RESEARCH ARTICLE

JUSTICE BEYOND THE STATE OUTER MARGINS: CONTENDING FORMS OF ANTIFASCIST VIOLENCE AND JUDICIARY PRACTICES IN THE SPANISH CIVIL WAR (1936-39) AND LIBERATION-FRANCE (1944-45)

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ABSTRACT: Although civil war scholarship focuses on the study of violence in internecine conflict, little attention has been paid to the ways in which extra-judiciary violence and the legal administration of justice interact. This article explores the relationship between state justice and extra-judiciary practices in two settings: Republican-held territories during the Spanish Civil War (1936-39) and the later stages of WWII and Liberation-France (1944-45). This paper challenges the view that the violence perpetrated by armed non-state agents flared and existed only because of state institutional justice was lacking, and until it was replaced by it. After a general overview of violence and justice in civil war settings, this article summarizes the differences and blurred boundaries between extra-judiciary violence and legal justice in both case studies; finally, it argues that exploring the complex links between "legal justice" and "illegal revolutionary violence" is a useful way to improve our understanding of revolutions and civil wars, as violence in those contexts constitutes a challenge to existing law and seeks to create new and non-conventional ways to implement justice.

KEYWORDS: civil war, violence, justice, Spanish Civil War, Liberation-France

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1. Introduction

Scholarship on civil wars has often overlooked the governance role played by non-state armed groups, or has built on the assumption that they act and rule their territories following criteria, strategies and aims

different to those of states. This can be only partially explained. On the one hand, research on civil wars has increasingly dealt with internecine conflicts in which the predominant type of warfare is asymmetrical. In such settings it is easy to identify guerrillas, insurgencies and even terrorist groups, and there is a strong tendency to find in them nothing but resources, goals and forms of organization different from those that characterize states. This is related to the fact that state logics, dynamics and institutions are often implicitly naturalized or even explicitly considered as normative and "good" practices. Arguments about, and literature on, the so-called "new wars" of the post-cold war era –most of which are civil wars– have frequently nourished the same idea. If these conflicts are (according to the "new wars" thesis) labelled as criminal, rather than political phenomena, in which violence is not triggered by ideology and public grievances but private greed, and given the fact that they mostly take place in the context of weak, strongly challenged or even "failed" states, it is hardly surprising that a similar but debatable conclusion is often reached: that these wars are so "new" and cruel because rebels have substituted or crucially vampirized states, so that state-logics and institutions no longer apply.

Recent research offers a new view that focuses on the similarities between the forms of warfare, governance and legitimacy deployed by state and non-state actors. According to this view, we need to examine how and to what extent non-state actors establish structures and practices of rule, create a certain political order –not only destroy or vampirize the pre-existing one– and govern civilians in civil wars. A number of studies explore the nature of rebel organizations and structures, the political economy of rebel rule and the accomplishments, problems and demise of rebel governments (Arjona, Kasfir and Mampilly, eds. 2015; Arjona 2016). However, this rebel governance scholarship has rarely explored the complex relationship between the administration of justice by state and non-state actors. More than any other kind of armed conflict, civil wars transform judicial institutions and practices, and produce shifts in the organization of the judicial system, and often its expansion. Civil war and revolutions are exceptional times and contexts that bring about exceptional measures, which can spring from doctrines and ideologies that differ drastically from, or even reverse, formerly-prevailing ideas and values. Changes concern not only the judicial systems, but also practices and actors, and they reflect fundamental shifts in the concept and system of justice (De Koster, Leuwers, Luyten and Rousseaux, eds. 2012; Mouralis and Weinke 2019, 74).

This article seeks to explore the relationship between state justice and extra-judiciary practices in civil war by addressing antifascist violence in Republican-held territories during the Spanish Civil War (1936-39) and the later stages of WWII and Liberation-France (1944-45), where internecine conflict compounded the interstate one. Most of the existing literature about these cases explicitly or implicitly conceives justice and violence as a straight zero-sum game. According to this narrative, violence flared and existed only because of the lack of state institutional justice, and then both states were able to rebuild judiciary systems which put an end to the revolutionary justice practices.

I argue that the relationship between justice and violence was more complex. Revolution and violence in both settings were not only the result of the collapse of the state, but also determined the degree of said collapse. State –and, in France, Allied military– authorities soon tried to reconstruct a justice system to replace extra-judiciary violence. But "legal justice" and "illegal revolutionary violence" were not totally separated and antagonistic phenomena. First, many political and armed actors were involved in both or moved from one to the other. Second, there were no such things as a single "revolutionary violence" or a single institutional justice system, but many different concepts of both. This blurs the boundaries between justice and violence. Finally, revolutionary non-state agents claimed that they were implementing not violence, but a "new form of justice": the "People's Justice". Notwithstanding the fact that these claims were used to justify atrocities and purges, I argue that these statements are to be taken seriously. All this is

particularly true with regard to the context of the so-called 1914-1945 European Civil War, when violence constituted a challenge to existing law and a way to create or provide new ways to implement justice.

This article is organized as follows: in the second section, a general and theoretical view at violence and justice in civil wars is presented. The third section introduces the Spanish and French cases, highlighting the differences between extra-judiciary violence and legal justice in both settings, while section four deals with the blurred boundaries and hybridizations between those two types of practices. The final section summarizes the conclusions and suggests further implications.

