

UNLAWFUL ASSOCIATIONS AND COMBINATIONS IN THE EARLY PENAL CODES. A COMPARATIVE STUDY OF FRANCE AND SPAIN

ASSOCIAÇÕES E REUNIÕES ILEGAIS NOS PRIMEIROS CÓDIGOS PENAIIS. UM ESTUDO COMPARATIVO DA FRANÇA E DA ESPANHA

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ABSTRACT

The rise of the ideology of freedom in liberal States, individual liberalism and individual autonomy, ended with ancient associations, leagues, collectivities or guilds, which gradually were forbidden and disintegrated. They can be dangerous both for public powers and for individual contracting, and therefore they required a special authorization from the government to be constituted. On the contrary, they were considered unlawful and they were repressed through criminal laws. French Penal Code of 1810 typified two kinds of crimes for that purpose: one of them among the crimes against de State or the “*chose publique*” (“*des associations ou réunions illicites*”), and the other among the crimes against individuals, and particularly against property (“*délit de coalition*”). The same way, Spanish Penal Code of 1848 recognized these two types of crimes, pointing out the public or private goals of the association: Unlawful associations that had political or religious purposes were typified as public crimes, but if these associations tried to interfere in private contracting, fixing terms and conditions of work or employment, they were considered “combinations” (“*coligaciones*”) to disturb free-market.

KEYWORDS: Unlawful associations. Crimes French and Spanish Penal Codes. Comparative study.

RESUMO

O crescimento da ideologia da liberdade nos Estados liberais, liberalismo individual e autonomia individual, acabou com com antigas associações, ligas, coletividades ou guildas, que gradualmente foram proibidas e desintegradas. Elas podem ser perigosas tanto para os poderes públicos quanto para a contratação privada, e, portanto, exigiam uma autorização especial do governo para serem constituídas. Caso contrário, eram consideradas ilegais e eram reprimidas através de leis criminais. O Código Penal francês de 1810 tipificava dois crimes para esse propósito: um deles na categoria de crimes contra o Estado ou contra a “*chose publique*” (“*des associations ou réunions illicites*”), e o outro entre os crimes contra indivíduos, e particularmente contra a propriedade (“*délit de coalition*”). Da mesma forma, o Código Penal espanhol de 1848 reconhecia esses dois tipos de crimes, apontando os objetivos públicos ou privados da associação: associações ilegais que tinham objetivos políticos ou religiosos eram tipificadas como crimes públicos, mas se essas associações tentassem interferir na contratação privada, fixando termos e condições de trabalho ou emprego, eram consideradas corporações (“*coligaciones*”) para perturbar o livre mercado.

PALAVRAS-CHAVE: Associações ilegais. Crimes nos Códigos Penais francês e espanhol. Estudo comparativo.

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SUMMARY: 1 Introduction. 2 Background to the French Penal Code of 1810. 3 The crimes of unlawful association and combination in the French Penal Code of 1810. 4 *La Loi sur les associations 10 avril 1834*. 5 Unlawful association in the first Spanish Penal Code of 1822. 6 Unlawful associations and combinations in the Spanish Penal Code of 1848. 7 Unlawful associations and combinations in Spain until the Penal Code of 1870.

1 INTRODUCTION

The first freedoms resulting from liberal legal-rationalist thought (Locke, Montesquieu, Rousseau, Voltaire etc.) were individual liberties attributed to a specific individual, “of the man and of the citizen” to paraphrase the famous “*Déclaration des droits de l’homme et du citoyen*” of 1789. Any form of association, combination, confederation or faction that could determine or influence the will of the individual was considered contrary to the principles of freedom.

During the preceding absolutist regime, associations had been used with exclusive purposes and in order to exclude others (noble or privileged orders), or to establish monopolies or protective practices (trades or guilds). This is why liberals viewed them as one of the greatest “*evils*” endangering individual (in political terms) and market (in economic terms) freedom.

