, (as, in the 1824 Special Powers Law, explored below) decrees of extraordinary faculties also gave the executive the power to remove governors, local officials and to override legislation enacted by the state legislatures.

The constitution became a poor predictor of behavior. Since the decrees granting such faculties often did not specify duration or scope, the door to all kind of arbitrary actions against citizens’ rights was open. Insecurity produced a vast array of non-cooperative behavior among political actors. The coordination problem was even more acute given the specific nature of the political system of early nineteenth-century Mexico. Since Spanish rule had used coercive powers to hamstring the opposition, political opponents to the regime had to work in secret and loosely organized groups. Consequently, after independence they developed a pattern of opposition politics based on shifting coalitions formed to attain specific purposes. This pattern obviously involved a high degree of uncertainty. The Masonic lodges were the most conspicuous secret societies in early republican Mexico. Since these groups were, by their very nature, secret and since membership in these coalitions varied depending on the time and the issue involved, it was difficult for the players to predict the future behavior of other political actors. Thus, by the very nature of opposition politics in Mexico, stable governance, meaning sustainable cooperation among key actors to agree on a specific set of rules, was a difficult thing to achieve. The frequency of extralegal transformations in the nineteenth century is, as Rodriguez states, “an indication of the inability of Mexicans to agree upon a suitable political system.”


The problems of a constitutional system of functional boundaries were magnified by the nature of politics in the new republic. Limits to legislative actions were not self-enforcing. Mexico, unlike Brazil, did not have a monarchy vested with a moderating power by the constitution. In the absence of such mechanism, even the moderate civil core had to seek military leaders to further its aims. Military interventions were not only the result of praetorian ambitions, but also of the inherent weakness of the constitutional system. In the absence of a balancing mechanism, military interventions restored the equilibrium among the factions. Had the constitution provided some kind of moderating mechanism, civilians perhaps would have been less inclined to call on the military to aid them in their political struggles. The obstacles to stable governance were formidable. Illegal grants of extraordinary faculties only worsened things.

Under the cover of such faculties, executives made up for their structural weakness vis-à-vis the legislative branch. Illegal extraordinary faculties became an escape hatch from normal procedures of deliberation. Laws not related to the emergency were often decreed under the authority of extraordinary faculties. Finally, illegal emergency powers created problems of legitimacy for the regime. In light of their unconstitutional character they became in themselves a contentious issue. They added to the list of pretexts that ambitious generals gave to rebel. In sum, the absence of constitutional emergency powers, that in turn led congresses to grant de facto illegal facultades extraordinarias was one of the causes of chronic political instability in the early republican period.

**The First Federal Republic: 1824-1834**

**Historical Overview**

The Federal Constitution was enacted on October 4, 1824. Before, on October 1, the Second Constituent Congress had elected generals Guadalupe Victoria and Nicolás Bravo as President and vice-president, respectively. The first constitutional Congress was seated on January 1, 1825. The Federal Republic possessed a weak executive and a powerful two-chambers legislature. The national government lacked authority


10. This pattern had a precedent in the proposed “Law on Public Tranquility” that the Second Constituent Congress debated in 1824.
vis-à-vis the states, particularly regarding taxation. Victoria was inaugurated in the midst of widespread optimism and hope. But this confidence in the power of constitutional government quickly vanished. Before a decade had passed, the country found itself deeply divided. Feuding among factions had overthrown the legitimate government, an illegal president had taken office and military intervention had been accepted as a normal expediency. The country’s treasury was broke and its international prestige badly damaged. Also, the republic had faced an attempt by Spain to reconquer its former colony in 1829. The process of erosion of constitutional legitimacy was swift: in the summer of 1834 the 1824 constitution was abandoned.

Secret societies were one of principal political forces that controlled the public life of the new republic. During the decade of the 1820’s political groups coalesced around Masonic lodges: the escoceses, in the Scottish-rite lodge, were reputed to be the aristocratic party, while the yorkinos, of the York-rite lodges, were considered populists. First, president Victoria sought unsuccessfully to balance competing interests by including members of both groups in his cabinet. In the first months of his administration the Congress had worked within the frame of the constitution. Congress directed its attention to public education and to the chronic fiscal crisis that the country suffered. Yet, the 1826 congressional elections showed that factions had not disappeared. The elections were bitterly contested and both yorkinos and escoceses cried foul. The result was a Congress dominated by the yorkino faction.

A political crisis erupted in January 1827 when a conspiracy, led by the Spanish Franciscan Joaquin Arenas, was discovered. Arenas plotted to return Spain to power in Mexico. The conspiracy created a national scandal and led to the expulsion of Spaniards from Mexico. Fearful of the growing power of the populist yorkinos, prominent escoceses, among them Vice-president Bravo, rebelled in December 1827, in what is known as the Tulancingo or Montano rebellion. Even when the rebellion was swiftly crushed by the government, national politics became even more polarized. The defeat of the escoceses, however, broke the equilibrium among the factions. A moderate coalition was quickly formed to offset the power of the victorious yorkinos. This coalition was so successful that it’s candidate, War Minister Manuel Gomez Pedraza, was able to defeat in the 1828 presidential election the popular yorkino candidate: general Vicente Guerrero, a hero of the independence.


war. State congresses gave eleven state-votes for Pedraza against nine for Guerrero. Unwilling to accept the results, the yorkinos aroused popular sentiment. There were *pronunciamientos* throughout the country demanding that the elections be annulled. When a revolt erupted in Mexico City and Guerrero joined the rebels, the elected-president Gómez Pedraza resigned and fled the capital on December 4, 1828. With the shattering of the constitutional process in 1828, the country entered a long period of instability. Between 1821 and 1850, only one president, Guadalupe Victoria, completed his term in office.

In January 1829 the Congress annulled Gómez Pedraza’s election, selecting Guerrero as President, and Anastasio Bustamante --who had placed third in the elections-- as Vice-president. As it had happened before, the president and vice-president represented opposing political factions. In the summer of 1829, the Guerrero administration confronted a Spanish invasion. It proved easier to defeat the invaders than to control discontented groups who rebelled against the government. On December 4, 1829 the Reserve Army of Jalapa issued a *plan* against the government. General Bustamante commanded the rebels. For the second time in two years, the vice-president turned against his chief executive. This time, however, the president was not so successful in quelling the rebellion. When President Guerrero left Mexico City at the head of an army, the opportunity was seized by the major of the city to depose the government. Having learnt about the fall of his government, Guerrero dismissed his army and withdrew to his hacienda in the South of the country. Bustamante entered Mexico City on December 31, 1829. Once again, Congress ratified the change, recognizing Bustamante as the new chief executive.

The new regime was determined to restore order and stability. Although certain aspects of the economy improved during the 1830-1832 period, the political climate degenerated. The government became authoritarian, aristocratic, militarist and pro-clerical. Without attempting to change the constitution, in practice the Bustamante government (or Alamán administration as it came to be known, due to the prominent role played in it by Minister Lucas Alamán), attempted to impose its authority on the states. The states opposed such change. Regional discontent increased, culminating in a bloody civil war between the national army and the state militias. The conflict ended in December 1832 with the temporary return of Gómez Pedraza and the moderates and liberals. General Santa Anna, who had once more revolted, this time successfully, against Bustamante, was elected for the presidency on the 1833 elections. The distinguished liberal, Valentin Gómez Farías assumed the vice-presidency. Following his election, Santa Anna left the government in the hands of Gómez Farías and withdrew to his hacienda of Manga de Clavo in the state of Veracruz. Thereafter Gómez Farías and the radical majority in Congress set about to avenge the excesses of the previous regime. They also carried out the first liberal reform in Mexico, reducing the size of the army, confiscating Church properties, secularizing education, suppressing the tithe and abolishing the Church-led university.
These changes were accompanied by an intense propaganda campaign against wealthy aristocrats and the Church.

Moderates and conservatives then launched a campaign to defend their interests and those of the Church and the military. Protests against the radical government policies erupted throughout the country. The widespread discontent induced Santa Anna to return from his hacienda and resume the presidency in April 1834. Thereafter, Gómez Farías and other officials were forced to resign. Congressional elections in 1835 shifted the balance of power to the advocates of conservative policies. Newly elected congressmen proposed introducing a centralist form of government. This provoked a reaction from the states. Civil war erupted in 1835. In May, Santa Anna crushed the state militia of Zacatecas. In spite of the fact that the legislators had not been elected to a constitutional convention, on December 30, 1836, Congress enacted seven constitutional laws, known as the Siete Leyes. The new charter established a central state divided into departments. The presidential term was extended to eight years and a special body, known as the Supreme Conservative Power, was established to moderate among the three branches of government. This idea was directly taken from Constant. A new voting system was introduced, establishing property qualifications for participating in politics and for holding office. The first Federal Republic was over.

**Constitutional performance**

An assessment of the performance of the constitution must take into account the way it worked during crises. In some cases, governments simply acted outside the boundaries of the constitution without bothering to have a legal cover in the guise of facultades extraordinarias. Yet, in some others congresses granted unconstitutional extraordinary faculties to the executives. The absence of constitutional emergency powers meant that governments could not face an internal or external threat in a legitimate manner. But the void left in the charter also invited the use of illegal extraordinary faculties for purposes other than facing an emergency, such as the indirect strengthening of a structurally weak executive. A vast array of causes could be invoked to request undetermined special powers. Since the constitution did not provide for emergency powers, the scope of these “legal”, yet unconstitutional, faculties was undetermined, hence the door to arbitrary rule was opened.

There is no satisfactory account of the use of facultades extraordinarias during the years of the First Federal Republic.¹⁴ Traditional scholarship fails to record the exact number of occasions when congresses granted extraordinary

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¹⁴. The most complete accounts are found in: Tena, _Derecho constitucional_, 226-228; “Suspensión de garantías,” 118-123; Burgoa, _Garantías_, 205-231.
faculties to the executive. Between 1824 and 1834 extraordinary faculties were granted on four occasions: in 1824, 1829, 1832 and 1833. Likewise, they were seriously considered in 1828. Of these cases, only one is well documented: in the summer of 1829 a Spanish expedition landed in the Atlantic coast of Mexico. President Guerrero was then vested with facultades extraordinarias to face the threat.

1824: The Special Powers Law

Extraordinary faculties proved to be one of the most divisive issues in the Second Constituent Congress that drafted the 1824 constitution.¹⁵ Congressmen were deeply divided over the possibility of including in the constitution a provision to allow Congress to grant emergency powers to the executive. One of the most controversial actions of the Second Constituent Congress was the granting of unconstitutional extraordinary faculties to the president on the penultimate day of its session. Although this is the first recorded use of facultades extraordinarias after the enactment of the 1824 constitution, it is seldom mentioned in the literature.¹⁶ This was, according to Quinlan, apparently a well-coordinated effort by the executive branch and the supporters of a strong executive in the Congress, led by Ramos Arizpe.¹⁷

On December 23, 1824, in the middle of a routine session, Congress received a message from the executive branch stating that the latest news from the province of Campeche obliged president Victoria to ask the Congress to take immediate action to preserve public tranquility and to remain in session until the matter was resolved.¹⁸ Congress then moved into secret session to allow the cabinet to plead its case. In that meeting, Manuel Crescencio Rejón (who had opposed the inclusion of emergency powers in the constitution), deputy for Yucatán, introduced a proposal to empower the government to act against individuals in his province who were in contact with Spanish-held Cuba and all those who were suspected of being opposed to


¹⁶. It is only recently that David Quinlan has given an account of that historical event.