2. Violence, justice and revolution in civil war

It has been argued that the "statism" of the social sciences determines, consciously or not, the criteria for what is historically and politically relevant and disregards other voices, social practices and political subjects and subjectivities (Guha 1996). However, violence might seem to be an exception to this claim. The implicit assumption that states, at least democratic ones, do not exercise political violence, but simply prevent its use by other agents through law and their armed and police forces, is present in many academic, political and media discourses. Accordingly, the accusation of violence easily sticks to the practices of non-state agents, most clearly in cases of terrorism and insurgence, but also in those of protest and social movements (Della Porta and Reiter 2003). Indeed, one of the major positions concerning the definition of violence is the "legitimist" tradition, for which the key factor to label the use of methods of physical coercion as violence or otherwise is simply the line that separates what is legal from what is not (González Calleja 2002, 36-8).

This line of thinking is recurrently questioned by research and empirical evidence (e.g. Sarat & Culbert, eds. 2009; Bloxham and Gerwarth, eds. 2011; Malešević 2017). Considering states as non-violent is a reflection of how they wish to present themselves and how they use violence. By establishing a clear line of division between the state's legal force and the violence of others, state actors try to discredit and depoliticize non-state agents and apply different moral standards to the former and the latter (Coady 2008, 3, 166). The State's power to attribute violence and to naturalize the above-mentioned divide implies that violence is interpreted within certain frameworks before it even enters the debate (Butler 2020).

There is a context in which the violent nature of states is self-evident and hard to conceal: civil wars. Since, by definition, these conflicts present a case of "split sovereignty", and this implies an urgent need for legitimacy for the contenders, intra-state wars are often characterised by justificatory discourses that reject their civil nature –"civil war often refuses to speak its name" (Kalyvas 2006, 17). Some narratives minimise the responsibility of the state, for instance when the unleashing of violence is explained as a result of the vacuum of state power and the fierce competition between out-of-control non-state agents. Some scholarly analyses also explain the forms and degree of violence according to the type of internal organisation and mobilisation of armed groups. According to this idea, better organised and disciplined groups tend to apply violence more selectively, while less organised groups indulge in more frequent and arbitrary acts of violence (Weinstein 2007; Hoer 2015). Owing to the complex nature of civil wars, when the monopoly over the use of violence is broken and the political space is fragmented, the boundaries between State and non-state actors are fluid and sometimes fuzzy (Rodrigo and Alegre 2019).

However, the evidence is stubborn: although the specific circumstances vary, in civil wars the State and its agencies are prime protagonists of mass violence. Furthermore, state and non-state actors share many of the logics and dynamics behind violence: the primary aim of undermining the enemy's support base and resources; the spiral of vengeance and retaliation between rivals; the competition for resources and the role of opaque motivations and private violence; the "strategic dimension" and "triangular" character of violence

in civil war, as the objectives are not only the rivals but also local non-combatant populations; and, competition between armed and political groups for the administration of violence (Kalyvas 2006; Hultman 2014; Balcells 2017). In this regard, the line that divides state and non-state actors is fluid insofar as states rarely limit themselves to using legal means of coercion and to prevent other actors from using violence.

However, the cross-breeding between the practices used by state and non-state agents also goes in the other direction: non-state actors do not limit themselves to unleashing –extra-legal– violence. Two points are worth emphasising. First, the violence used by them is not only not antithetical to that used by states but also seeks similar criteria of political legitimacy. Public violence is always "an instrument of power, but also a social force that generates power" (Corradi 2020, 33), regardless of what actors use it, and it is always linked to frameworks that pivot around justification and legitimacy (Butler 2020). In short, Modern violence, be it implemented by state or non-state agents, "has to legitimize itself" (Thorup 2010, 4). That does not mean that violent actors can simply lay a claim on legitimate authority; it means that, to some extent, violence must appear to be efficient and consistent with the expectations and culture of the population, as well as "to speak within the established parameters of categories of morality" (Thorup 2010, 5). The same applies to civil wars. A perspective open to the logics of collective actors and non-state agents makes it clear that violence in civil war not only runs along state legitimacy criteria, but also para-institutional principles, emotional structures and exceptional moral horizons that, crucially, embrace violence. A general feature of violence in civil war is that it tends to be most intense where sovereignty is most fragmented, because this promotes the emergence of a larger number of political actors and gives them more room to develop alternative and radical criteria of authority and justice (Ledesma 2018).

A second interesting point is that, in the context of armed struggle, violence is not the only activity of non-state actors nor their only way to seek legitimacy and to establish links with the population. In parallel, these actors improvise political and social practices and structures and develop more or less elaborate forms of government, providing public goods and services and even creating formal bodies and institutionalised bureaucracies. This directly links with the issue about violence and legitimacy. Between the fields of action of these actors, along with taxation practices, local and economic affairs, provision of education and symbolic expressions of power, we can find the provision of certain forms of justice. Armed rebel groups, insurgents, guerrillas and revolutionary counter-powers of all stripes tend to set up formal and informal courts (Arjona *et al.*, eds. 2015, *passim*; Arjona 2016, 56-73). Their function seems to be threefold: they not only punish the enemy, but provide some sort of security to civilians; they show the will to develop political and social relationships different to those reproduced by the pre-existing justice system; finally, by creating such courts, "armed groups centralize power and build an aura of legitimacy" (Arjona 2016, 56). Monopolizing punishment seems to play a key role in conferring power on the armed groups and making them a recognized authority to be obeyed (Bilz 2007).