It should therefore come as no surprise that one of the first purposes of the new bourgeois liberal regime was to prevent the emergence of any groups or confederations that opposed or obstructed political freedom and to dismantle or abolish any interventionist corporative structures. France was a pioneer in this process, which began with the famous Turgot’s Edict of 1776 and continued with Allarde’s Decree and Le Chapelier’s Act, both introduced in 1791¹.

In Spain, for its part, the first step in this direction came with the abolition of corporativism, following the decree issued by Conde de Toreno on 8th June 1813 in line with the French liberal model. This Act was repealed two years later by King Fernando VII in a decree issued on 29th June 1815, only to be laid down again briefly during the period of liberal government known as the Trienio Liberal (1820-1823), and definitively after the death of the King through the decrees of 20th January 1834, and of 2nd and 6th December 1836².

1 SOREAU, E., «La loi Le Chapelier», *Annales historiques de la révolution*, t.VIII, 1931, pp.287-314, SOBIRAN-PAILLET, F., «Nouvelle règles du jeu? Le decret d’Allarde et la loi Chapelier», *Deux siècles de droit du travail*, Paris, 1998, pp.17-24, or KAPLAN, S.L., *La fin des corporations*, Paris, 2001.

2 BAYÓN CHACÓN, G., *La autonomía de la voluntad en el Derecho del Trabajo. Límites a la libertad contractual en el Derecho histórico español*, Madrid, 1955, pp.270-308, or ÁLVAREZ MONTERO, A., “La libertad de trabajo en el entorno normativo de las Cortes de Cádiz”,

Once the principle of individual liberty had been laid down and the corporative structures of the Ancien Régime had been dismantled, the first liberal rule of law formed in France and in Spain ruled that a special authorization must be sought for the establishment of any kind of association. Those that did not have government authorization or sought political or economic ends were considered unlawful³.

The repression of unlawful associations of this kind and the punishment of those involved was a question of Criminal or Penal Law and as such they were included in some of the first nineteenth-century penal codes such as the French Penal Code of 1810 passed during the Napoleonic Era. This text and the subsequent Spanish Penal Code of 1848 set out two separate crimes of unlawful association according to the purpose being sought: associations with political or religious ends were considered as crimes against the State or public crimes, while the associations that sought private goals via the intervention or alteration of market or work conditions (“*scheming to alter the price of things*”), were classified as crimes against individuals or as crimes between private citizens, and in particular as crimes against property.

In this paper I will try to analyse the origin and the changing definition of these crimes, the possible influences or transfers between the French Penal Code of 1810 and the Spanish Penal Codes of 1822, 1848 and 1870, and the juridical evolution of the crimes of unlawful associations and combinations during the 19th century.

2 BACKGROUND TO THE FRENCH PENAL CODE OF 1810

In the first years of the Revolution there was a somewhat confused approach to associationism in France⁴. On the one hand enlightened liberal thinkers supported the need to abolish any corporate or guild structure with acts such as Turgot’s Edict (Édit du roi portant suppression des jurandes et communautés de commerce, arts et métiers, donné a Versailles au mois de février 1776). This requirement which was absolutely essential for boosting the free market, was eventually and explicitly set down in writing in the Preamble to the Constitution of 1791, according to which “henceforth there are no guilds or corporations of professions, arts or crafts”, and was subsequently developed by acts such as Allarde’s Decree of 1791, or the aforementioned *Loi Le Chapelier* passed on 14 June 1791, the first Act in which there was a specific reference to the crime of combination in France⁵.

Sobre un hito jurídico: La Constitución de 1812, Jaén, 2012, pp.325-341.

3 HOFFMANN, S.L., “Democracy and associations in the long nineteenth century: toward a transnational perspective”, *The Journal of Modern History*, 2, June 2003, pp.269-299.

4 MORIN, A., *Dictionnaire de Droit Criminel*, Paris, 1842, p.80.

5 *Loi Le Chapelier* du 14 juin 1791, art. 1: «*L’anéantissement de toutes espèces de corporations*

In the wake of this Act, various other policing acts were passed that referred to the crime of combination or of unlawful association for economic or market purposes. These included the *Loi du 28 septembre du 1791, sur la police rurale*, aimed at farm workers ⁶ and the *Loi du 12 du avril du 1803, sur la police des manufactures*, aimed at industrial workers or proletarians ⁷, which referred back to the Penal Code if the deeds committed by the combinations of workers were performed with violence, assault or the aggravating circumstance of multitude⁸.