¹⁸. Juan Guzmán, First Secretary of State to the Congress, Mexico City, December 23, 1824, Archivo General de la Nación, Gobernación (hereafter cited as AGN:Gobernación), leg. 56, “Año de 1826.” Most legislative documents of the period 1824-1834, regarding authorizations of emergency powers are located in the legajo 56 of the National Archives (AGN).
“independence and the established form of government.” The government’s request and Rejón’s proposal were sent to a special committee. According to Quinlan, the situation in Yucatán was far from critical, and the administration subsequently took no action to remedy it. Government spokesmen, “however, managed to convince the special committee to issue a report calling for a grant of broad extraconstitutional powers to the president.” Congress held an unusual evening session behind closed doors to discuss the issue. The secret session lasted into the early hours of the morning, generating heated debate over both the committee report and the statement of the several ministers. Supporters, led by Ramos Arizpe, Gómez Farías and Minister of Justice, La Llave, managed to pass most of the articles of the project, which became the Special Powers Law. Under the provisions of this law, the president could expel any foreigner from Mexico, send any federal employee or resident of any territory or the Federal District into internal exile, remove any state employee through the respective governor, and use federal troops against any governor who conspired against the federal system or independence. As Quinlan asserts, this was hardly a piece of legislation designed to deal with a local problem. The Special Powers Law gave the president control over the federal and state bureaucracies, and to a lesser extent, over the governors of the states. These were powers granted to the executive in the drafts of the Constitutive Act and the Constitution, but removed from the final documents by a vote of Congress. Congress had also “removed from both documents provisions that would have allowed the

20. Ibid. 184. On the political situation in Yucatán, see Rafael F. Muñoz, Santa Anna. El dictador resplandeciente (México: Fondo de Cultura Económica/SEP, 1984): 76-80. Since Mexico was at war with Spain, all trade with the former metropolis had been banned. Yucatán’s merchants, however, refused to stop trading with Cuba. Meanwhile in Campeche, a neighbor province, the Spanish residents were being illegally evicted from their jobs. General Santa Anna had been sent as military commander to Campeche, since he was regarded by the government as a threat.

21. Decree, December 23, 1824. El gobierno tome las medidas que se expresan, cuando lo tenga por conveniente a la seguridad de la República. “El Soberano Congreso General Constituyente de los Estados Unidos Mexicanos ha tenido a bien decretar. 1. Estando en las facultades del gobierno expeler del territorio de la republica a todo extranjero cuando lo juzgue oportuno, cuidará de dar el correspondiente pasaporte a los que en las actuales circunstancias le parezca conveniente. 2. Se autoriza al gobierno para remover de uno a otro punto cuando le parezca conveniente a la seguridad de la republica a los empleados de la federación y habitantes de los territorios y distrito federal. 3. También podrá remover en el mismo caso a los particulares de los estados por medio de los respectivos gobernadores. 4. Si las autoridades supremas de los estados conspirasen contra la independencia o sistema adoptado de federación, el Supremo gobierno general de la republica las sujetará con la fuerza armada, conforme a la facultad 10 del artículo 11 de la constitución.” Colección de los decretos y ordenes del Soberano Congreso Constituyente Mexicano. Desde su instalación en 5 de noviembre de 1823, hasta 24 de diciembre de 1824, en que cesó (Mexico: Imprenta del Supremo Gobierno de los Estados Unidos Mexicanos, 1825): 179.
legislature to grant extraconstitutional powers to the president. Thus the constitutionality of the Special Powers Law was questionable."^23

According to Quinlan, the about-face by the Congress can be explained by examining the groups targeted by the legislation: Bourbonists, foreigners, centralists and opponents to the Federal District. These groups opposed the political structure created by the Constituent Congress. Many deputies, who had opposed a strong executive earlier in the year because they feared centralism, "seem to have switched positions to defend federalism." Four of the five deputies who drafted the Special Powers Law had opposed emergency powers in the constitutional debates.^^24 Elections results may have also played a role: president Victoria did not appear as a menace like the triumvirs that preceded him. Therefore, it was easier to trust him with greater power. Thus, "the Special Powers Law was an attempt to consolidate the federal system, rather than a response to a crisis situation."^^25 To emphasize the absence of an emergency, Congress passed, at the same time, an amnesty for all political offenses committed before the promulgation of the constitution.^^26 The paradox of the Congress giving extraordinary powers to the president and then granting a general amnesty to political subversives became the subject of an editorial in the newspaper of the central Creole elite, *El Sol*. The editors claimed that the Special Powers Law created a "new air of terror" in Mexico. At that time, unlike in the days of the Lobato revolt, there was no self-evident motive to grant such authority to the executive. Such powers were "highly unusual in the enlightened nations of our days."^^27

23. My emphasis. Ibid. 185.
24. They were: Gómez Farías, García, Vélez and Castillo. All of them voted against emergency powers in December 1823.
26. Decree. December 23, 1824. *Amnistía por opiniones políticas*. "El Soberano Congreso General Constituyente de los Estados Unidos Mexicanos ha tenido a bien decretar. 1. Se concede amnistía a todos los que estuvieran procesados, sentenciados o sufriendo alguna pena por opiniones políticas. 2. Se exceptúan a esta gracia los que hayan conspirado contra la independencia, y los que hayan delinquido por las mismas opiniones políticas después de publicada la constitución." Colección de los decretos, 179-180.
28. *El Sol*, December 27, 1824. "Cuando a principios de este año se dieron facultades absolutas al supremo poder ejecutivo, la causa era evidente, pues en el seno de la capital el gobierno se hallaba rodeado de gentes armadas que desconocían su autoridad: mas al presente la tranquilidad más completa reina en la república. [...] Aun lo desusado de estas facultades entre todas las naciones cultas de nuestros días les da un nuevo aire de terror. El gobierno que más ha propendido al despotismo, el francés, no creyó poder pedirlas, ni su sombra de representación nacional creyó deber darlas, cuando en el año de 1815 las conspiraciones polulaban por todas partes en la Francia. La ley que entonces autorizaba por sólo el término de seis meses al gobierno del rey a detener las personas de los ciudadanos sin previa sumaria información y conservarlos en prisión por tiempo determinado, exigía que la medida se acordase en consejo de ministros y la orden fuese firmada por tres de estos y si en el gobierno de un rey una asamblea de ultras juzgaba tan sagrada la libertad individual, que
The passage of the Special Powers Law was an inauspicious finish to the labors of the Constituent Congress. Bocanegra, a contemporary observer, asserted that the Congress had undermined its two greatest achievements—the Constitutive Act and the Constitution of 1824—by creating a “dictatorship” just as the political system it had created was about to go into effect. The makers themselves of the constitution were the first ones to disavow it.29 The damage to the constitution was evident. The signal conveyed by the passing of the Special Powers Law was that the constitution was not an effective governance device. Therefore the initial prestige of the 1824 charter was badly hurt. This, in turn undermined its effectiveness as a coordination device for the political actors.

The law was used against unarmed political opponents of the government. Soon there was an organized movement to force Congress to repeal the December 23, 1824 law.30 Yet, the law remained in effect for eighteen months. The period of time that the law was in effect coincided with the months that the new republic remained in peace. On January 2, 1825 deputy José Agustín Paz introduced a proposal to repeal the Special Powers Law. A long legislative battle ensued.31 Paz claimed that the law was “inopportune to the political state of the nation” and requested its repeal, since it was an obstacle to “the country’s external relations.” A request to repeal the Special Powers Law had been denied by Congress a few months before. In that occasion, the government claimed that extraordinary faculties were necessary since no European nation had recognized México as an independent country. Yet, by the time Paz issued his proposal England had already moved to give México diplomatic recognition. The new pretext of the government was that there were rumors that the Holly Alliance might invade the country. This time the committee did not go along with the Minister of Justice (Ramos Arizpe) and on April 17, 1825 issued a report supporting Paz’s request to repeal the law. It added that “the legislative power can vest the executive with constitutional extraordinary faculties only in the case of a foreign invasion or of serious internal upheaval.” Such faculties would be limited to those places where “the evil exists” and only for the time

30. Vested by his extraordinary authority, president Victoria deprived generals Negrete, Echavarrí and Obregoso of their positions in the army, El Sol, December 25, 1824.
31. Secretaría de la Cámara de Representantes. Sobre que se derogue la ley de 23 de Diciembre de 1824 relativa a las facultades extraordinarias del presidente de la República, AGN: Gobernación, leg. 56(1) E: 1 “Año de 1826.”
32. January 2, 1825. “Pido a la comisión tome en consideración la siguiente proposición: que se derogue la ley de 23 de diciembre de 1824 relativa a las facultades extraordinarias por inoportunas al estado político de la nación: por contrario a la felicidad común de los asociados, y por ser un obstáculo a nuestras relaciones exteriores.” AGN: Gobernación, leg. 56(1) E: 1 “Año de 1826.”
necessary to remedy it. Extraordinary faculties should not destroy, the committee argued, individual guarantees. The supporters of the law claimed that the Constituent Congress had dissolved itself before it had enacted basic laws on the administration of justice, fiscal provisions, regulation of the press, responsibility of public officials and the way to punish conspirators. The republic could not function, some deputies argued, without such laws. The Special Powers Law would last only while Congress drafted such laws. How, they asked Congress, can crimes be punished if there are no tribunals to try nor there are laws that name them? "Only the extraordinary faculties that the executive now has can somehow make up for them." The proposal of the supporters of the law was rejected and the report of the majority, requesting the repeal, was adopted by the chamber of deputies.

When the senate discussed the deputies' report they agreed: the Special Powers Law should be repealed. "It is time," a senatorial committee argued, "for the Mexican nation to act only within her constitutional institutions." The senate considered that there was no powerful motive for citizens to live deprived of their "just freedom." One of the members of the committee, Juan Nepomuceno Rosains, agreed.

33. Dictamen. April 17, 1825. "En apoyo pues de la proposición del Sr. Paz, a la cual suscribe desde luego la comisión, sólo resta indicar unas ligeras observaciones. 1ra. Que el poder legislativo no puede investir al gobierno de facultades extraordinarias constitucionales sino en el caso de una invasión extranjera o de un grave trastorno en el orden interior. 2da. Que estas facultades se limitarán a los puntos en que exista el mal y por el tiempo que baste aprevenirlo o remediarlo. 3ra. Que ellas han de ser de tal naturaleza que no destruyan las garantías individuales. 4ta. Que con estos mismos principios que serán desenvueltos con mas extensión y claridad si fuera necesario, podrá la cámara con su profunda sabiduría hacer la debida aplicación, al caso que nos ocupa, y de ellos deduce la comisión su dictamen refundido en la siguiente proposición: Cesan las facultades extraordinarias concedidas al gobierno por decreto de 23 de diciembre último." AGN:Gobernación, leg. 56(1) E: 1 "Año de 1826."

34. February 16, 1825. "El congreso constituyente acusado de querer permanecer más allá de su mandato se disolvió dejando a los congresos posteriores los importantes puntos sobre arreglo de la administración de justicia en los tribunales generales, en el distrito y territorios: sobre el sistema de hacienda [...] sobre un reglamento que reprimiese los abusos de la imprenta; y últimamente una ley que detallase el modo de exigir la responsabilidad a los primeros funcionarios, y las penas con que han de castigarse los conspiradores. Todas estas leyes eran consideradas como absolutamente indispensables para la marcha de la constitución, y sin ellas es imaginario el sistema federal, pues no pueden suplirse por las antiguas leyes formadas para una Monarquía, y su falta ofrece un camino muy amplio a los descontentos para maquinar y trastornar el orden, ya abusando de la licencia de imprimir, ya disputando a los gobiernos generales sus facultades, o por otros mil medios que no se ocultan a la sabiduría del senado y que no es prudencia manifestar en público. ¿Cómo han de evitarse los delitos si no hay tribunales que castiguen, ni leyes que designen sus penas? ¿Cómo se impediría que un escrito maligno excite un tumulto popular si la ley española que existe para estos casos está calificada de insuficiente por la experiencia? ¿Cómo se ha de salir del laberinto y confusión en que estamos metidos en el Distrito Federal si no se dan las leyes que nos saquen del d? Solo las facultades 'extraordinarias' que tiene hoy el jefe de la república podrán suplirlas de alguna manera." AGN:Gobernación, leg. 56(1) E: 1 "Año de 1826."

35. February 8, 1825. Dictamen de la comisión de Gobernación del Senado sobre facultades extraordinarias del gobierno. "Los que suscriben, después de haber examinado el
not only supported the report calling for the repeal of the Special Powers Law, but issued a particular vote summarizing the views of many other senators. Rosains argued that extraordinary faculties were not warranted in that particular occasion. However, and this is the remarkable point, the senator recognized that under pressing circumstances—not the ones prevailing then—emergency powers were indeed necessary. This was a significant insight, since the 1824 constitution did not provide for such means to face emergencies.

“Benjamin Constant,” Rosains argued, “has made an unexpected finding: that there is no unlimited sovereignty.” Nor the people, nor the kings, he asserted, “should block the natural rights of men.” Rosains contended, that the example of Rome did not support the Special Powers Law. Rome, Rosains argued, created the dictatorship only in cases of grave danger. The crisis was evident to all of her citizens and the dictatorial authority was granted for only six months. Since Mexico was not under such “urging and pressing” circumstances and since the duration of the Special Powers Law was not specified

we are not in the situation that allow us to follow the procedures of the Roman senate. (...) Only when the independence is in danger, only in such crises that have as their aim to pull down our institutions, it is permissible to sacrifice a share of the individual’s liberties for the general liberty: at that time actions require
concealment and an expediency so violent that the public good would suffer if it is obstructed by slow debates and discussions..."  