These forms of para-institutional justice are, to say the least, problematic, especially in war and revolutionary contexts, in which weapons take over tribunals and, for many actors, it is more important to swiftly apply draconian punishments than follow judicial process. There is little doubt that there is plenty of room for abuse, and that tribunals often do little more than apply a thin veneer of legitimacy to violence. Indeed, they can hardly meet the theoretical purpose of justice administration systems: to overcome "the short-circuit of vengeance" by creating a distance between the protagonists of a given conflict through the addition of a supposedly neutral third party (Ricoeur 2003, XI). However, they are relevant for the study of the behaviour of non-state armed groups in civil war contexts. These instances of non-state justice system present an irregular, but not always negative, balance. On the one hand, they can, to an extent and for some time, engender some popular support. This is especially the case when their managers are able to both combine selective and predictable coercion and self-control vis-à-vis the civilians, and they serve the

community's notions of social justice (Gutiérrez-Sanín 2015, 260-3). On the other hand, they illustrate the fact that non-state actors, when they implement social and political practices, neither limit themselves to reproducing the methods and ways of states nor depart entirely from them. Often, what they do is to find a middle ground between these positions –more or less close to that of the State depending on the degree of "habitus" of the population with regard to State procedures – and as a result of various formulas of adaptation.

In addition, the presence of these forms of para-state justice is consistent with, for example, historiographical accounts of major social revolutions, which show that courts, in which the differences between the formal and the informal were fuzzy, were frequent during the first stages of the French and Russian revolutions (Martin 2006; Mayer 2000). Similarly, juridical sociology claims that socially relevant law is not the same as State law, which is complemented and contradicted by alternative legal systems in every setting. It is precisely during processes of intense social and political transformation that the juridical systems tend to be overwhelmed. In these conditions, not only different juridical practices and alternative legal systems emerge to challenge the monopoly of the State in the administration and creation of law, –e.g. formulas of "popular justice"– but the official law is applied and interpreted in more heterogeneous ways (De Sousa Santos 2018). Similarly, social scientists contend that justice, or rather the different conceptions of justice, always "lies at the heart of violent conflict" (Tilly, Tilly and Tilly 1975, 85). More specifically, in contexts of war, revolution and the crystallisation of new social and political orders, the line that separates justice and violence becomes crucially permeable, so the invocation of justice as a justification for violence is not necessarily cynical or anarchical (De Koster *et al.*, eds. 2012). Finally, some scholarship points out that the currently hegemonic Transitional Justice perspective tends to depoliticize the idea of justice as well as to make competing notions of justice almost invisible, while, especially in the first half of the twentieth century, justice was a contested issue not only between states, but even more so among non-governmental actors (Mouralis and Weinke 2019, 56 and 74).

More than in any other setting, this seems to be the case in 1914-45 Europe, when the complex, contradictory, and very often murky ways in which violence, justice and legitimacy are intertwined, inside and outside the margins of States, shaped both peacetime political contention and warfare (Traverso 2007). The defining feature in these decades is not so much that politics were often stained with blood; it is that mass violence was supported by dense and widely shared frameworks of ideological justification. After the Great War, the legitimacy crisis of European liberal states opened the door to alternative political projects and criteria. The notions of representation, legality and justice became crucial in political debate and were given new meanings. Indeed, violence redrew the boundaries of intimate experience, "social energy" and "political imagination" in those years (Haupt 2012, 11-12). The protean links between violence and legitimacy crucially nourished the vivid political debates of the period, in which first-class intellectuals such as Walter Benjamin, Carl Schmitt, Luckács, Trotsky and Max Weber participated. However, these arguments were not mere armchair-lucubration, but were often seen as political guidelines for collective action.

At least three main issues can be identified in these debates. First, in the context of political crisis, civil war or revolution, alternative principles of sovereignty and legitimacy can arise and become the basis of action, in dissociation with, and questioning, the existing legal status quo. Second, the very existence of an abstract morality is challenged; as a result, a struggle between concurrent and politically-oriented forms of morality emerge and justify violence (Trotsky 1973). Not surprisingly, some studies have stressed that violence in Interwar Europe was invested with a certain morality and "moral horizons" (Pavone 1991; Crainz 2007, 113). Finally, violence and contending forms of legitimacy form a triangle with justice and legality. Although Walter Benjamin's often obscure terms do not make this claim explicitly, many political actors seemed to act according to the practical implications of some of his speculative claims: while the relationship

between State law and violence are ambiguous and the former is not the only source of justice and political legitimacy, it is not surprising that justice might be administered from a position that is against the law in war and revolutionary contexts. Similarly, violence, especially when used to build a new social body, impugns the previous legal framework and drafts new laws. As political philosophy has argued, the hottest topic in interwar Europe was no other than "the legal legitimacy of revolutionary violence perpetrated beyond State boundaries" (Honneth 2009, 121).