However, while the crime of combination for economic purposes gradually became laid down through these acts, there was greater resistance to treating political associationism as an offence. In fact, the recognition of the work done by the popular societies during the Revolution led to an early *Décret des 19 et 20 septembre 1790* which included positive references to the right of association⁹, and the first Constitution of 1791 guaranteed this right amongst the fundamental provisions set out in Title 1, solely subjecting it to the controls laid down in acts on policing.

The first of these acts on policing was the *Loi relative à l'organisation d'une police municipale et correctionnelle du 19-22 juillet 1791*, which laid down a number of municipal controls on the formation of societies and clubs

des citoyens du même état ou profession étant une des bases fondamentales de la constitution française, il est défendu de les rétablir de fait, sous quelque prétexte et quelque forme que ce soit»

- 6 Loi sur la police rurale du 28 septembre du 1791, art.20, in MIROIR, E.M.M., et BRISSOT de WARVILLE, E., *Traité de police municipale et rurale. Première Partie*, Paris, 1846, p.79: «*Les moissonneurs, les domestiques et ouvriers de la campagne ne pourront se liguer entre eux pour faire hausser et déterminer le prix des gages ou salaries, sous peine d'une amende, qui ne pourra excéder la valeur de douze journées de travail, et en outre, de la détention de police municipale*».
- 7 Loi relative aux manufactures, fabriques et ateliers du 12 avril du 1803, arts. 6 y 7 in MIROIR, E.M.M., et BRISSOT de WARVILLE, E., *Traité de police municipale et rurale. Première Partie*, Paris, 1846, p.115: «*Art.6. Toute coalition entre ceux qui font travailler des ouvriers, tendant à forcer injustement et abusivement l'abaissement des salaires, et suivie d'une tentative ou d'un commencement d'exécution, sera punie d'une amende de cent francs au moins, de trois mille francs au plus; et, s'il y a lieu, d'un emprisonnement qui ne pourra excéder un mois. Art.7: Toute coalition de la part des ouvriers pour cesse en même temps de travailler, interdire le travail dans certains ateliers, empêcher de s'y rendre et d'y rester avant ou après de certaines heures, et en général pour suspendre, empêcher, encherir les travaux, sera punie, s'il y a eu tentative o commencement d'exécution, d'un emprisonnement qui ne pourra excéder trois mois*».
- 8 Loi relative aux manufactures, fabriques et ateliers du 12 avril du 1803, art.8 in MIROIR, E.M.M., et BRISSOT de WARVILLE, E., *Traité de police municipale et rurale. Première Partie*, Paris, 1846, p.115: «*Si les actes prévus dans l'article précédent ont été accompagnés de violences, voies de fait, attroupement, les auteurs et complices seront punis des peines portées au Code de police correctionnelle ou au Code pénal, suivant la nature des délits*».
- 9 Décret qui défend à toute association ou corporation, et aux corps de l'armée, d'entretenir ensemble des correspondances, in DUVERGIER, J.B., *Collection complète des Lois, Décrets, Ordonnances, Réglemens, avis du Conseil-D'État (de 1788 à 1830 inclusivement, par ordre chronologique)*, Tome Premier, Deuxième Edition, Paris, 1834, p.375

with political ends¹⁰. The *Décret sur les sociétés populaires du 29 et 30 septembre 1791* extended restrictions by prohibiting the existence or political activity of any society, club or association of citizens¹¹, providing financial penalties and disqualification from public office¹².

In response to this progressive trend towards the limitation of political associations, the government of the Convention briefly laid down again the absolute right of citizens to associate with *Décret du 13 juin 1793*¹³. However very shortly afterwards, the Thermidorian reaction once again restricted this right in the *Décret du 16 septembre 1794*¹⁴, which began to definitively map out the crime of unlawful political association.