Clearly, the need of emergency powers was recognized, even if Rosains thought that in that particular occasion the December 23 law was not justified by the circumstances. The example of the American president Andrew Jackson was used by Rosains to support this view. During the war with Britain, Jackson had enacted a martial law that, in spite of having deprived the citizens from their rights in the short run, in the long run it saved the American Republic. Roman dictatorship was regarded by Rosains as an institution superior to extraordinary faculties.

The battle to repeal the Special Powers Law was long. The chamber of deputies switched between recommending the derogation of the law and upholding it. The supporters, aided by the administration, won back the majority in the chamber and reversed the previous report, and issued a new one, this time upholding the law. However, the Senate, which unambiguously opposed the law, did not approve...
such report. The state legislatures of Mexico and Veracruz issued petitions demanding Congress to repeal the law. Finally, on April 26, 1826, and after a long year of legislative standoff, the opponents of the law won again a majority in the house. A proposal to derogate the Special Powers Law was again issued. This time the Senate moved fast to ratify the deputies' resolution and the December 23, 1824 law was finally repealed on May 6, 1826. Clearly, right from the beginning of the Federal republic, extraordinary faculties had been used as a substitute for ordinary constitutional provisions. As the arguments in Congress demonstrate, the feasibility of such provisions was called into question by the use of unconstitutional means by the government.

*Patterns of Extraconstitutional Enforcement: 1827-1828*

The first years of relative stability that the new republic enjoyed were linked to the use of unconstitutional extraordinary faculties. As the supporters of the Special Powers Law argued in Congress, the law was to be credited for the absence of serious threats to the regime. Yet, illegal extraordinary powers strained the relations between the central government and the states. The December 23, 1824 law afforded an artificial peace and eventually undermined the reputation of the constitution. If the new charter was an adequate means to rule the country, as it was hailed by its supporters, then why did the government have to make use of an unconstitutional device such as the Special Powers Law? The likely answer was that the constitution itself was flawed. Had it been really effective, illegal extraconstitutional faculties would not have been necessary in the first place. At the same time, the first republican government preserved the pattern of extraconstitutional enforcement developed in the previous years. On October 3, 1825 Congress extended, once more, the September 27, 1823 law, which allowed civilians to be tried by military commissions. This time the scope of the martial law was expanded to include even more cases in

The fact that there were disturbances in Yucatán, and that three states (Durango, Coahuila and Texas) had not yet adopted their local constitutions was adduced as reasons to preserve the extraordinary faculties of the executive. The silence of the state legislatures was also interpreted as tacit consent.

40. February 17, 1826. *La legislatura del Estado de México se manifiesta contra las facultades extraordinarias.* The Congress of the state of Veracruz asserted that “the constitution did not want, by any means, to give the President faculties concerning the liberty and security of individuals, that belong to another power... such faculties are anticonstitutional; they attack individual liberty and security, they conflict with the federal republican system and they endanger the political existence of the nation.” April 20, 1826. *Petición de la legislatura de Veracruz de que se deroguen las facultades extraordinarias.* AGN: Gobernación, leg. 56(1) E: 1 “Año de 1826.”
which military jurisdiction could be applied to civilians. This only retarded the establishment of ordinary tribunals and confused the administration of justice.

On January 18, 1827 a conspiracy by the Spanish priest Joaquín Arenas was discovered in Mexico City. Arenas intended to return Mexico to Spanish rule. Since the crimes of conspiracy were punished according to the September 27 law, Arenas was tried by a war council and sentenced to death. He was executed on June 2, 1827. The extraconstitutional martial law was also used by the government, along with illegal extraordinary faculties, to repress its political enemies. For instance, when generals Negrete and Echávarri were acquitted by the war council that tried them according to the September 27 law, the War Minister, Gómez Pedraza, exiled them using the December 23, 1824 law.

Such maneuvers were denounced by José María Luis Mora, the brightest liberal of those years, in the newspaper El Observador. Echoing Constant, Mora

41. October 3, 1825. Extensión de la ley de 27 de Setiembre de 1823 sobre ladrones juzgados militarmente. “1. Se hace extensivo el artículo 1 de la ley de 27 de Setiembre de 1823, que habla de ladrones en cuadrilla, a todo ladrón aprehendido en el distrito federal y territorios, por la autoridad política, tropa permanente, milicia activa o local, aunque no sea destinada para persecución de ladrones, supliéndose los consejos de esta última milicia, caso de falta de oficiales, con los de los otros. 2. Esto se entiende sin perjuicio de la jurisdicción ordinaria de los reos que ella haya aprehendido, o aprehenda en los sucesivos, aunque se en auxilio de fuerza militar. 3. Las autoridades militares aplicarán las penas que expresa y literalmente designan las leyes comunes. 4. Se autoriza al gobierno para que pueda gratificar de la hacienda nacional a tres asesores en el distrito, con doscientos pesos mensuales cada uno, y uno en cada territorio, si lo creyese necesario, con cien pesos, para que consulten estas causas; y si en alguna de ellas quedaren recusados los tres asesores, el gobierno podrá nombrar otro que subrogue en solo la causa de la recusación, o ratificándolo particularmente. 5. Esta ley cesará en todas sus partes luego que se publiquen en esta ciudad, su distrito y territorios, las leyes que arreglen definitivamente la administración de justicia” in Manuel Dublán and José Lozano, Legislación mexicana o colección completa de las disposiciones legislativas expedidas desde la independencia de la república (México: Imprenta del Comercio, 1876): 1:771. The Second Constituent Congress had extended indefinitely the martial law of September 27, 1823 on April 6, 1824.

42. The law was so expansive, that Congress had to issue an “aclaration” to avoid some of its original harshness. November 21, 1825. Aclaración de la ley de 27 de Setiembre de 1823. “En las causas de que se habla la ley de 27 de Setiembre de 1823, cuando la sentencia del comandante general del distrito federal no fuera confirmativa de la del consejo de guerra ordinario, remitirá los autos en consulta a los dos asesores dotados que no hubieren intervenido en la causa, para que reuniéndose con otro tercero que nombrará el gobierno, la vean y den su dictamen dentro de tres días perentorios, con el que se deberá conformar el comandante general, llevándose a pleno y debido efecto.” Dublán y Lozano, Legislación mexicana, 1:772.

43. Costeloe, República federal, 90-97. For the proceedings of the trials of the conspirators involved in the Arenas affair see, Bocanegra, Memorias, 1:610-745.

44. Lucas Alamán, Historia de México desde los primeros movimientos que prepararon su independencia en el año de 1808 hasta la época presente (Mexico: Fondo de Cultura Económica, 1985): 5:831-832.

45. “El que trata de establecer el régimen arbitrario, lo primero que procura es que las personas de los ciudadanos estén enteramente a su disposición. Una vez alcanzado esto, camina sin
charged that every political system that allow “the arrest and exile of persons without due process, carries within itself the seed of disasters, that sooner or later will explode.” At that time Mora endorsed wholeheartedly Constant’s condemnation of emergency powers. In one of his journalistic pieces, he cited Montesquieu’s *Considerations on the Causes of the Grandeour and Decline of the Romans*: “In popular governments, the people have never been saved by proscription laws.” Mora criticized the contradiction between the constitution and the secondary laws that canceled it. The example of the Victoria administration acting under the Special Powers Law, prompted Mora to write a full-fledged condemnation of “exception laws.” On August 8, 1827 Mora wrote that the constitution had proclaimed the freedom of the press, individual security, and the division of powers, but as soon as these liberties had been accepted the government decreed secondary laws to exile under *extraordinary faculties*, and to create military commissions and war councils that “try as they please.” Such sad state of affairs was similar to the Terror instituted by the Committee on Public Safety in France. Once a constitution has been given, Mora contended, “legislative bodies lack the faculties necessary to decree such laws... their actions are unjust in themselves, because they tend to absolutism; they are illegal because they breach the constitution and they are imprudent, because they alarm the people...” If among all the laws, Mora asserted, “the constitution, is the only one that is powerless, and if it is helpless against the others [laws], that can everything against it, if it [the constitution] does not exist but to receive outrages, what kind of obligation exists to obey it and how is its attributed immutability to be understood?” A constitution breached by the legislative body, Mora contended, is unable to offer any security at all.

Along with extraordinary faculties and martial laws, the government decreed on December 20, 1827 a law to expel Spaniards from Mexico. Such law, of course, breached the individual rights of foreigners living in the country. After the populist yorkinos won a majority in the 1826 congressional elections, the escoceses faction obstáculo hasta llegar al término. Para conseguirlo supone la necesidad de aumentar la fuerza del gobierno, por la suspensión de las fórmulas judiciales, por las leyes de excepción y por el establecimiento de tribunales que estén todos a devoción del poder y bajo su dirección e influjo... ciudadanos... desconfián de todas las solicitudes relativas al aumento o concesión de poderes extraconstitucionales o contrarios a las bases del sistema, sea cual fuere su título o denominación, especialmente si para obtenerlos se alega la existencia o temores de conspiraciones.” José María Luis Mora, “Sobre los medios de que se vale la ambición,” *El Observador de la República Mexicana*, June 20, 1827. On Mora, see: México y sus revoluciones, 3 vols. Paris, 1836; Obras sueltas (Paris: Librería de Rosa, 1837).

was displaced from key political posts. Their dissatisfaction led to a revolt, headed by the vice-president Bravo, on December 21, 1827. The Tulancingo rebellion, as it came to be known, was poorly conceived and was soon quelled by the Victoria government. Guerrero defeated Bravo’s forces on January 7, 1828. The vice-president was captured and tried by the Congress. Although the government crushed easily the uprising, the Tulancingo revolt was the first significant attempt to overthrow the government since the proclamation of the constitution.50

The 1828 presidential elections were a challenge to constitutional governance. A moderate coalition coalesced around the War Minister Gómez Pedraza to offset the unchecked power of the yorkinos. Gómez Pedraza defeated the yorkino candidate, Guerrero and won the presidency by a short margin of state votes.51 That constitutional government was not a stable equilibrium was obvious when the defeated faction did not accept the results of the elections. A revolt, led by Santa Anna, erupted in the city of Jalapa a few days after the elections had taken place, on September 3, 1828. This time the threat to the constitutional government was more serious, since the defeated candidate, Guerrero, was very popular and had allies around the country. Santa Anna issued a plan calling for the government to annul Gómez Pedraza’s election, to decree a new law to expel the Spaniards, to declare Guerrero president and to demand the state legislatures to hold new elections “in accordance to the General Will.”52 On September 17, 1828 Congress issued a decree outlawing Santa Anna.53 At that point it seemed that the most important generals were not following suit. They had adopted a strategy of “wait and see”. If other generals revolted, then they would join the bandwagon. Therefore, it was critical for

50. Ibid. 137-166.
51. Ibid. 167-189.
52. Ibid. 189-216.
53. September 17, 1828 Ley. Se pone fuera de la ley al general Santa-Anna “1. Se pone fuera de la ley al general D. Antonio López de Santa Anna, identificándose previamente su persona, si dentro del término que le prefije el gobierno, no rinde a su disposición las armas. En el caso de entregarlas, se le indulta de la pena capital. 2. Lo gns. y oficiales que se hayan pronunciado por el plan revolucionario del expresado general, si dentro del término que se le señale, según el artículo anterior, no se separasen de aquel cabecilla, poniéndose a disposición del supremo gobierno, serán juzgados con arreglo a Ordenanza. Los que por el contrario, lo verificaren dentro de dicho término, serán juzgados en consejo de guerra de generales, e indultados de la pena capital; y si ante el consejo acreditan seducción o engaño, serán conservados en sus empleos, sin nota en su hoja de servicios. 3. Los militares de sargento para abajo que se hayan adherido al mismo pronunciamiento, quedarán en sus plazas y goces, indultados de toda pena, y sin nota en sus filiaciones siempre que en el término que les señaile el gobierno se pongan bajo su obediencia; y no verificándolo serán juzgados con arreglo a Ordenanza, como reos de alta traición. 4. Los milicianos cívicos y los paisanos que se hayan agregado a los revolucionarios, y los abandonaron en el término que les señale, según el artículo anterior, quedan libres de toda nota y de toda pena. En el caso contrario, también serán juzgados con arreglo a las leyes. 5. Los que voluntariamente prestaren auxilios para el sostenimiento del plan de Santa-Anna, apoyándolo de hecho o promoviéndolo de palabra o por escrito, serán reputados traidores, y castigados como tales.” Dublán y Lozano, Legislación mexicana, 2:79-80.
the government to quell the revolt as soon as possible. Only swift action would stop
the “snow ball” effect. This time the government knew that the threat posed by the
Santa Anna revolt was far greater, notwithstanding the apparent lack of enthusiasm
of the military.