In what follows, I shall introduce violence and justice administration at the hands of state and non-state actors in two historical settings: the Republican-held territories in the Spanish Civil War, and the French Resistance and Liberation. What I intend to do here is not to present a systematic comparative analysis between both cases, but the tentative consideration of the previous general arguments through the presentation of two specific settings. However, far from being a mere description and juxtaposition of two isolated examples, the essay builds on previous inductions –based on extensive qualitative field research conducted around the Spanish Civil War– and seeks to test them by addressing another war setting. The rationale for case-selection is twofold. On the one hand, the two settings are close in time and space. Both are part of the European Civil War of 1914-45. They are also instances of "red" or antifascist violence, so their analysis should be able to dodge the two major narratives that surround the study of revolutionary violence: the conservative and ideocratic version, holding that all revolutionary ideology inexorably leads to mass terror, and the left-wing accounts, that often overlook violence or view it as "volcanic", regrettable but unavoidable. Similarly, both cases share the fact that non-state actors not only competed with the enemy State (Franco's state in Spain and the Vichy/Wehrmacht apparatus in France), but, interestingly, they also confronted the democratic states that were being reconstructed in Republican Spain and liberated France.

On the other hand, there are clear differences between 1936-Spain and the end of WWII in France. While the first event was the beginning of a civil war, the second was the last phase of a world war. The violent practices of the Resistance and Liberation periods sprung out of the country's occupation as a result of an inter-state conflict. As a result, the logic of violence and the dynamics of popular support and control diverged significantly. That said, the French années noires and Liberation were not only a story of foreign occupation, resistance against the Nazis and military liberation by the Allies. There are other phenomena to be considered. First, Vichy's collaborationist regime implemented its own authoritarian political order and shared responsibility for the deportation of Jews and the repression of the Resistance with the Nazis. The Resistance, for its part, took arms not only against the Germans, but also against Vichy and collaborationists, and the political projects that it harboured mainly aimed to bring about significant, even revolutionary, social change (Laborie 2001, 242-6). Finally, the mutual violence of collaborationists and the Resistance, which reached its peak just before and during Liberation, played a crucial role. Some authors use a narrow take on the term "civil war" and argue that it does not accurately represent the events in France (Wieviorka 2005; Buton 2004). However, many authors claim that the final years of occupation and Liberation were often felt like a civil war which, like in other Nazi-occupied countries, came on top of occupation and world war (Rousso 2006; Rodrigo and Alegre 2019, 229-39). This is the reason why this example is discussed here as an example of civil strife.

3. Extra-judiciary violence and State violence in 1936 Spain and 1944-45 France

Prevailing accounts of violence in Republican-held territory and liberated France have in common that we know little about the relationship and tensions between violence and judicial practices. The existing literature

tends to be influenced by rigid, binary concepts of justice and violence. Conservative accounts mix together revolutionary violence and institutional justice, assuming that both were basically the same thing and thereby implying that the investigations and court proceedings of the latter were nothing but a farce. Meanwhile, other scholars often imply a relationship in which, generally speaking, violence and justice played a zero-sum game. Accordingly, they are presented as antithetic and opposing realities, with the implementation of the latter automatically ending the former. This view can be partly challenged.

While claiming a "liberating morality of the proletariat", independent from the bourgeoisie and their morals, Leon Trotsky (1973, 36, 48) significantly referred to the then ongoing civil war in Spain: "Whoever accepts the end: victory over Franco, must accept the means: civil war with its wake of horrors and crimes'. The Spanish Civil War (1936-39) certainly triggered horror and crimes. Apart from those killed in battle, in bombing attacks and in the overcrowded prisons and concentration camps, at least 180,000 people were murdered extra-judicially or executed after barely legal trials held at the rear-guard. According to current estimates, the death-toll of violence on Franco's side during and after the war was no less than 130,000 (Preston 2012, XVIII). A wave of killings also swept the regions under Republican control, claiming a further 50,000 lives, most of them during the opening months of the conflict (Ledesma 2010, 247).

Unlike right-wing terror, that was promoted and rigidly organized by Franco's military regime, violence in the areas that remained loyal to the Republic emerged as a response to the military rebellion; it sprang out of the virtual collapse of the state and the atomisation of power that took place in Republican-held territory at the outbreak of the war (e.g. Casanova 2010; cf. Del Rey 2019). The collapse of state authority explains, to an important extent, a central trend of the killings: violence against non-combatants was remarkably concentrated within the first months of the Spanish conflict. Approximately 80% of Red terror victims were killed in the first six months of the war –with another 27 months of war still to come. Indeed at least half of the massacres took place in the first three months. This suggests a close correlation between the early breakdown of the State's conventional instruments of coercion and the initial concentration of violent practices. The partially failed military *coup* and the revolutionary mobilisation against it gave numerous armed and revolutionary actors the opportunity to assume local power and administer violence and justice. Under these circumstances, newly formed committees of working-class unions and parties created their own police forces and summary courts. Their aim was to defeat the "fascists" and fifth-columnists, but this context obviously created the ideal conditions for abuse in the name of revolutionary justice. Behind the rhetoric of social cleansing, they all applied their own concepts of revolutionary or "popular" justice against military rebels, "class enemies", clergymen, and real or alleged Francoist supporters.

The Republican authorities were very concerned, but the Government was largely impotent in terms of public order and justice. At the onset of the war, the application of justice ceased to be a state function; it became the playing field for acute social and political contention between revolutionary organizations, local committees and militia "investigation squads". In Madrid, a Provincial Committee of Public Investigation (CPIP) was set up in an attempt to unify these disparate instances and put them under some degree of official control, but the result was clearly poor. Hundreds of the suspects judged by the Committee tribunals were sentenced, picked up late at night in a car and shot (Preston 2012, 259-99; Ruiz 2014, 101-44).