The desire to control associations was very clearly expressed in the Constitution of 1795, which devoted at least five provisions to either limit them or subordinate their existence to the maintenance of social order (art.355, arts.360-362 and art.364). In spite of this, it is important to make clear that neither the first French Penal Code of 1791, which appeared during the full fervour of the revolution, or the subsequent *Code des délits et des peines* promulgated in 1795 in order to complete the Penal Code, expressly set out the crime of combination or of unlawful association.

Both these acts were very philosophical texts which contained the basic principles of the new juridical penal science based on humanism, individualism,

10 Loi relative à l'organisation d'une police municipale et correctionnelle du 19-22 juillet 1791, art. 14, in MIROIR, E.M.M., et BRISSOT de WARVILLE, E., *Traité de police municipale et rurale. Première Partie*, Paris, 1846, pp.66-67: «Art.14: Ceux qui voudront former des sociétés ou clubs seront tenus, à peine de 200 livres d'amende, de faire préalablement, au greffe de la municipalité, la déclaration des lieux et jours de leur réunion; et, en cas de récidiver, ils seront condamnés à 500 livres d'amende. L'amende sera pour suivie contre les présidents, secretaires ou commissaires de ces clubs ou sociétés».

11 Décret sur les sociétés populaires, in DUVERGIER, J.B., *Collection complète des Lois, Décrets, Ordonnances, Réglemens, avis du Conseil-D'État (de 1788 à 1830 inclusivement, par ordre chronologique)*, Tome Troisième, Deuxième Edition, Paris, 1834, pp.457-458: «L'Assemblée nationale, considérant que nulle société, club, association de citoyens, ne peuvent avoir, sous aucune forme, une existence politique, ni exercer aucune action sur les actes des pouvoirs constitués et des autorités légales; que, sous aucun prétexte, ils ne peuvent paraître sous un nom collectif, soit pour assister à des cérémonies publiques, soit pour tout autre objet, décrété ce que suit: (...)».

12 Rapport sur les sociétés populaires, fait au nom du comité de constitution, in DUVERGIER, J.B., *Collection complète des Lois, Décrets, Ordonnances, Réglemens, avis du Conseil-D'État (de 1788 à 1830 inclusivement, par ordre chronologique)*, Tome Troisième, Deuxième Edition, Paris, 1834, pp.458-461.

13 Décret relatif aux comités de salut publique et aux sociétés populaires, du 13 juin 1793, in DUVERGIER, J.B., *Collection complète des Lois, Décrets, Ordonnances, Réglemens, avis du Conseil-D'État (de 1788 à 1830 inclusivement, par ordre chronologique)*, Tome Cinquième, Deuxième Edition, Paris, 1834, p.342: «Art.2.: Il est fait défense aux autorités constituées de troubler les citoyens dans le droit qu'ils ont de se réunir en société populaire».

14 Décret du 16 septembre 1794, in DUVERGIER, J.B., *Collection complète des Lois, Décrets, Ordonnances, Réglemens, avis du Conseil-D'État (de 1788 à 1830 inclusivement, par ordre chronologique)*, Tome Septième, Deuxième Edition, Paris, 1834, p.279.

the principle of legality and the proportionality of punishment. But leaving aside the General Part, the authors failed to make a proper, precise description of the different crimes in the Special Part, which still appears quite incomplete¹⁵. It was not until the promulgation of the Napoleonic Penal Code in 1810 that we find a clear description of this peculiar crime of unlawful association in both its political and private/economic dimensions.

3 THE CRIMES OF UNLAWFUL ASSOCIATION AND COMBINATION IN THE FRENCH PENAL CODE OF 1810

In addition to being technically far superior to its previous counterparts and the culmination of the codifying process in its criminal dimension¹⁶, the Penal Code of 1810 represents the expression of the authoritarian state and the repressive justice of the Napoleonic era¹⁷. One manifestation of the prevailing spirit of control was the description of the crimes of unlawful association, which until then had been gradually constructed outside the code system and were now set out in a Penal Code for the first time. The two main types were distinguished in separate sections according to the ends being pursued.