On September 24, 1828 senator Francisco Palacios introduced a proposal to
grant extraordinary powers to the government. The proposal was approved by the
Senate and the next day a committee presented the draft to the lower house. Yet,
many deputies favored Guerrero. As some pamphleteers argued, the government had
violated the constitution by establishing military commissions. Hence, the illegality
of the extraconstitutional measures adopted by the government, such as the September
27 law, was used to justify Santa Anna’s uprising. President Victoria, through
Minister Cañedo, urged Congress to approve the proposal. The enemies of order
were confident, he asserted, “because they know that there are no laws of the nature
needed to check them with the efficacy and expediency necessary.” However, on
September 26, the Justice commission of the House rejected the senate’s proposal.
Granting extraordinary faculties to the president, the report argued, would only signal
weakness on the side of the government. The legislature of the state of Mexico

facultar extraordinariamente al Presidente de la República. AGN:Gobernación, leg. 56(1), E:3
“Año de 1828.” “1. Se faculta al Supremo gobierno para que tome las medidas y providencias que
juzgue necesarias para restablecer y conservar la tranquilidad pública, y el imperio de la
constitución y de la ley que no tuviera... por la rebelión del general Santa Anna.”

55. See, for instance, the pamphlet El Congreso y el gobierno son traidores a la patria y
más déspotas que Calleja (Mexico: Oficina de la Testamentaria de Ontiveros, 1828). “El artículo
148 de la constitución dice así: ‘Queda para siempre prohibido todo juicio por comisión y toda ley
retroactiva.’ [...] ¿Dónde constan las facultades que han recibido del paño para unos preceptos tan
monstruosos? Y si todo el poder emana necesariamente del que prefija el código, no haciendo en
él mención de tan raras facultades, ¿de dónde las han recibido los legisladores?”

56. Letter of Minister of Internal and External Relations, Juan de Dios Cañedo to the
Congress. September 29, 1828. “En consecuencia me manda el Sr. Presidente excitar al congreso
para que se sirva resolver a la mayor brevedad posible acerca de la ley y medidas de que se ocupa
para el restablecimiento de la tranquilidad pública y dictar, así mismo, las que estime oportunas y
eficas para que se proporcione al gobierno los fondos indispensables para este efecto, y que no le
dan los recursos comunes, como ha manifestado repetidas veces el Ministro de Hacienda.”
AGN:Gobernación, leg. 56(1), E:3 “Año de 1828.”

57. Comisión de Justicia. September 26, 1828. “La comisión de Justicia ha tratado de
examinar con cuanta detenión y calma permiten las circunstancias el acuerdo de la cámara de
senadores sobre autorizar extraordinariamente al gobierno para que tome las providencias
conducentes a refrenar el desorden de que nos vemos amagos con motivo del pronunciamineto del
general Santa Anna; y aunque convencida de que al gobierno le es necesario proceder con celeridad
y energía, no ha podido llegar a persuadirse de que publicándose como se verificará muy pronto, las
leyes sobre reforma del arreglo de la imprenta y organización de la milicia local del distrito, sean
necesario atropellando todo y echar mano del último recurso, dando de este modo mayor
importancia de la que tiene al pronunciamiento de Perote, exasperando los animos de los que por
temor o respeto a las leyes se mantienen tranquilos, y manifestando una especie de debilidad de que
están sin duda muy distantes los supremos poderes. Por lo tanto concluye sujetando a la deliberación
addressed Congress a veiled threat: the state authorities “would not accept the intrusion of an alien power in its internal affairs.” 58 Since the government insisted, the Justice Commission issued a new report on October 2, insisting that “Extraordinary faculties are alien to liberal principles and even to the circumstances that could threaten them.” 59 On October 19, the Justice and Public Safety Commissions of the House issued a joint report: they rejected granting broad emergency powers to the executive and instead proposed to resuscitate the Special Powers Law. Sending suspected persons to internal exile was better than subjecting them to war councils. 60 For the opposition press, granting extraordinary faculties to Victoria was like establishing a dictatorship, one in which the elected president Gómez Pedraza would be the dictator. 61 No agreement was reached and no legislation was enacted. Four months later the constitutional government would fall. While Santa Anna was garrisoned in a southern city of the country, a small number of troops revolted against the government in Mexico City on November 30, 1828. The Acordada rebels, as they were known, demanded the resignation of the elected president. When fighting erupted in the capital on December 2, no side seemed to have a clear victory. At that point, Guerrero, who had kept himself aloof, joined the Acordada rebels and tipped the balance in favor of the rebels and against the government. Gómez Pedraza, the elected president, fled the city and left president Victoria and a handful of loyal forces at the mercy of the rebels. The constitutional president was forced to negotiate a settlement with the rebel leaders that would allow for a peaceful transition. Constitutional government had been shattered. Congress declared the election of Gómez Pedraza null and appointed Guerrero as president and
Anastasio Bustamante, who had placed third in the elections, as vice-president. Such actions were clearly anti-constitutional. All legal formulas had been broken. The Victoria administration came to an end on March 31, 1829. An armed revolt against his government had succeeded and an illegitimate president was about to be inaugurated. This was a significant landmark. Once constitutional procedures were transgressed, it would prove impossible to retrieve the sense of legitimacy that the government once enjoyed.

In this process, the absence of emergency powers played a role. The granting of unnecessary and unconstitutional extraordinary faculties (such as the December 23, 1824 law), as well as the use of extraconstitutional measures, like the September 27, 1823 martial law, at the onset of the Victoria administration damaged the prestige of the constitution, but once a real emergency appeared, the government was not able to face it legally. When Santa Anna revolted in 1828 the government was unable to confront him with the necessary expediency. The result was the dismissal of the constitution and the breakdown of legitimate government.

**The Spanish Invasion: 1829**

Four months after having taken office, Guerrero faced the first challenge to his administration. A Spanish expedition had to be confronted in the midst of a serious fiscal crisis. On July 27, 1829 an army of three thousand Spanish soldiers landed on Mexico’s Atlantic coast, near the port of Tampico. This force was headed by general Isidro Barradas. A patriotic fervor enraged the country. On August 6 twelve deputies introduced in the chamber of deputies a proposal to grant extraordinary faculties to the president for five months. However, at that time the proposal was rejected by eleven votes. Thirty-one deputies voted against, while twenty supported the proposal. The long editorial of El Sol of August 8 is highly instructive. The feasibility of the republican form of government was called into question by the newspaper because the liberal constitution did not provide for emergencies. “We will never”, the editors asserted,
be so credulous as to believe that the liberty and the rights of men are so weak that they can not be maintained without the aid of despotism; to preach such doctrines, and to invoke them in the days of danger is the same as to assert that the principles and maxims of republicanism are but brilliant and charming theories destined to glow in peace and to eclipse or hide their fake shine in the ill-fated days of war. One of the first qualities of a good government is its ability to resist foreign aggression. If, by the tacit recognition of these 

pseudo legislators, the government can not expel the invaders without uniting all the powers under one hand, then the republicanism that our regime has adopted is not the best kind of government, since according to its principles it can not serve one of its first duties, namely the defense from the exterior.\textsuperscript{65}

According to the editors of the newspaper, Esparta, Athens, Carthago and Rome never felt the necessity of “abjuring their principles” in order to achieve greatness. Clearly, the example of Roman dictatorship was missed by the editors.

The argument of the opponents of granting extraordinary powers to Guerrero was that, as congressman Tornel asserted, the emergency could be faced with the ordinary provisions of the constitution: “the patria can be saved from the perils that threaten her by religiously observing the constitution and the laws.” The threat posed by the small invasion was not great, the nation had the resources to fight the war, and Congress had already passed several laws intended to deal with the situation. The president, Tornel asserted, “will have so firm a support without the need of casting a

\textsuperscript{65} El Sol, August 8, 1829. “Los mexicanos han oido con escándalo y patria indignación haberse pretendido en la cámara de diputados armar con facultades extraordinarias la mano del poder ejecutivo... Los mexicanos nunca abrazan con más ardor su constitución y leyes, que cuando las ven amenazadas de una invasión extranjera. Nunca, en verdad, seremos tan crédulos que nos hayamos de persuadir ser tan débiles la libertad y derechos del hombre, que no se puedan sostener sin llamar al auxilio al despotismo; predicar tales doctrinas e invocarlas en los días de peligro es lo mismo que manifestar ser los principios y máximas del republicanismo brillantes y encantadoras teorías destinadas a lucir en la paz y a eclipsarse o esconder su falso brillo en los días calamitosos de la guerra. Una de las primeras cualidades que caracterizan un buen gobierno es la aptitud en que le coloca su sistema para resistir los ataques del exterior. Si, pues, por una tácita confesión que han hecho en sus pretensiones estos pseudo legisladores , el gobierno no puede rechazar la invasión expedicionaria sino reuniendo todos los poderes bajo una misma mano, o tomando una nueva forma, el republicanismo adoptado para nuestro régimen no es la mejor clase de gobierno, pues conforme a sus principios no se puede consultar a una de sus primeras obligaciones, cual es la defensa del exterior. [...] Si los pueblos mexicanos fueran los primeros que en el mundo adoptaran para su regimen el sistema republicano, creeríamos que la República Mexicana era uno de aquellos meteóricos, cuya luz debía brillar sólo por algunos momentos. ¿Pero cuántos ejemplos nos ministran la antigüedad? Esparta y Atenas, Cartago y Roma nunca abjuro sus principios ni creyeron necesarios deponerlos para triunfar y hacer respetar sus estandartes.”
transparent veil on the constitution of the republic.” The Barradas expedition was doomed to failure. The Spaniards had no allies in Mexico, they invaded the country in the summer, the worst season of the year, and therefore they had to fight not only the Mexican army but the deadly fevers of the coast. Soon most of the men in the Spanish army were either sick or starving. While the threat posed by the invading army was not serious, the Mexican government was ill prepared to face a foreign invasion of any sorts. Tax collection had stalled and the government was broke. The army was underpaid and under supplied. The coastal fortresses were in ruins.

Congress passed laws intended to broaden the ordinary powers of the president. Authorization was given to confiscate property, to grant military promotions and to fire government employees. The martial law was, once again, used against traitors. El Sol charged that such measures were anti-constitutional. On August 20, the Mexican army clashed with the Spanish forces in Pueblo Viejo. The next day a new proposal was introduced in the House to grant extraordinary faculties to the executive. This time the proposal was approved by the deputies. The

66. Speech of deputy José María Torner, August 6, 1829, reproduced by El Sol, August 11, 1829. “Si yo creyera que los españoles invadían nuestro territorio en número imponente y considerable, que contaban, por desgracia, con partido en nuestro suelo, que los recursos se habían agotado, que las leyes eran insuficientes de todo punto y que el entusiasmo patriótico no bastaba para salvarnos, acaso y sin acaso, me propondría que la constitución se depositara en un lugar sagrado, sino que obedeciera al imperio de los acontecimientos. Pero mexicanos, afortunadamente distamos mucho de ese momento y de esas circunstancias tan aciagas. La patria puede salvarse de los peligros que la amenazan observando religiosamente la constitución y las leyes [...] El poder de la nación conforme a las leyes y sin traspasar su órbita es grande para repeler a sus enemigos. Decretada está la formación del ejército compuesto de tres armas, de la milicia permanente, activa y local. La nación cuenta con recursos pecuniarios para hacer la guerra, se han dado leyes para proporcionar estos recursos al gobierno, y si llegare a calificarse que no son bastantes se acordarán otros por el conducto de los representantes de la nación. [...] El ejecutivo contará con tan firme apoyo sin que sea necesario correr un velo transparente a la constitución de la república.”