That said, the degree of the collapse of state structures differed across time and space, and the levels of violence did so accordingly. Massacres mainly took place during the opening weeks of the war, when the fragmentation of power was most acute and there were more irregular local and militia powers bent on "cleansing". The competition for the use of violence and justice among a large number of actors –state and revolutionary, military and civilian, local and regional– led to growing arbitrariness and coercive zeal. This explains why violence was most intense and persistent in areas where the proliferation of counter-powers was greatest –Aragon, interior Catalonia, Madrid– as well as the lesser prevalence (and shorter duration) of

atrocities in areas where power was not so atomised –e.g. Biscay, Almería and Murcia (Ledesma 2010). This circumstance also explains the successive decrease of killings; as the Republican government and regional authorities were able to unify the mechanisms of power, from autumn 1936 onwards, violence behind the lines decreased everywhere.

This was no easy process. Until then, all the authorities could do was to keep at least some semblance of institutional continuity and to attempt to convince other agents that violence had to be controlled. However, most Republican political organizations soon came to the conclusion that a centralized State was required to direct the war effort against Franco. This included the creation of a legal and institutional framework that initially covered and later replaced the coercive activities undertaken by the various revolutionary bodies. Even important anarcho-syndicalist trade union CNT sectors stated that it was necessary to put an end to terror: "let it be a people's tribunal that judges, that purges and that imposes justice".[1] The Popular Tribunals were the first step towards building institutionalised justice against para-state repressive practices. However, these courts were far from irreproachable in juridical terms. In the initial weeks, sentences were usually extreme, frequently resulting either in the absolution or in the death penalty

The process of setting up the institutionalized court system was not free from hurdles, setbacks and contradictions. Even while they were being set up, these courts seemed to follow Danton's logic of "being terrible to prevent people being so" (Wahnich 2003, 62), but they also tried to appear reliable and legitimised. At any rate, the new State judicial system ultimately started operating. The Popular Tribunals were progressively introduced into every Republican-held region and the State could thus begin to resume the administration of justice (Sánchez Recio 1991). In addition, after the first few weeks, death sentences became less frequent. As a result, Republican justice, in a gradual process, constrained and contributed to putting a stop to extra-legal justice, despite the resistance and political strife encountered at the national and the local levels. In short, the rebuilding of the State was done "via the reconstruction of the police and the judiciary" (Godicheau 2004, 19; Graham 2002).

Similar patterns may be found in Liberation France. Like in the rest of occupied Europe, France imposed policies of retribution and denazification, which led to political bans, jail sentences, economic sanctions and professional and administrative purges. What is known as *épuration* (the "purge") also included a wave of killings before, during and after Liberation. The estimates speak of between 10,000 and 11,000 victims, 1,500 of which were the result of court rulings, while the rest were summary extra-judicial executions (Rouquet and Virgili 2018, 136-40).[2]

This violence began long before Liberation. Within the framework of its irregular warfare tactics against the Germans and Vichy, in 1942 the Resistance began a campaign of outrages, *coup de mains* and reprisals. In the run up to the Normandy landings, the Resistance stepped up its violent practices in response to the increasing repression by the Germans and Vichy. Between 20% and 30% of all "extra-judicial" executions in France occurred in the months that preceded the Allied landings (Rousso 2001, 499-500). However, most of this lethal violence (between 50% and 60%) took place between D-Day and the liberation of each department (June-October 1944), and only 15%-25% is dated to the remainder of the war and the post-war period. In this context, irregular warfare compounded with conventional war, leading to fierce fights and a succession of brutal reprisals by Nazi troops (e.g. Oradur and Tulle). The violence of the Resistance responded to a war logic, such as the need to "cleanse" regions from the enemy to facilitate the advance of the frontline. Most armed actors thought that there was no time to bring the enemy before a formal tribunal. Behind this Partisan violence, there was an obvious symbolic logic: "hunting a *collabo*" –political, judicial and police

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[1] *Solidaridad Obrera*, 30 August 1936, p. 1, and 30 September 1936, p. 3.
[2] The death-toll of the Vichy's and III Reich's repressive practices was between 135,000 and 140,000 French citizens, which includes 70,000 Jewish people who were killed or died in the nazi concentration camps (Rouquet et Virgili 2018, 140-1).

representatives of Vichy and members of Fascist parties and the Militia– was a way to re-own the territory and recover the nation through the punishment of a scapegoat (Brossat 1994). The best example were the approximately 20,000 women who had their heads shaven in public. It has been defined as being less a punishment for sexual collaboration than a sexualised punishment for having collaborated with the Germans (Virgili 2000).

This violence also responded to a clear political logic. With the Germans and the Vichy police forces in retreat, Liberation created room for purging and multiplied the number of armed actors willing to carry it out. In the regions in which Liberation was the work of the Allied armies and the military units of the Provisional Government organised by De Gaulle in exile (GPRF), the latter tried to assume the direction of the purges without delay. In fact, they achieved this target to a large extent, and bloody purges were less numerous in these regions (e.g. Normandy and Paris). Controlling the purges meant taking them away from other political actors, especially those connected with the Resistance, and contributing to an easy transition between Vichy and the GPRF and avoiding the collapse of state structures. Purging collaborationists became a central stage for the struggle for the political and social order that resulted from Liberation: depending on who did the punishment, this would bear a different revolutionary content, creating spaces for non-state political actors, many of which were related to the Communist Party (PCF).