The unlawful associations or assemblies with political purposes were described in Section VII (*“Section VII. Des associations ou réunions illicites”*), of Chapter 3 of Title 1 of Book III. This whole title was devoted to crimes or offences against the *res publica* (*“Crimes et délits contre la chose publique”*), while Chapter 3 in particular dealt with crimes or offences against public peace (*“Crimes et délits contre la paix publique”*).

However, when the associations or combinations were specifically of employers or workers and sought private ends such as the alteration of market prices or working conditions, they were classified under Chapter 2 (*“Crimes et délits contre les propriétés”*), of Title 2 of Book III, which was devoted to crimes or offences against private individuals (*“Crimes et délits contre les particuliers”*).

The Penal Code devoted four provisions (arts.291-294) to the first type, which in fact recovered and developed the three provisions previously laid

15 JIMÉNEZ de ASÚA, L., *Tratado de Derecho penal*, 7 vols., Buenos Aires, 2ª ed., t. I, 1956, pp. 309-310, LASCOUMES, P., PONCELA, P. et LEONÈL, P., *Au nom de l'ordre. Une histoire politique du Code pénal*, Paris, 1989, o PONCELA, P., «Le premier Code: la Codification pénale révolutionnaire», *Diritto e stato nella filosofia della rivoluzione francese. Atti del Colloquio internazionale (Milano, 1-3 ottobre 1990)*, a cura di Mario A. Cattaneo, Milano, 1992, pp. 57-92.

16 LASCOUMES, P., PONCELA, P. et LENOËL, P., *Au nom de l'ordre. Une histoire politique du Code pénal*, Paris, 1989, pp.17-19, DAMIEN, A., «Code pénal», en *Dictionnaire Napoléon*, Paris, 1999, t. I, pp.454-455, CARBASSE, J.M., «Code pénal», *Dictionnaire de culture juridique*, Paris, 2003, pp.210-216, o *Bicentenaire du Code Pénal. 1810-2010*, Paris, 2010, pp.8-9.

17 CARBASSE, J.M., «État autoritaire et justice répressive. L'évolution de la législation pénale de 1789 au Code pénal de 1810», *All'ombra dell'aquila imperiale. Trasformazioni e continuità istituzionali nei territori sabaudi in età napoleonica*, Rome, 1994, pp.313-333.

down by the *Loi du 25 juillet 1797, interdisant les associations politiques*. This Act provisionally prohibited any private society that was involved in political questions, stating that the leaders would be taken before the correctional police tribunals to be tried on the charge of “*d’attroupements*” and punished with fines and up to 3 months imprisonment.

Article 291 of the Penal Code developed these provisions by demanding that the association that was unlawful or “without the consent of the government” should have at least 20 people and should meet daily or on set days (in other words should demonstrate permanence) to discuss religious, literary, political or other matters¹⁸.

The requirements stated were absolutely necessary to prevent the punishment of “*réunions accidentelles*” or simple occasional meetings of citizens that took place for any particular reason because, as explained earlier, for the original liberal ideology the right of association was a natural right of man, which could only be subordinated to the superior interests of the state for reasons of security and public order; an idea which was repeated ad nauseam by the doctrine of the period¹⁹.

In order to apply for authorization, an application had to be presented to the local authorities, attaching the statutes of the association. The association could not meet without having obtained this authorization and it was not sufficient just to have applied for it. If the association formed without authorization or breached the conditions under which authorization was granted, the association would be dissolved and its leaders, directors or administrators would be punished with a fine of between 16 and 200 francs²⁰.

18 C.P. 1810, art.291: «Nulle association de plus de vingt personnes, dont le but sera de se réunir tous les jours ou à certains jours marqués pour s’occuper d’objets religieux, littéraires, politiques ou autres, ne pourra se former qu’avec l’agrément du gouvernement, et sous les conditions qu’il plaira à l’autorité publique d’imposer à la société. Dans le nombre de personnes indiqué par le présent article, ne sont pas comprises celles domiciliées dans la maison où l’association se réunit».