67. Costeloe, República federal, 221-230.

68. El Sol, August 15, 1829. Congress reinstated article 3 of the law of April 28, 1824: “Are traitors to the Federation all those who cooperate by means of printed matters, or by any other means, with the aims of any foreign invader, or that attack our federal institutions, or that slander the supreme powers, these criminals will be tried militarily in accordance to the law of September 27, 1823.” Not only were the authors of subversive material accountable to the government, but also the publishers of were held responsible.

69. El Sol, August 17, 1829. “Cuál crédulos debíamos ser para persuadirnos que el acuerdo del día 14 era diverso de la iniciativa del día 6. En este día se pretendieron facultades extraordinarias por el espacio de cinco meses, hoy se solicitan poderes anticonstitucionales por un tiempo indefinido.”

70. Costeloe, República federal, 225.

71. AGN:Gobernación, leg. 56(1) E:4 “Año de 1829”.

72. This time twenty deputies introduced the proposal. The decree was approved by forty-one votes against eight. Sixteen of the deputies whom had voted against a similar proposal on the 6, had changed their minds and voted for extraordinary faculties on August 22, 1829. Juan A. Mateos, Historia parlamentaria de los congresos mexicanos (Mexico: J.V. Villada, 1882): 5:553-589.
proposal caused, according to El Sol, “a painful uncertainty.”73 The government argued that it had not been able to raise the funds necessary to supply the army. On August 23 the word was passed that the senate was about to pass the decree of extraordinary faculties. “Is the constitution’s fault,” the editors of El Sol sourly questioned, “that the executive power does not have the necessary means for our defense? Is the constitution, by any chance, the one that has caused the previous evils so as to lead us to this evil that is greater than any other?”74 The next day the newspaper asserted:

it is very likely that the sun will set before its reasons have been answered by other reasons, taken from the arguments of Filangieri or Mr. Constant [...] Deputies and senators are but recipients of the popular will... Where in the constitution is the authority to grant extraordinary faculties found? Such faculties are beyond the power of the representatives and therefore they can not grant them, nor can the executive receive them.75

Although the majority in the senate supported granting Guerrero facultades extraordinarias, the proposal had also opponents among the senators. José Mariano Marin and Antonio Tarrazo were appointed to the Commission that examined the proposal to vest the president with extraordinary powers. The report, issued by the Commission on August 24, is worth quoting at length. The committee could not believe that the constitution could be seriously flawed: “To suppose that the constitution is only for the time of peace is to forget that it [the constitution] was given in times of war, and is to presuppose that the constituent Congress took for granted the peace of the republic, or that it left an immense void of how the nation should be ruled in times of war…”

They were not willing to accept the logical consequence of such void, that legitimate rule collapsed during emergencies, since threats could not be faced legally:

But just assuming for the sake of the argument that it [the constitution] must be suspended during times of war, the obvious consequence must be this: ‘once war has been declared the legislative powers of Congress disappear, as well as the power of the president, terminated, and the power of the tribunals, since all three [powers] have no natural dominion to give laws, to rule and to pass sentence respectively, since they can do no more than what

73. My emphasis. El Sol, August 22, 1829.
74. El Sol, August 23, 1829. My emphasis. The title of the editorial was: “¡Los hediondos y osorios calabozos abren ya sus cavernas para recibir a los amigos de la libertad!”
75. El Sol, August 24, 1829. My emphasis.
they are empowered to do by virtue of the constitution and their authority can last no longer than the Charter itself. Therefore, in times of war, the Mexican nation must be left headless and her people returned to the state of nature, free from all obligation, having broken the social contract, none is above the other, and all are free to take whatever road they please...

This was too much for the senators to concede: “And in such state is the Mexican nation believed to be freer to defend and maintain her independence? But, let it be, if this is meant to be,” they argued,

where would the senate find the faculty to vest the executive with such powers above and against the constitution itself? [...] How can we expect the nation to recognize the president vested with all-embracing faculties? Insolent citizens will mock him; the evil ones that seek only an opportunity to rebel will indeed revolt, and those more temperate, the ones that act only upon their conscience, will say in public or in private: ‘we are not obliged to comply’, and it is true that no right would be left to stop or punish any of them.76

76. My emphasis. August 24, 1829. Dictamen de la comisión del senado sobre el acuerdo de la cámara de diputados sobre conceder facultades extraordinarias al ejecutivo. “Suponer que la constitución es para sólo el tiempo de paz, es olvidarse de que se dio en tiempo de guerra, y es presuponer que el congreso constituyente tuvo por necesaria y perdurable la paz en la República, o que dejó el inmenso vacío de cómo había de gobernarse la nación en tiempo de guerra: es no haber parado la vista en el párrafo primero de la carta en que el congreso general aseguró decretarla para fijar la independencia de la nación; y no haberse detenido en el artículo último, que previno que jamás se podrán reformar los artículos de ella que establecen la división de los poderes supremos de la federación y de los estados. Mas fingiendo debiera cesar en el tiempo de guerra, la consecuencia que luego fluye es esta, ‘luego de declararse la guerra acabó la potestad legislativa del congreso, feneció la del presidente, se aniquiló la de los tribunales, porque uno, otro y los otros no tienen potestad natural para dar leyes, gobernar y fallar, y no mas pueden que lo que pueden por la constitución, y no puede durar su autoridad un momento mas de lo que dure esta Carta. Luego en tiempo de guerra había de quedar acéfala la nación mexicana y todos sus individuos vueltos al estado natural, quedarían absueltos de toda obligación, roto su pacto, ninguno superior, ninguno súbdito y libres todos para tomar el rumbo que más adaptare a su capricho. ¡Horrorísima anarquía! ¿Y en ese estado se cree que la nación mexicana tendrá más expedición para defender y sostener su independencia? Pero adelante, si así hubiere de ser, ¿de dónde tomará el senado la facultad de habilitar al poder ejecutivo sobre y contra la misma constitución? [...] ¿Cómo podemos esperar que la nación habida de reconocer al presidente investido de las facultades omnímodas? Los particulares que sean insolentes le burlarán: los malvados que buscan ocasión para alzamientos se le sublevarían, y los más templados, los que obran por conciencia, dirían en público o a solas, no somos obligados a la obediencia, y de cierto no quedaba derecho para enfrenar y castigar a ninguno.” AGN: Gobernación, leg. 56(1) E:4 “Año de 1829.”

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Even if they were not willing to accept their own logical conclusions, the reasoning of the senators was impeccable. Granting illegal extraordinary faculties was an implicit acknowledgment that the constitution was critically flawed. The absence of legitimate means to face emergencies seriously compromised the legitimacy of constitutional rule. The report proposed to reject granting broad emergency powers since such authorization violated the division of powers, and because it disposed of the judiciary, which was not in the hands of the senators. Instead, the commission proposed to decree a forced loan and to tighten the control over the press.

The report was not voted by the senate and it was returned to the commission. On August 25, the report was rejected and the senate approved instead the deputies' proposal to grant extraordinary faculties to the president. Two amendments were made: one forbidding the president to take the lives of Mexicans or to send them to exile, the other required the president to inform Congress about the use he had made of extraordinary faculties once it met in ordinary sessions. This report, however, did not imply responsibility. Senator Tarrazo cast his qualified vote: "I do not believe that extraordinary faculties are necessary. I do not consider them useful, but harmful. Nonetheless, I am for the proposal of the chamber of deputies, having to choose among evils, which is the only thing I see." Senator Tarrazo cast his qualified vote: "I do not believe that extraordinary faculties are necessary. I do not consider them useful, but harmful. Nonetheless, I am for the proposal of the chamber of deputies, having to choose among evils, which is the only thing I see." The amended decree of extraordinary faculties was enacted on August 25, 1829. Two days later Congress closed its sessions.

77. The amendments were introduced by senators Rejón, Gómez Farias, Moreno and Acosta. The wording of the article was changed from The government will "account" Congress for its actions, to the government will "manifest." El Sol, September 2, 1829.

78. August 25, 1829. "No creo necesarias las facultades extraordinarias. Tampoco las considero útiles sino perjudiciales. Sin embargo estoy por el acuerdo de la cámara de diputados, escogiendo entre males, que es lo único que se presenta a mi vista." Tarrazo's vote in Ibid.


80. "Art. 1. Se autoriza al Ejecutivo de la Federación para adoptar cuantas medidas sean necesarias a la conservación de la independencia, del sistema actual de gobierno, y de la tranquilidad pública. 2. Por el artículo anterior no queda el gobierno autorizado para disponer de la vida de los mexicanos, ni para expelerlos del territorio de la República. 3. Esta autorización cesará tan luego como el congreso general se reúna en sesiones ordinarias. 4. Las actuales sesiones extraordinarias se cerrarán tan luego se publique esta ley. 5. El gobierno manifestará al congreso en su reunión ordinaria del próximo Enero, la necesidad que ha tenido en los casos en que ha hecho uso de las facultades que se concede el Art. 1." Dublán y Lozano, Legislación mexicana, 1:151.
J. Antonio Aguilar/Emergencies without Emergency Powers:

*El Sol* regretted the passing of the law in a remarkable editorial:

We say, along with the wise man of Salamanca when he impugned Montesquieu’s opinion that ‘there are cases in which the effect of the laws that protect individual liberty must be suspended and covered with a veil as in certain times the statues of the gods were covered with a veil.’ A rhetorical figure, no matter how beautiful and brilliant might be, is not a reason and in spite of the respect I feel for the man that has justly been called the legislator of the nations, I dare to think that, with good laws that provide for all possible cases, and for those that can not be foreseen, good general rules, there are no circumstances under which it is advantageous to suspend the guarantees of individual freedom. If general laws show the measures to be taken in these and other similar cases, such an odious law of exception will not be necessary.

The editors questioned: “Is it the point to discredit the system, that must save us under any circumstances, by presenting it to the mob as weak, impotent, and as incapable of providing for the security and happiness of the state? Is not this to make room for the discontented to present themselves to the people as defenders of their liberties?” If the reflexive slowness of legislative bodies, the editors of *El Sol* asserted,

were an obstacle to the defense and security of the nations, and if individual guarantees were reefs where governments unfailingly wrecked, the facts would have already exposed the brilliant theories of the philosophers, the freedom, giving powerful and incontestable arguments to absolutism and the republican governments would have vanished at the sight of the scepters.81

81. My emphasis. *El Sol*, August 25, 1829. “...decimos, como el sabio de Salamanca, impugnado la opinión de Montesquieu, de que ‘en ciertas circunstancias debe suspenderse el efecto de las leyes protectoras de la libertad individual, y cubriéndolas con un velo la manera que en ciertos tiempos se cubrian con un velo las imágenes de los dioses’. Una figura de retórica por hermosa y brillante que sea, no es una razón y a pesar de mi respeto a un hombre que justamente ha sido llamado el legislador de las naciones, me atrevo a pensar que con buenas leyes que prevean todos los casos posibles, y para los que no puedan prever se den buenas reglas generales, no puede haber circunstancias en que convenga suspender las garantías de la libertad individual. Si las leyes generales indican las medidas que deben tomarse en estas y otros casos semejantes, no será necesaria un ley odiosa de excepción.” The "wise" man of Salamanca mentioned in this remarkable editorial was Salas, who had written a treatise on constitutional law: *Derecho público constitucional.*
On August 26, *El Sol* recognized that the battle against extraordinary faculties had been lost. The affair of *facultades extraordinarias*, its editorial stated, “is over.” It must be noted that among the senators that voted for the decree were two prominent liberals: Gómez Farías and Rejón, who had opposed emergency powers in 1822 and 1824. Guerrero addressed Congress in its last session, claiming that “the nation will not shed one single tear for the abuse of these terrible faculties. I will employ its power and its resources against the enemy and to secure the citizen’s free exercise of social rights.” The president of Congress replied that congressmen had realized that in order to repel the invasion government must have “all the means, all the energy and enough power to stop internal licentiousness and to expel the invaders.” He trusted that the president would not abuse the power “with which Congress had vested him.”