This is what happened in several regions in south and central France, where liberation came by the hands of the Resistance (e.g. Rhône-Alpes and Occitanie): it gave them spaces of political power and the ability to take over the political and military administration of the territory. Despite the differences, some of the features of the Spanish case are reproduced here: the greater the number of actors involved in violent practices, the more violence was unleashed and the more it became the stage of political competition. The departments in which the purges were most intense were those in which the way Liberation came about led to the atomisation of power and in which a greater number of non-state armed actors appropriated the right to assume public order and "justice" functions. It was not a mere situation of political anarchy in which any small armed group could go around killing *collabos* without control. Defining the purges that took place in the summer of 1944 as "justice at the crossroads" describes the situation only incompletely: killings were, by and large, not acts of spontaneous violence or caused by frustration with the slow progression of official justice (Novick 1991, 113 and 127); and perpetrators were not only informal bands of partisans. During these months, large areas of France were a "mosaic" of local and regional powers that competed with one another and often resisted the centralising attempts of the GPRF (Buton and Guillon 1994). Most of them were involved in the purge: the Departmental Liberation Committees (CDL), the Local Liberation Committees (CLL), the *Milices Patriotiques* (the auxiliary police forces of the CDL), and the armed forces of the Resistance (FFI), which were in itself a motley collection of units.

In this setting, the GPRF's strategy was to create a power *de iure* that could be confronted to all these powers *de facto* and turn the administration of justice into a "matter of state" as soon as possible. The steps taken in this direction were many, but four are particularly significant. First, the prefects and commissars of the Republic were to be the provincial and regional representatives of the GPRF, with the duty of centralising public order and justice. Second, commissars and CDLs swiftly organised *Cours martiales*, exceptional courts which, often, were carried away by the stormy atmosphere of the first weeks, with frequent death sentences - approximately one thousand people were executed after being sentenced by these martial courts –, but they were a first step in the centralisation of repression in a single tribunal per department. Third, the FFI and *Milices Patriotiques* were disbanded in October 1944 and the GPRF was put in command of all military forces in the Republican army. And, fourth, between September and October 1944 the *Cours martiales* were replaced with *Cours de justice*, which had a stronger institutional profile.

They operated until at least 1945 and they passed 7,000 death sentences –although less than 800 of these were carried out– and nearly 90,000 lesser sentences (Buton 2004, 109-13).

Like in Spain, this was no easy process. The conflicts between different bodies continued, and the FFI and other armed groups resisted disbandment. In many cases, owing to the slowness or lack of severity of tribunals, they resumed their activities and executed defendants themselves. These episodes became, however, increasingly rare, indicating the gradual evolution of the court system. Most capital punishments were administered in the initial weeks. Later, as the attention of the public shifted to other matters, such as the continuation of the war and the urgent need for reconstruction, the purges moved into the background and sentences became increasingly lenient. The most severe rulings were reserved for high-profile collaborationists, whereas most defendants got away with jail sentences, economic sanctions and administrative bans.

4. Contending forms of (popular) justice

The account presented in the previous section, while accurate, is open to further nuancing and can be partly challenged. Pushed to its logical conclusion, the implication of this account is that revolution and violence were in both Spain and France merely the automatic outcome of the collapse of the State, a vacuum filled by illegal, ideology-driven actors which administered popular revenge. In other words, violence could be simply seen as the result of a lack of institutionalised forms of justice. The aim of this section is to go beyond these arguments.

To begin with, the case of 1944-1945 France seems to present other factors apart from the competition between state institutions and non-state actors and the absence of a formal justice system. First, for the GPRF, the centralisation of the justice administration by the state was "less a matter of justice than of social cohesion" (Rouquet 2011, 25). Controlling the purge was crucial for the new government to regain the monopoly of something as essential for contemporary states as the legitimate use of violence and to close down the insurrectional episode triggered by Liberation (Bergère 2003). The overall result of this process was the reduction in the levels of violence, but this was not always the case. As GPRF commissars knew too well, if they wanted to "satisfy" the people's thirst for "justice" they could not always "remain impervious to their anger", and they indulged in repressive practices; otherwise "we would have had no authority left" (Foulon 1975, 86; Bertaux 1973, 153).

Second, the logic that moved non-state actors was not necessarily antagonistic to that of the State. The relationship between punishment and legitimacy was equally important for both. The state of legal exception that presided over the Vichy government, and its participation in the repression of the Resistance, undermined the legitimacy of the state's justice administration –even among judicial staff (Israël 2005). This led to the emergence of alternative ideas and judicial practices, for which the revolutionary tradition presented enough models and precedents (Martin 2006). During the collapse of the Vichy regime, with the proliferation of armed actors engaged in the liberation, there was not only a competition to hoard power. There was also an underlying controversy for the legitimacy of power and justice administration, and the population could "renegotiate" the terms of the social order through the triple demand of "social justice", "honorary justice" (commemorative) and "legal justice" (the punishment of collaborators) (Koreman 1999). This is why it was so important to participate in the purge: responding to its demands –meeting them, inciting them or curbing them– was for weeks an immediate source of political authority. The relationship between "legal" and extra-judicial purges was not that one was the result of the lack of the other. The

geography of both overlap very significantly, which suggests that all actors were competing to meet the demand for punishment where there were enough agents willing to dole it out.