19 MORIN, A., *Dictionnaire de Droit Criminel*, Paris, 1842, p.80: «L’homme est né pour vivre en famille et en société, le droit d’association est dans la nature; mais l’enfant a des devoirs de subordination envers la famille; le citoyen, des devoirs de soumission envers l’état; et il n’y a pas de droit contre le droit. Ce sont donc les associations politiques, c’est-à-dire, celles dont le but est de s’occuper soit de théories sociales ou gouvernementales»; or CHAUVEAU, A., et FAUSTIN, H., *Théorie du Code Pénal*, tomo III, Bruxelles, 1852, pp. 337-338: «En thèse générale, la liberté d’association est un droit naturel (...). Mais l’exercice des droits le plus légitime, laissé sans règles entre les mains de l’homme, peut aussitôt engendrer des abus. C’est ainsi que la loi a ceint chacune des nos libertés d’un cercle qui en limite l’entendue. Il est évident que les passions humaines peuvent s’emparer de l’instrument puissant de l’association, qu’elles peuvent le diriger contre la société elle-même, et redoubler, à l’aide de ses forces énergiques, le péril de leurs œuvre destructive».

20 C.P. 1810, art.292: «Toute association de la nature ci-dessus exprimée qui se sera formée sans autorisation, ou qui, après l’avoir obtenue, aura enfreint les conditions à elle imposées, sera dissoute. Les chefs, directeurs, ou administrateurs de l’association seront en outre punis d’une amende de seize francs à deux cents francs».

Carnot insisted that the closure or dissolution of the association in these cases would take place immediately as it was an administrative measure and would therefore not have to wait for the verdict of a court²¹.

Article 293 tried to distinguish between the responsibility of the leaders, directors or administrators of the Association and that of mere members, because of the provocations that they might perform. In the same way it laid down that if through speeches, exhortations or orations in any language or via the reading, posting, or publication of any written document in these assemblies there was any action to provoke crimes or offences, the leaders, directors and administrators of the associations would be given fines of 100 to 300 francs and sentences of three months to two years in prison, without prejudice to more severe sanctions imposed by the Act against individuals who were personally guilty of provocation²².

This article did not specify whether this provocation had to achieve its effect or not but the maximum and minimum sentences provided for (from 100 to 300 francs and from three months to two years in prison) were sufficiently wide-ranging to allow the courts or judges to graduate the punishment in accordance with the facts of each case, and the degree of responsibility of the perpetrators, including in all cases the leaders, directors or administrators of the association²³.

Finally, Article 294 set out to punish the necessary collaborators in the functioning of this kind of association. Those people who without permission from the municipal authority, lent their houses or apartments for the meetings of a political or religious association (“including authorized” associations, says the Act in that the offence lay in not having received public authorization to lend one’s house), would be punished with a fine of 16 to 200 francs²⁴.

As regards the second type of crime of association, the type affecting associations of employers or workers, the Penal Code of 1810 devoted three

21 CARNOT, M., *Commentaire sur le Code Pénal*, Tome Premier, Seconde Edition, Paris, 1836, p.773.

22 C.P. 1810, art.293: «*Si, par discours, exhortations, invocations ou prières, en quelque langue que ce soit, ou par lecture, affiche, publication ou distribution d’écrits quelconques, il a été fait, dans ces assemblées, quelque provocation à des crimes ou à des délits, la peine sera de cent francs à trois cents francs d’amende, et de trois mois à deux ans d’emprisonnement, contre les chefs, directeurs et administrateurs de ces associations ; sans préjudice des peines plus fortes qui seraient portées par la loi contre les individus personnellement coupables de la provocation, lesquels, en aucun cas, ne pourront être punis d’une peine moindre que celle infligée aux chefs, directeurs et administrateurs de l’association*».