The Spanish invaders were defeated in Tampico and surrendered on September 10, 1829, only sixteenth days after Congress vested Guerrero with extraordinary faculties. The government, however, did not give up its powers. Since the August 25 decree had authorized the executive until January, the Guerrero administration retained the extraordinary faculties and used them freely. In the next three months the government enacted no less than 25 laws under the authority of extraordinary faculties, most of them after the Spaniards had been defeated and the emergency was over. Government presses were in frenetic activity. The pattern of the December 23, 1824 law was repeated, the government replaced normal legislative procedures and decreed laws regarding a wide range of subjects. Under the authority of extraordinary faculties the government, among other things, confiscated property and rents, offered double pay to the military, licensed gambling houses, gave pardons, checked the press, created new military units, decreed forced loans, abolished slavery, established a national house for maimed soldiers, reorganized the coining of legal currency, established new custom houses in California, reorganized the foreign service, encouraged fisheries and recalled Congress to a new legislative period. The president even used his faculties to bypass ordinary tribunals in order to

82. *El Sol*, August 26, 1829. “La cuestión quedó resuelt a el haber de los mexicanos pronto para ponerse, como lo estaba desde antes, a la disposición del gobierno para salvar a la patria, su independencia y el régimen federal, quadamente garantizada de nuevo el segurid ad individual por el artículo 2do de la misma ley, que iniciado en la cámara de senadores fue aprobado en la de diputados.”


85. Laws under the authority of extraordinary faculties were enacted on the following dates: one on August 29, three on September 2, two on September 4, one on September 5, one on September 7, two on September 11, one on September 14, three on September 15, one on September 19, two on September 28, one on September 30, one on October 14, one on October 15, one on October 22, one on October 31, one on November 3, one on November 20, one on November 30 and finally one on December 10. For the text of these laws see Dublán y Lozano, *Legislación mexicana*, 1:153-209.
void a will and award an inheritance to one of the disputant parties in an *ab intestato* trial in return for a “voluntary” donation to the government.⁸⁶

Many of such laws were not necessary and later caused the government serious problems. The misuse of extraordinary faculties was so gross that a new government voided in 1831 most of the actions that Guerrero had taken under such authority.⁸⁷ Since the administration had granted hundreds of jobs and promotions to the military, Congress was flowed by petitions from every part of the country requesting confirmation by Congress of jobs and promotions.⁸⁸ The annulment of favors further strained relations between the national bureaucracy and the military. A legislative Commission had to be appointed to oversee case by case. In one of its reports, the commission recognized, “the serious damage caused to the Republic by the scandalous abuse of the extraordinary faculties.”⁹⁰ The annulment of favors further strained relations between the national bureaucracy and the military. A legislative Commission had to be appointed to oversee case by case. In one of its reports, the commission recognized, “the serious damage caused to the Republic by the scandalous abuse of the extraordinary faculties.”⁹⁰ “As a necessary consequence of the terrible attack that liberal institutions suffered in the sad day of August 25, 1829,” the commission argued, “the Mexican nation is still trying to remedy the very serious evils that the extraordinary faculties have caused her.”⁹⁰ Since emergency powers had not been embedded in the constitution, no clear boundaries to state action existed. The risks of not regulating extraordinary faculties was made evident by the misuse that the Guerrero administration made of them.

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⁸⁶. The case of the inheritance of the widow of Castañiza is often used as an example of Guerrero’s gross misuse of his extraordinary faculties. See Tena Ramírez, “Suspensión de garantías,” 173.

⁸⁷. On February 15, 1831 Congress passed a law revoking promotions, property confiscations and other measures taken by the Guerrero administration. *Declaración relativa a los actos del gobierno en virtud de facultades extraordinarias.* “Art. 1. Se anulan los empleos, ascensos, grados, nombramientos, jubilaciones, pensiones, gracias y restituciones de empleos o sueldos concedidos o decretados por el gobierno en virtud de las facultades extraordinarias de que habla la ley de 25 de Agosto de 1829.” Dublán y Lozano, *Legislación mexicana,* 1:312-314.

⁸⁸. See, for instance, March 23, 1831. *Petición del Ministro de Guerra Fació a la Cámara de Diputados solicitando se reconsiderse la anulación de beneficios a militares.* AGN: Gobernación, leg. 56(1) E:8 “Año de 1831” doc 1.

⁸⁹. April 12, 1831. *De la Sala de Comisiones de la Cámara de Representantes.* AGN: Gobernación, leg. 56(1) E:8 “Año de 1831” doc 6.

⁹⁰. “Como una consecuencia necesaria del horroroso ataque que sufrieron las instituciones liberales en el amargo día 25 de Agosto de 1829 lucha hoy todavía la nación mexicana entre el empeño de quitarse de encima los gravísimos males a los que la han conducido las facultades extraordinarias con que autorizó el poder ejecutivo que entonces la presidia.” AGN: Gobernación, leg. 56(1) E:7 “Año de 1831.”
The Bustamante Administration: 1832

Some of the laws that Guerrero decreed under his extraordinary authority (particularly the decree of September 4) alarmed the opposition. The impression was that an era of persecution and intolerance had begun. For the aristocratic *El Sol*, the authorization of extraordinary faculties had finally raised the demagogues to power. The executive had lost every trace of prestige and Guerrero seemed incapable of ruling the country. By the Fall of 1829, it was widely known that vice-president Bustamante, Santa Anna and Melchor Múzquiz were conspiring to overthrow Guerrero. In early November 1829 the garrison of Campeche revolted and issued a plan calling for the establishment of centralism. On December 4, the Reserve Army of Jalapa issued another plan. Article 3 of such plan called for the resignation by the executive, of his extraordinary faculties. Santa Anna and Bustamante were invited to lead the rebellion. Once the vice-president joined the insurrection most military leaders jumped to the bandwagon. Guerrero then promised to resign his extraordinary powers, but it was too late. On December 16, 1829 Guerrero left the capital at the head of a small army, Minister Bocanegra was then appointed as interim president by the chamber of deputies. A week later Luis Quintanar, Governor of Mexico City, revolted and deposed Bocanegra. He issued a proclaim stating that Bocanegra’s appointment was null since Congress had been convoked by the president under the authority of his “illegal extraordinary faculties.” Guerrero acknowledged that there was nothing to be done and withdrew to his stronghold in the south of the country. Bustamante entered Mexico City on December 31, 1829. Once again, the Congress ratified the change, recognizing vice-president Bustamante as the new chief executive. Many moderates accepted the transfer of power because they believed that Guerrero had abused his office. They hoped that the new government would restore order and tranquillity. However, it soon became evident that the price of stability would be high. The new regime became authoritarian, elitist and proclerical. The government also attempted to check the independence of the states.

In February 1831 the government captured and executed ex-president Guerrero. Only a small group of congressmen in the capital continued to oppose the

92. Ibid. 242-243.
government. The continuing excesses of the Bustamante regime and its ill treatment of the Congress, convinced a number of influential moderates that they could no longer tolerate the “progressive destruction of civil liberties.” Yet, this group failed to convince any of the leading military men to rebel. The government, fearful of the growing discontent of some of the key generals, made moves to change the military hierarchy of the state of Veracruz. This maneuver backfired and local chiefs revolted on January 2, 1832. The rebellious officers invited Santa Anna to lead the insurrection. In February, Santa Anna prepared to battle the Bustamante administration. However, he was not very successful and in May 1832 the government still hoped to defeat the rebels. Most states had not joined in the revolt, but Santa Anna controlled the key ports of Tampico and Veracruz. A full blown civil war ensued.

As armed resistance spread throughout the country, the government attempted to destroy the opposition in the capital. Hundreds of persons were arrested and both, “secret police and uniformed guards roamed the city arresting suspected subversives.” Clearly, the Bustamante administration had gone over the constitution to fight the war. Unlike its predecessors, that administration simply ignored the constitution, and did not seek legal cover under the guise of extraordinary faculties. Congressional immunity was not respected and prominent senators went into hiding to avoid imprisonment. By July 1832, the position of the government had deteriorated significantly. Five states were in open revolt and others were in the verge of joining them. Bustamante decided to take personal command of the federal armies and left the capital on August 17, 1832, leaving Melchor Múzquiz as acting chief executive. The police was ordered to shoot the opposition leaders on sight. Yet, the government had lost control of most of the country. On October 4, three more states joined Santa Anna. The insurgent armies converged in Mexico City. The nearby city of Puebla fell on October 5. Since Santa Anna was at the doors of Mexico City, panic broke in the capital. On October 9, 1832 Congress closed its sessions and granted Múzquiz extraordinary faculties. The law authorized government “to act according to the circumstances to end the present revolution,

96. Ibid.
97. Ibid. 159.
98. Costeloe, República federal, 327-350.
99. Ibid. 344.
100. Extraordinary sessions, 1832. Sobre facultar al gobierno en lo gubernativo y militar para terminar la presente revolución, y suspender las actuales sesiones extraordinarias, AGN:Gobernación, leg. 56(1) E:9 “Año de 1832.” On October 1, 1832 the senate passed the proposal made by the lower House to grant extraordinary faculties to Múzquiz. See here the first draft of the decree: “1. El gobierno, cuidando de salvar a todo trance la quietud de la capital…” The proceedings of that day are described in the opposition newspaper El Fénix de la Libertad, October 8, 1832.
adopting all measures that are necessary and in conformity to the federal system.”

The official daily, El Registro, asserted that day: “deliberative bodies can not provide the executive with the necessary remedies, with the celerity demanded by the revolution.”

Congress, according to the opposition daily El Fénix de la Libertad, had appointed acting chief executive Múzquiz as “dictator”, and was already destroying the press. On October 16, the government declared the capital under siege. El Fénix claimed that “no such authorization had been given since the time of independence.” Not surprisingly, the daily was soon closed by the government. Under the authority of extraordinary faculties the government rewarded the public safety bodies of the city (October 27), raised internal tariffs (November 15 and 17), and decreed new city contributions (December 11).

Bustamante was decisively defeated on December 5 1832 and three days later he sued for peace. An agreement was reached whereby Bustamante and his officers would go into exile while Gómez Pedraza assumed the presidency in order to supervise state and national elections. As part of this compromise, the government, using its extraordinary faculties, finally revoked the martial law of September 27, 1823 and instead reaffirmed habeas corpus.


102. Registro Oficial, October 8, 1832. “...en revoluciones de la clase de la que nos agita se agolpan y multiplican los sucesos, los cuerpos deliberantes no pueden acudir con la celeridad que es necesaria en tales casos a proveer al ejecutivo de los convenientes remedios, y suele... inutilizar su eficacia porque se transpiran con más facilidad que cuando se acuerdan y aplican por pocos individuos.”

103. “Esas cámaras abominables han consumado sus maldades erigiendo en dictador al Sr. Múzquiz... Ya se ocupa de la destrucción de la libertad de prensa, ya está formando la lista de los proscriptos...” El Fénix de la Libertad, October 8, 1832.

104. October 16, 1832. Decree. Declaración de estado de sitio. “1. Se declara en estado de sitio la ciudad de México. 2. El general en jefe del ejército procederá consecuentemente a esta declaración.” Before, on October 12, the government had granted a pardon to the deserters. Dublán y Lozano, Legislación mexicana, 1:453.

105. See El Fénix de la Libertad, October 13, 1832.

106. Registro Oficial, October 17, 1832. “Se declara en estado de sitio la ciudad de México. Todo el que perturbe el orden público será juzgado militarmente con arreglo a ordenanza.” For the text of these laws see: Dublán y Lozano, Legislación mexicana, 1:453-469.

107. December 18, 1832. Law. Cesan las leyes que expresa relativas a ladrones y otros reos que deban ser juzgados militarmente. “1. Cesa la ley de 27 de Setiembre de 1823 y sus concordantes de 6 de abril, 4 de junio 1824 y 3 de octubre de 1825. 2. Las causas de que hablan las leyes derogadas por el artículo anterior, y se hallen actualmente pendientes en los tribunales militares, pasarán a los que corresponda su conocimiento, según la constitución y leyes. 3. Todas las autoridades civiles y militares, bajo la más estricta responsabilidad, perseguirán y aprehenderán a los delincuentes y harán las primeras averiguaciones, poniendo a los reos dentro de 48 horas a...
Anna, who had became one of the most popular men in the country, was elected president in the 1833 elections.¹⁰⁸

At the beginning of the 1832 uprisings, the absence of emergency powers in the constitution meant that the Bustamante regime put aside the charter to fight the first real civil war since independence. While at first no legal cover was given to the government, illegal extraordinary faculties were granted when the regime was about to fall and little could be done (see below Alamán’s reflections on the effectiveness of extraordinary faculties). Besides, such authorization was seen by many as if Congress was evading its own responsibility.¹⁰⁹

**Liberal Reform and Extraordinary Powers: 1833.**

Santa Anna, however, was not inaugurated president since he decided to stay in his state in Veracruz. Vice-president Valentín Gómez Farías took the reins of the executive power on April 1, 1833. The new government launched the first full-fledged liberal reform in Mexico. The administration attempted to reform the military, the church and public education. Soon the clergy and the military reacted. Prompted by the aristocrats, Santa Anna returned to the capital and took charge of the government in mid-May 1833. A week later a revolt erupted in Morelia.¹¹¹ It had taken only seven weeks for the military and the church to stage a rebellion against the government. Towards the beginning of June, another rebellion broke out in a town near Mexico. Congress met on June 1, 1833 and a week later granted extraordinary faculties to the executive.¹¹² Congress authorized the government to “take the disposición del juez o tribunal competente.” Dublán y Lozano, Legislación mexicana, 1:470. On April 6, 1833 a proposal was introduced in Congress by deputy Ramírez to forever ban extraordinary tribunals and the suspension of the judicial formulas that protect individual liberty. “Queda abolida la ley de 27 de Septiembre de 1823 y prohibido para siempre la creación de tribunales extraordinarios, la suspensión de las fórmulas protectoras de la libertad en la administración de justicia y la sanción de leyes de proscripción.” Mateos, Historia parlamentaria, 8:283.