Third, this leads us to what both ways of administering justice seem to share. On the one hand, the judicial apparatus that was being rebuilt was allegedly based on Republican law, but when it came to judging Vichy's men it resorted to exceptional mechanisms (Jean, ed. 2018). On the other hand, not all "summary" executions carried out by non-state actors can be accused of the "formal or legal absence of justice". In those cases in which the victims were not shot right away after capture, it was rare for at least some semblance of court proceedings not to be performed, even if it lacked all legal basis and, before Liberation, had to be held in secret (Rouquet and Virgili 2018, 124-5). Moreover, the Resistance also took steps to end fragmentation in the administration of the purge, for instance the military tribunals set up by the FFI, which applied the Republican military justice code. In fact, the evidence suggests that the war logic, the need to centralise power in order to optimise the war effort, also reached the Resistance. As a result, the levels of violence decreased when the popular demand for punishment waned, even where the GPRF was not in control. Finally, some authors consider that the irregular killings of the summer of 1944 led the regular judicial processes of the following autumn to be more lenient: in a way, their victims, like the shaven women, played the role of sacrificial scapegoats (Novick 1991, 134-5).

Although 1936-Spain lacked the experience of world war and occupation, many steps had been taken before onset of the civil war to legitimise violence and alternative forms of political justice. Even though conservative accounts have very often exaggerated the degree of revolutionary conflict in pre-civil war Spain, widespread contention and martial rhetoric did seriously undermine the stability of the Republic. Protest frequently contravened Republican legality and a historian defined the situation in some agrarian areas as an "atmosphere of revenge and "popular justice"" (González Calleja 2011, 308). Some political discourses explicitly alluded to forms of alternative justice. Among other examples, the Socialist leader Largo Caballero argued in February 1936 that the time had come for the enemies of the Republic to feel the weight of "popular justice and its inexorable verdicts", while the Marxist J. Maurín claimed for an eye-for-an-eye type of justice against the right-wing government responsible for the harsh repression of the October 1934 uprising (Ranzato 2011, 82, 88). Although these were mere political and propagandistic claims, they reveal the ubiquitous nature of the notions that, once the war began, fuelled all manner of violent practices.

Accordingly Red violence in the civil war was not merely a spontaneous reaction: it fed on existing social and cultural cleavages that the war only exacerbated, forcing them to be presented in bellicose language (Cruz 2006). It did not lack in organisation either. Massacres in the Republican zone did not emanate from the higher levels of the state –as was the case in the Francoist rear-guard. However, the perpetrators were not obscure pickets or groups acting outside any form of authority or organisation. The perpetrators of most massacres were members of political parties, trade unions, local revolutionary committees and all sorts of local, and sometimes state, institutions. Even the groups most often labelled as "uncontrolled" were not fully devoid of control. During the first weeks of the war, their actions were tolerated and regarded as a temporary, lesser evil by the same revolutionary organizations and state agents that would soon "discipline" the rear-guard and stop massacres (Del Rey 2019).

It is not always easy, therefore, to draw a neat line between violence practiced outside any kind of normative framework, on the one hand, and a state elite working to abort it within the boundaries of legal justice, on the other. Revolutionary non-state armed groups were responsible for most violent episodes in the opening months of the war, while the Republican authorities soon tried to reconstruct a justice system intended to replace illegal violence. Yet, "legal" Republican justice and "illegal" revolutionary violence were not totally opposed phenomena. First, while many people and political actors supported the activity of the state Popular Tribunals, many more, especially at the onset of the Civil War, applauded the "urgent pruning"

of the rear-guard, and even took part in it. Second, when the Popular Tribunals were set up, they were supported also by important revolutionary sectors –although certainly not all. Third, a complete state judicial system was eventually at work by spring 1937, but this did not put a definitive end to arbitrariness, illegal activities and terror policies –especially with regard to the struggle against both fifth-columnists and Trotskyists.

Finally, it is possible to argue that attitudes regarding which kind of justice was to be administered, how and by which agents, were not only governed by moral and humanitarian criteria. The defence of institutional justice by the state and non-revolutionary organizations, and that of extra-judicial practices by unwieldy revolutionary sectors, were also determined by political logic. The Republican zone harboured contending projects for social and political order, with different implications for the administration of violence and justice. While for the State and its supporting organizations institutionalized justice was a way of centralizing political power and military command as well as a means to stop the revolution, for many non-state actors the administration of justice outside state boundaries was a way of preserving some of the political space and advancing through a social order grounded in social justice. Not surprisingly, this political rivalry ultimately resulted in violent internal clashes within the Republican side, which included the persecution of Trotskyists and anarchist in 1937 (Gallego 2007).

Like Liberation in France, the outbreak of the Spanish Civil War meant political contention, which wartime and revolutionary conditions facilitate or create (Tarrow 2015). Under these circumstances, the (contending forms of) administration of violence and justice –and their intersection– became a crucial part of politics. It was a dispute between different political organizations and actors, including the Republican state, aimed at creating, maintaining and consolidating spaces of power. Administering and channelling "popular justice" –whatever form it took– was a source of control and political capital in a context of shifting power boundaries. Perhaps, non-state methods of justice had been unavoidable at the outbreak of the civil war. As expressed by a judge a year later, the interruption of the legal order and the inactivity of the court system had forced a "replacement made up by the rushed cooperation of anti-fascist elements"; indeed, they "had to improvise the power apparatus of the state through the application of expeditious measures and without regard to burdensome legalisms".[3] But for many of the political actors in the Republican zone, non-state justice had to be a short-term mechanism; they claimed and –like in France– ultimately achieved for violence and justice to be under the state's control. This was not only positive in humanitarian terms, but would also contribute to the mobilisation of the rear-guard that total war demanded.