23 CARNOT, M., *Commentaire sur le Code Pénal*, Tome Premier, Seconde Edition, Paris, 1836, pp.774-775.

24 C.P. 1810, art.294: «*Tout individu qui, sans la permission de l’autorité municipale, aura accordé ou consenti l’usage de sa maison ou de son appartement, en tout ou en partie, pour la réunion des membres d’une association même autorisée, ou pour l’exercice d’un culte, sera puni d’une amende de seize francs à deux cents francs*».

specific articles which appear in the Chapter devoted to Crimes against Property. The classification of this crime required less intellectual effort because as we know the liberalization of labour relations, removing them from the control of any corporate or guild-based structure, had been defended by the liberals ever since Turgot's Edict of 1776 as the only way to activate a free market²⁵.

In the same way, the first article (Article 414) devoted to this question laid down that if “those who put the workers to work”, in other words if the employers or masters were to combine or associate in order to unfairly and abusively force a reduction in salaries, they would be committing a crime punishable with a sentence of six days to one month in prison and a fine of 200 – 3000 francs²⁶. According to Chauveau and Faustin, this crime had three fundamental aspects: that there must have been a combination of various people, even if they belonged to different professions or sectors; that their objective or purpose was to manipulate the price of the salaries; and that the deed had at least been attempted or that “execution had commenced”²⁷.

Chauveau and Faustin wondered if the legislator had perhaps made a mistake in the drafting of this point, in the sense that the expressions “attempted” or “commencement of execution” could almost be considered synonyms. However, they came to the conclusion that their intention was probably to capture the spirit of Article 2 of the Penal Code of 1810, and that they wanted to make clear that any external action tending towards execution should be considered a crime, even if execution thereof had not actually begun.

Article 415 laid down that if the combination was made up specifically of workers and was carried out with the specific purpose of bringing work to a halt, stopping the work in a workshop, obstructing the entrance thereto before or after certain times of day, or in general suspend, prevent or interfere in some way with the free supply of labour, the crime would be punished with a prison sentence of between one and three months. The leaders of the combination would be more severely punished with higher sentences of two to five years in prison²⁸.

25 TANGUE, F., *Le droit au travail entre histoire et utopie. 1789-1848-1989: de la répression de la mendicité à l'allocation universelle*, Bruxelles, 1989, p.11.

26 C.P. 1810, art.414: «*Toute coalition entre ceux qui font travailler des ouvriers, tendant à forcer injustement et abusivement l'abaissement des salaires, suivie d'une tentative ou d'un commencement d'exécution, sera punie d'un emprisonnement de six jours à un mois, et d'une amende de deux cents francs à trois mille francs*».

27 CHAUCHEAU, A., et FAUSTIN, H., *Théorie du Code Pénal*, tomo II, Bruxelles, 1845, pp.516-517.

28 C.P. 1810, art.415: «*Toute coalition de la part des ouvriers pour faire cesser en même temps de travailler, interdire le travail dans un atelier, empêcher de s'y rendre et d'y rester avant ou après de certaines heures, et en général pour suspendre, empêcher, enchérir les travaux, s'il y a eu tentative ou commencement d'exécution, sera punie d'un emprisonnement d'un mois au moins et de trois mois au plus. Les chefs ou moteurs seront punis d'un emprisonnement de deux ans*».

For its part, Article 416 laid down the same sentences as in the previous article for workers who imposed fines, prohibitions, boycotts or any other similar action that resulted in the condemnation or proscription of the managers of factories or public works contractors. In this case it was sufficient just to have announced the offence even if the crime had not actually been committed or had only been attempted²⁹.

In the situations described in both these articles i.e. in the case of offences committed in combination specifically by workers, they could additionally be subject to police supervision, even after they had served their sentence, for between two and five years, so as to prevent them from recidivism³⁰.

As can be seen, not only were the punishments more severe in the case of workers than those imposed on employers, especially for the leaders or ringleaders of the association, but they were also accompanied by additional policing measures. In this case what did the word “worker” (in French “ouvrier”) actually mean? Initially and once again according to the comments by Chaveau and Faustin, it referred only to those individuals who worked in factories, workshops, manufacturing and the commercial sphere in general. Men who worked in the fields were therefore excluded, although a different special act existed for them which contained a similar prohibition, to which we referred earlier: the *Loi du 28 septembre 1791 sur la police rurale*³¹.