¹⁰⁹ Joseïnna Zoraida Vázquez, “Los pronunciamientos de 1832; aspirantismo político e ideología” in Rodríguez, Patterns of Contention, 183.
¹¹⁰ Costeloe. República federal, 371.
¹¹¹ Ibid. 384-385.
¹¹² June 8, 1833. Bando. Se faculta al Supremo Gobierno para dictar medidas a fin de restablecer el orden y consolidar las instituciones federales. “1. Se faculta al supremo gobierno para dictar todas las medidas que juzgue convenientes al restablecimiento del orden y conservación de las instituciones federales. 2. Sólo se harán uso de estas facultades dentro del distrito y territorios de la Federación, en los lugares fronterizos y litorales de la República, y en los estados que se hayan proclamado o proclamen cualquier plan que contravenga a las constituciones particulares de los estados o general de la Unión. 4. Si en uso de dichas facultades desterrarre o confinare el gobierno a...
measures it considered necessary to restore order and preserve the federal institutions.” This extraordinary power was to be exercised in the federal jurisdiction and in the states that had turned against the government. Congress could extend this authorization given originally for four months only. Under the authority of extraordinary faculties the government restricted the access to the capital and regulated horseback riding (June 2), collected fire arms and increased the civic militia (June 5), and authorized general commanders of the army to demote or expel suspected officers (June 6). This time the daily El Fénix praised Congress for granting facultades extraordinarias to vice-president Gómez Farías, since the “present revolution”, the newspaper stated, “has as its aim to destroy the institutions.”

The Gómez Farías administration used its extraordinary faculties not only to quell the proclerical rebellions, but to perform the liberal reforms already envisioned. On June 23, 1833 the government issued the famous Ley del caso, which ordered that fifty-one individuals be expelled from Mexico for six years and set the same punishment for any other person in “the same case.” The government also tried several prominent members of the Bustamante administration. The trials in conjunction with the Ley del caso made political life in Mexico “more much dangerous.” Abuses were not infrequent, since the government could expel practically anyone. Many innocents were exiled by the Ley del caso, as Mora himself admitted years later when he wrote an apology for the Gómez Farías administration. The states quickly passed similar laws. In the following months hundred of suspected persons were arrested. Most revolts, however, were, from the...
militarily point of view, insignificant. Only generals Durán, Arista and Escalada posed a real threat to the government. By the Fall of 1833, Santa Anna had quelled all three rebellions. But, as Guerrero in 1829, the government did not give up its extraordinary faculties, but instead used them to carry out the proposed reforms. In October and November 1833 the government launched an offensive against the church: it confiscated its property, closed convents, abolished the tithe, closed the university and banned all non-authorized sales of church property. Many states followed suit and adopted several anticlerical measures. The pattern that took form in 1824, with the December 23 law, of misusing unconstitutional extraordinary faculties for purposes other than facing an emergency, was consolidated by Guerrero in 1829 and reached its zenith in the Gómez Farias administration. Under the authority of extraordinary faculties the government reformed public education, attempted to downsize the military, regulated the use of sea ports, acquired public debt, and reformed the postal system, among other things. The excesses are less documented for this period but by no means were they less significant. Some of them were committed by Gómez Farias while other were the responsibility of Santa Anna acting as president. On November 14, 1833 the Minister of Finance, by “virtue of the extraordinary faculties vested on the executive power” ordered the national Treasury to pay Mr. Federico Waulthier for the bed canopy he had built for his excellency the president. Extraordinary faculties were also used by the government as party-weapons against prominent generals, and several of them were deprived of their positions in the army. The possibility of being dismissed and sent to exile, lowered the cost of revolting for some uncertain military chiefs.

Santa Anna spent most of the time quelling pronunciamientos, but he returned to the capital and reinstated his authority on October 27, 1833. Soon he clashed with a reforming Congress that attempted to downsize the army. Santa Anna requested Congress to stop debating such measures. However, in open defiance to the president, the Congress passed a law on November 15 suppressing several army units. However, Santa Anna did not give in. Using the extraordinary faculties with

118. Costeloe, República federal, 394.
119. Ibid. 396.
120. A total of forty-nine orders, laws and decrees were issued by the government. For a complete list of all the laws decreed under the authority of extraordinary faculties see: Copias de las órdenes dictadas en virtud de facultades extraordinarias del Supremo Gobierno; Indice de las providencias dictadas por el Supremo poder ejecutivo en virtud de las facultades extraordinarias que le confirió el congreso general en 8 de junio de 1833; Copias de órdenes dictadas en virtud de facultades extraordinarias, AGN:Gobernación, leg. 56(2) E:19,20, 22 “Año de 1833.”
121. November 14, 1833. “Que se pague a Federico Waulthier la colgadura o pabellón que construyó en su taller para la cama de su excelencia.” Copias de las órdenes dictadas en virtud de facultades extraordinarias del Supremo Gobierno, AGN:Gobernación, leg. 56(2) E:22 “Año de 1833.”
122. “Among the dictatorial acts of the 1833 administration,” Mora asserted, one that deserves little excuse, was the deprivation of the jobs of generals Negrete and Echávarri. Earlier, Alamán had made similar charges against the Guerrero administration.
which Congress had vested him in June, he decreed his own law. A conflict of authority resulted. When Santa Anna requested Congress permission to withdraw to his state, it seemed that the reformers in Congress and the vice-president had carried the day. However, the president was only repositioning himself. The aristocratic and clerical opposition soon reorganized and started conspiring against the reformist government. Small revolts erupted throughout the country. The opposition press used the Ley del caso as evidence of the lack of freedom in the country. The same argument had been made earlier in regard of the September 27 martial law. It is a long time now, El Mosquito argued, “that the constitution has been over.” Nobody was safe from the caprices of the vice-president. Meanwhile Santa Anna was courted by the conservatives. They finally convinced him to return to the capital and dismiss the liberal vice-president. Santa Anna returned on April 24, 1834. The next day two Ministers resigned. The Ley del caso was partially revoked on May 7 and on May 14 Gómez Farías resigned his office and left the country.

The centralists and the conservative clerical faction won a majority in the 1834 congressional elections. The new Congress was seated on January 4, 1835. The legislative assembly declared itself “by the will of the nation” authorized to amend the 1824 constitution. On September 9, Congress dissolved and immediately reconstituted itself as a single constituent assembly. On October 3 the centralist system was adopted de facto when Congress passed a law that dissolved the state legislatures and subjected all governors to central direct control. A whole year was spent drafting several constitutional laws. Finally, on December 29, 1836 seven Constitutional Laws substituted the 1824 constitution.

Conclusions: Theoretical Arguments

When reflecting on the failure of the 1834 liberal reform program, José María Luis Mora claimed that vice-president Gómez Farías had espoused “an excessive respect for constitutional forms.” Since no basic consensus existed among the factions, the constitution was, anyway, bound to disappear. Mora claimed that, as an advisor to Gómez Farías, he had tried to convince the vice-president that the “only thing left to solve the situation was a dictatorial act by both Chambers of Congress, or by the president or by both powers at once, to abolish the military and clergy privileges (fueros) and the article of the Constitution that granted them.”

123. El Mosquito Mexicano, March, 18, 21 and 25, 1834, quoted by Costeloe, República federal, 422.
124. Ibid. 425-430. The Ley del caso was repealed in its entirety on June 21, 1834.
125. Ibid. 431-436.
126. “De todos modos la Constitución debía acabar por desplomarse, en razón de que las fuerzas destinadas a sostenerla, lejos de conspirar al efecto, tiraban en direcciones contrarias o se
Mora, Santa Anna had instead used his extraordinary faculties to strengthen the position of the military.

Mora’s recommendations were utterly surprising coming from one of Constant's best disciples. As noted above, Mora was no superficial reader of the French constitutional school. In his mid-1827 writings, he had embraced Constant’s rejection of emergency powers. What had happened to Mora? According to Hale, Mora had discovered that liberal constitutionalism, as represented by Constant, was an obstacle to the modernization of Mexican society. The privileges of the military and the church could not be destroyed if the liberal constitution was rigorously observed. Before Constant’s theories could have any real meaning in Mexico, the residues of the past first had to be wiped out.

While the constitutional disappointment of Mexican liberals have been ascribed to obstacles posed by a traditional political order, there is also another reason. Not only the liberal constitutional model flew in the face of corporate privileges, but its general applicability was also called into question by recent experience because it proved incapable of providing governments with legitimate means to deal with political crises. This is a general point that goes beyond the Mexican experience. Liberals grew skeptical of constitutional provisions not only because of the lessons taught by their country’s traditional pattern of authority, but also because they began to see the “immense void”, in words of senators Marín and Tarrazos, left by the constitution in times of turbulence.

Political historians have noted that Mora and Alamán, the two intellectual heads of the opposing factions, were in agreement regarding one issue: excluding emergency powers from the 1824 constitution had been a mistake. In Mexico and her Revolutions, Mora reflected on the failings of the 1824 charter. The constitution, Mora complained in 1836, had been kidnapped by military commissions. He also decried the abuses of extraordinary faculties, but still insisted that such faculties were necessary. Mora recognized:

It is all right that under pressing circumstances the government be authorized, to a certain extent, to set aside forms, but this must be for a limited time and it must never go as far as to the deprivation of life. Military commissions should never exist and extraordinary faculties should be granted only in cases of open and armed revolts,
J. Antonio Águilar/Emtrgments without Emergency Powers:

... and for the time they last. To grant these [extraordinary faculties] in times of undisturbed peace, and to keep the nation under military rule, although it has happened, is unexplainable. **

While at hiding, Lucas Alamán, leader of the aristocratic party, wrote an apology of the Bustamante administration in 1833. In his *Impartial Examination of the Bustamante Administration*, Alamán criticized extraordinary faculties: “these faculties, because they are extraordinary, carry an imprint of odiousness.” Moreover, often they were not even granted at the time they were needed. The pattern of how political commotion developed in México, Alamán contended, was well established. An ambitious man, with whatever pretext he could find, revolted; the government then started negotiations with his rebellious subject, and thus the most precious time to act was lost. Meanwhile, the revolution took form, the forces of the government were weakened. Several laws of exception were in turn debated in Congress, all of them were insufficient to quell the revolt, and in the end the government resorted to extraordinary faculties, when the opportunity to grant them had been lost and when they were, thus, useless. “**