However, for the numerous agents which had constructed spaces of power out of the debris of Republican legality, keeping in their hands the administration of popular justice was something completely different. First, it was an alternative source of power and representation. Second, it was a direct way to challenge the state power and its legal foundations, and subsequently a way of creating a "new Law" which must be shaped according to alternative parameters of social justice (Peiró 1936, XXII). This was elaborated upon in numerous public statements, such as the leading article published by the libertarian newspaper *CNT* in late July 1936: pushing aside "a judiciary and courts that stink of rot and whose spirit and whose laws are purely bourgeois", and with the popular forces in the streets, people must crush its enemies because "there is no other law and no other authority than that of the people".[4] A difficult question to answer is whether these pronouncements were merely demagogic messages or something else. Importantly, however, they can also be often found in sources that were not directed at an audience. Insofar as they justified bloodshed, they are to be taken seriously. It is also worth exploring whether these pronouncements revealed –and perhaps contributed to bring about– alternative ways to articulate the rear-guard through the administration of

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[3] CDMH, Causa General, file 199/2, exp. 29, p. 384.
[4] *CNT*, 31 July 1936, p. 1.

exceptional forms of para-state justice. Whatever the case, they oriented and provided meaning to extensive violence in the Republican zone in a context that gave many political actors not only access to weapons, but also political spaces in which their expectations of justice could be realised.

As the months went by, these spaces became smaller. By the beginning of 1937 the Popular Tribunals were finally in operation in all Republican-held territories. The war went from bad to worse for Republicans, one defeat following another, but this did not lead to an increase in the levels of violence, as had been the case with the Russian revolution. Indeed, violence never stopped waning for the rest of the war. The logic of mobilisation for total war extended the belief in the need for centralised power over most of the political spectrum. The example posed by the region of eastern Aragón is revealing: those who led the anarchist militias in their repressive practices in summer 1936 turned within some months to rule the regional justice and public order institutions. This proves that even the most steadfast revolutionaries, whose representational power relied on their control of spaces of para-state power, eventually accepted formal methods to administer justice. This, along with the institutionalisation of the Republican justice and police instruments, undermined the power of non-legal violence as a source of political legitimacy. The agents involved in social prophylaxis became ever less numerous, the spaces where they could exercise power ever smaller, and the audience of their discourse on alternative justice ever thinner.

5. Conclusion

As pointed out by Simone Weil and Albert Camus, the relationship between violence and justice is protean and ambivalent, and this is even more the case when they are associated with political projects of emancipation and revolution, which put the legitimacy of power and law at the centre of the debate. This article has addressed this relationship in the Spanish Civil War and Liberation France, which were the examples on which Weil and Camus based their arguments. It has examined differences and similarities in the ways state and non-state actors administered justice in both contexts. The starting hypothesis was that civil wars are contexts that challenge conventional notions of justice and open the door to other ideas, institutions and judicial practices, in which the boundaries between states and other political agents are not always clear. The two examples used seem to confirm that no neat division line can be drawn between both types of actors, and that there were areas of confluence and hybridisation.

More specifically, both case studies reveal that, despite their obvious differences, the beginning of the Spanish Civil War in the Republican zones and the end of the Occupation and the Liberation in France led to a relative collapse of existing state institutions, and that this facilitated the emergence of armed actors that assumed and competed for the administration of punishment, presented as "justice", to the enemy. In both cases, punishment was the most bloody where the atomisation of power was most intense, and also in both cases the Spanish Republican government and the French GPRF sought to centralise public order and justice in their state institutions and, by doing so, reduced the scale of violence.

However, both settings suggest that no rigid dichotomy exists between state vs. non-state justice. First, these states did not use the centralisation of justice as an instrument to unleash sweeping campaigns of repression and mass violence, unlike the state apparatuses of the Francoist side in Spain, and the Third Reich and Vichy in France. This is not to say that they limited themselves to curb violence and centralise the administration of justice through conventional judicial means, and it is legitimate to wonder if they did not apply less aggressive forms of justice only as a way to compete with non-state actors. Second, the logic followed by non-state actors was not entirely divorced from that applied by states: revolutionary and liberation committees, informal tribunals, and so on, also reflect, to an extent, territorial control, organisation

and centralisation criteria, as well as the wish to find spaces of power and legitimacy. Indeed, they were often entangled in the same spirals of means vs. ends, of prophylaxis vs. regeneration, as states.

Finally, both state and non-state actors described their administration of punishment as "popular justice", and this was not necessarily only demagogy. While for Spanish and French state actors "popular justice" was the one based on the courts introduced by their governments, and they progressively managed to implement a regulated institutional justice, many of the non-state actors considered that the use of violence beyond all legal regulations was also a form of doling out "justice". For them, it was not a question of suppressing justice, but of replacing a specific way of administering it, closely related to the *status quo*, by another of a supposedly popular nature; one that integrated a form of social justice that counteracted the unjust previous social order. These claims about displaying justice certainly justified and endorsed painful violence – although the reason for that does not seem to be the fact that they were non-state or insurgent actors, for many states do similar or worse things. All of this notwithstanding, against conventional accounts, the competing notions and practices of justice that perform and give meaning to crucial political and social processes, including violence in civil war and revolution, is worth studying.

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