130. “La ley fundamental mexicana... ha dejado al congreso general una autoridad sin limites, de la cual se ha abusado sin interrupción, decretando sin cesar facultades extraordinarias y expidiendo leyes de excepción; por las primeras ha estado autorizado casi siempre el gobierno para disponer de las personas unas veces, de las propiedades otras, y no pocas ha tenido a su disposición ambas cosas, por el tiempo que las venganzas y mares de la ferocidad de su carácter, sirviendo bajamente a las relajaciones. Enhorabuena que en circunstancias apuradas, se autorice al gobierno para salvar hasta cierto punto las formas, pero esto debe ser por un tiempo limitado, y nunca extenderse hasta la privación de la vida. Las comisiones militares en ningún caso deben existir, y las facultades extraordinarias sólo en el caso de una alarma y armada sublevación por el tiempo que sea necesario para el levantamiento y marcha de las guarniciones militares que han cometido los excesos de las personas y cosas, por las primeras ha estado autorizado casi siempre el gobierno para disponer de las personas unas veces, de las propiedades otras, y no pocas ha tenido a su disposición ambas cosas, por el tiempo que las venganzas y mares de la ferocidad de su carácter, sirviendo bajamente a las relajaciones. Enhorabuena que en circunstancias apuradas, se autorice al gobierno para salvar hasta cierto punto las formas, pero esto debe ser por un tiempo limitado, y nunca extenderse hasta la privación de la vida. Las comisiones militares en ningún caso deben existir, y las facultades extraordinarias sólo en el caso de una armada sublevación por el tiempo que sea necesario para el levantamiento y marcha de las guarniciones militares que han cometido los excesos de las personas y cosas.” José María Luis Mora, *México y sus revoluciones* (México: Porrúa, 1986): 1:282-283. On Mora and emergency powers see also: José Antonio Aguilar Rivera, “La libertad posible: El Dr. José María Luis Mora y los límites del poder legítimo,” Congreso de la Unión, unpublished ms. 1994.
dangerous once a strong hand ready to check them, and with sufficient power, has been provided. 131

The absence of emergency powers in the constitution signaled, according to Alamán, the inability of the government to act with the necessary expediency at the right moment to quell incipient revolts. A window of opportunity for extra-constitutional action was opened. There was an incentive to potential revolutionary leaders to revolt. On the contrary, constitutional emergency powers would have provided a negative incentive to rebel. Costs could have been anticipated by would-be revolutionaries and rebellions deterred. This is how emergency powers worked as a signaling device. Illegal extraordinary faculties, on the other hand, only introduced uncertainty in the political system. Since there were no clearly defined rules obvious to all participants —such as written constitutional provisions— the players were not able to anticipate costs. Neither were they capable of predicting the actions of other players. The cases in which emergency powers could be decreed, and the limits of such faculties, was nowhere defined. Once these faculties had been granted to the government, unfriendly military leaders could expect to receive a blow any time. The cases of generals Negrete and Echávarri are good examples of this. Uncertainty, hence, encouraged political actors to strike first, or pronunciarse.

The role played by extraordinary faculties in the demise of the first federal republic must not be underestimated. While there were serious inter-elite conflicts between radicals and conservatives, these conflicts do not account for the failure of the rule of law. "It was the apparently irresolvable problem of the military pronunciamientos against the ruling administrations," Costeloe contends, "what brought about the collapse of constitutional government." 132 If the absence of constitutional emergency powers, as Alamán claimed, encouraged revolts and if, as I have argued in this paper, illegal extraordinary faculties prompted military leaders to pronunciarse, then emergency powers did play a significant role, since the governments’ inability to deter revolts is a key factor in explaining political instability in early republican Mexico. Illegal extraordinary faculties also damaged the reputation of the constitution, and created legitimacy problems for the regimes, as I have tried to demonstrate above.

Mora is a good example of how a brilliant liberal mind confronted disconfirming evidence about cherished theories. In the midst of the 1833 liberal

131. "Si por el contrario se hubiese establecido por regla general en la Constitución... lo que debe hacerse en los casos no muy raros de turbaciones públicas, el Gobierno podría hacer uso en tiempo oportuno de una amplitud de facultades que vendrían a ser ordinarias, aunque sólo aplicables en tiempos y circunstancias determinadas, y las revoluciones cesarían de ser tan frecuentes y peligrosas habiendo una mano fuerte pronta y siempre con el poder suficiente para reprimirlas." Lucas Alamán, Examen imparcial de la administración del general Bustamante, 1833, unpublished ms. in the Noriega Archive, quoted by José C. Valadés, Alamán: Estadista e historiador (Mexico: Universidad Nacional Autónoma de México, 1977): 336-337.

132. Costeloe, República federal, 443.
reform, Mora wrote an article in which he provided a liberal theory of constitutional emergency powers.\(^{133}\) It was not only that Mora favored—and actively participated in—the Gómez Farías administration, and that such government was then attempting to reform society using extraordinary faculties. Ideology might have provided Mora a good reason to reconsider the liberal exclusion of emergency powers, but his thoughts went beyond narrow ideological lines. Mora was forced by the Mexican experience to re-examine key liberal assumptions regarding emergency provisions. Political turmoil was not something particular to Mexico, he contended.

The question of whether it was possible and rational to recognize an unlimited power in society, which Constant had answered negatively, was posed again by Mora in 1833.\(^{134}\) The experience of the first federal republic led Mora to assert that “society must not be defenseless against armed rebellions.” Civil strife was a test for governments. In the history of the world, Mora asserted,

there has never been a government that has not strayed away from the ordinary rules established to govern the members of society, more or less according to the risk faced, or perceived to be faced, during public upheavals. And this regularity in the conduct of governments is one of the most decisive proofs that the order of societies is not, and cannot be, subject to the same rules in all possible situations. The ancient Romans at times appointed a dictator. At other times the supreme magistrates were authorized with the formula caveant consules, ne quid Respublica detrimenti capiat; in both cases the forms and the persons were different, but the sum of public power that they yielded in their hands was the same, and the proudest people of its independence that history has known, bowed to it.\(^{135}\)

\(^{133}\) José María Luis Mora, “Reflexiones sobre facultades extraordinarias,” Indicador de la Federación Mexicana, November 13, 1833. Mora later reproduced this article in his 1837 Revista política. This proves that he had not changed his mind regarding emergency powers.

\(^{134}\) Hale, Liberalismo mexicano, 114.

\(^{135}\) “No ha habido jamás en el mundo gobierno alguno que no haya salido de las reglas comunes establecidas para regir a los miembros de la sociedad, más o menos, según era mayor o menor el riesgo que corría o se figuraba correr en las turbaciones públicas, y este modo constante y uniforme de obrar es una de las pruebas más decisivas de que el orden de las sociedades no está ni puede estar sometido a reglas que sean comunes a estos diversos períodos. Los antiguos romanos nombraban unas veces un dictador, otras autorizaban a los supremos magistrados con la fórmula de caveant consules, ne quid Respublica detrimenti capiat; en ambos casos las formas y las personas eran diversas; pero la suma del poder público que se depositaba en sus manos era la misma, y ante ella doblaba la cerviz el pueblo más orgulloso de su independencia que se conoce en la historia.” Mora, Revista política, 388.
The repetition of such occurrences, Mora contended, "must call the attention of thoughtful men, and should raise reasonable doubts about the advisability of the rules of conduct which in practice are prescribed, and of those other rules that would be convenient to prescribe to governments during not so infrequent critical situations." Mora claimed that such issues had always been debated without the necessary equanimity. He asserted that governments, as well as individuals, had a sense of self-preservation, for both this was a first priority. This need created in individuals, as well as in governments, a "discretionary right" to stray from ordinary rules, to use force and every resource available to repel an aggression and preserve their existence. Why then, Mora questioned, "should the government be denied the same right when it is found under the same circumstances?" For society, its existence is as important as for an individual is his. The only difference, according to Mora, between society's right to self-preservation, and the individual's right is that the former is civil while the latter is natural, but this has nothing to do with the existence of such right, nor with the use it is made of. So, "is it possible and rational to recognize in society an unlimited power?" In order to answer this question, Mora contended, it is necessary to distinguish between an unlimited power and a power that strays from ordinary rules: the former is not bound by any rules, while the latter is subject to many. Such rules, "are the same ones that should moderate an individual's conduct in the case of facing an aggression. And they all can be summed up in one: not to cause the enemy a greater evil than what circumstances demand for self-preservation." While it is true that such measures are left to prudence, "this can not be otherwise, and the reason for this is self-evident: since cases and risks can be infinitely varied, and actions must be swift due to the nature of things, it is not possible to establish a regulator other than the individual's assessment of the present danger and of the efficacy of the means to avoid it." While Mora acknowledged that such assessment was often mistaken, he claimed that such was an unavoidable evil. No institutions are "so perfect as to be capable on their own to keep society from the infinitely varied attacks to which she can be exposed to, for the simple reason that only a short number of such attacks can be foreseen." Hence, it is necessary to provide for a discretionary power to be used when it is required by the circumstances. Here lies, therefore, "the necessity of the extraordinary faculties for certain cases, that can be no others than an armed aggression that puts in risk the existence of society." Extraordinary faculties are to society, Mora contended, what self-defense is to the individual. If attacked, society must not be stopped by ordinary rules if these are not effective. It is necessary to assert that constitutional guarantees disappear in every revolution that seriously threatens the existence of society. But the issue is not if such guarantees disappear or not, Mora argued, "but instead if it is

136. Ibid.
137. Ibid. 389.
138. Ibid.
possible to preserve them under such circumstances. Until such presumption is not proven, nothing can be argued against the extraordinary power.”

Once having been admitted that society, in certain cases, can not be saved by ordinary means, “it is fundamental to authorize her extraordinarily by these means and to bear the temporary inconveniences that the exercise of such power might bring.” These drawbacks, Mora argued, are not completely avoidable, since the nature of discretionary power exposes it to abuse, but certain limits can be drawn to address the legitimate fears it inspires. The first limitation “which is in the nature of things,” is time. Since “the only thing that can justify this formidable power are critical circumstances, and these are of a temporary nature, the remedy must also be temporary, and its duration must be determined, after which the state of things must be restored to normality, along with social guarantees, without them it is not possible to preserve liberty in a lasting and stable way.” The imperium of the Constitution must be restored “as soon as the motive of its interruption has ceased.”

The extraordinary power over people, Mora stated, “must not go beyond the deprivation of jobs, the suspension of freedom and exile. The life of man is too sacred to risk it in a discretionary trial, or to expose an innocent to suffer an irreparable damage.” In order for society to be saved from the deeds of conspirators, “it is sufficient to place them where they can do no harm.” This is achieved by the right to arrest and by the right to exile. Since a margin for error exists, Mora cautioned, only these actions are to be undertaken. That the government, during armed revolutions that threaten its existence, must be left free to arrest, confine and exile, seemed to him “not only a very clear truth, but also a measure of indisputable need.” Disabling an enemy by quickly disarming him, is the only thing that can prevent a revolution from occurring. And, “how can this aim be achieved with the ordinary procedures of a trial; since its slowness is not only well known to everyone, but positively intended by the legislator?” In dangerous crises, the survival of governments depend on taking every advantage that times allows, and this would be lost if action is subordinated to ordinary forms.

Mora argued that the right to arrest was not sufficient to prevent revolts. When a revolution has not broke out yet, he advised, or when only limited conspiracies exist, then such evils can be checked by simply arresting the suspects, without the need of exiling anyone. Yet, in some cases, the government positively knows that some persons are plotting, but lacks sufficient evidence to convict them in a trial. Usually then, conspirators are acquitted and left free to keep on plotting. The only solution to this problem, Mora contended, was to exile the suspects for a certain time. In any case, he claimed, exile was better than trials by military commissions that allowed arbitrary executions. When the extraordinary power is exercised openly and

139. “Por sólo el hecho de confesar, como es necesario hacerlo, que la sociedad, en ciertos casos, no puede salvarse por los medios ordinarios, es indispensable en ellos autorizarala extraordinariamente, y pasar por los inconvenientes temporales que pueda traer consigo el ejercicio de semejante poder.” Ibid. 390.
frankly, "it gives results more humane than when it is hidden under the guise of legal formulas and the apparatus of a trial." Here is an argument for the inclusion of emergency powers in the constitution, and against arbitrary extra-constitutional martial laws. Under the Bustamante administration, he charged, military commissions sometimes, and general commanders others, "everywhere murdered the rebels against the government." The Bustamante Administration abuses were less known because they were committed against poor and obscure persons.

Mora did not want to persuade anyone that the existence of an extraordinary power was a good, he recognized it as a necessary evil. He suggested limited emergency powers, but the scope of his proposal was far broader than the classic liberal suspension of habeas corpus. However, Mora claimed that while extraordinary faculties excluded legal responsibility by the government that exercised them, in a nation where the press was free, they presupposed and implied a responsibility to public opinion. Tribunals could not try or account for the measures taken by the government acting under such extraordinary authority, but the public "has an indisputable right to know, sooner or later, about the motives the government had to act in a particular way in a determined case. It is necessary that the authority agrees to endure this responsibility, which it will find hard to elude, and that it be ready to account for its conduct when the case demands it to." Yet, Mora clearly stated that it was important not to lose sight of the exceptional nature of extraordinary power. Such power could not be the regulator of everyday affairs.

140. Ibid. 392-393.
141. Ibid. 395.
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