4 LA LOI SUR LES ASSOCIATIONS 10 AVRIL 1834

After the promulgation of the Penal Code, political clubs and secret societies were forced underground. However, workers’ associations in many cases achieved legal status by setting up professional mutual societies which were authorized by the authorities because of their charitable nature. These were then used to secretly organize still very limited protest actions.

The only form of association open to workers after the Loi de Chapelier was the Mutual Aid Society. These societies used the fees paid by their members to help out those in need as a result of illness or death of their members. The

à cinq ans».

29 CARNOT, M., *Commentaire sur le Code Pénal*, Tome Second, Paris, 1824, pp.363-364.

30 C.P. 1810, art.416: «Seront aussi punis de la peine portée par l'article précédent et d'après les mêmes distinctions, les ouvriers qui auront prononcé des amendes, des défenses, des interdictions ou toutes proscriptions sous le nom de damnations et sous quelque qualification que ce puisse être, soit contre les directeurs d'ateliers et entrepreneurs d'ouvrages, soit les uns contre les autres.

Dans le cas du présent article et dans celui du précédent, les chefs ou moteurs du délit pourront, après l'expiration de leur peine, être mis sous la surveillance de la haute police pendant deux ans au moins et cinq ans au plus».

31 CHAUCHEAU, A., et FAUSTIN, H., *Théorie du Code Pénal*, tomo II, Bruxelles, 1845, pp.517-520.

first associations of this kind appeared in Paris during the Bourbonic restoration period (1814-1830) after which many more were created in the provinces³².

However, membership continued to be very low and they were easy to control by the government who adopted a fairly tolerant approach to them, until their protest actions began to multiply, above all after the Revolution of 1830. Then in addition to propaganda and some temporary downing of tools, the workers associations began to organize much more serious resistance actions, such as the violent destruction of machines or factories, riots like the revolts in Lyon in 1831 and strikes like those organized across the whole country in 1833³³.

This escalation in violence was mainly due to the economic crisis and the sudden depreciation in salaries as a result of the change in the political regime. The government responded by greatly increasing police action and by reminding the mutual societies that they had to operate within their specific confines and if not would be dissolved and punished as unlawful associations.

The government persecution and the reaction by the workers with increasingly more frequent actions led to a lively debate about the right of association in the French Parliament in March 1834. Two deputies, Pierre Antoine Berryer and Félicité Robert de Lamennais, spoke out in favour arguing that the functioning of democracy was essentially dependent on this right, which permitted the different social classes to join together to defend their interests³⁴. Above all they looked to the American model as a reference³⁵.

These deputies however were in a minority and in the end the moderate majority in Parliament prevailed. The result was the *Loi sur les associations 10 avril 1834*, which far from recognizing the right to association increased the penalties for those involved. Article 1 of this Act laid down that the provisions of the Penal Code would be applied even for sections of associations of less than 20 people, and even if they did not meet on a continuous basis. The authorization granted by the government would be revocable³⁶.

32 CHARLE, C., *Histoire sociale de la France au XIX siècle*, Paris, 1991, DUPRAT, C., *Usage et pratiques de la philanthropie. Pauvreté, action sociale et lien social à Paris au cours du premier XIX^e siècle*, Paris, 1997, vol. 1, p. 327-403, GIBAUD, B., *Mutualité, assurances (1850-1914): les enjeux*, Paris, 1998, or DREYFUS, M., *Liberté, Égalité, Mutualité*, Paris, 2001, pp.63-65.

33 BRON, J., *Histoire du mouvement ouvrier français*, Paris, 1970, pp.47-49, FRIDENSON, P., «Le conflit in social», *Histoire de la France : l'Etat et les conflits, tome III : les conflits*, Paris, 1990, p. 402, or CHARLE, C., *Histoire sociale de la France au XIX siècle*, Paris, 1991, pp.65-79.

34 LAMENNAIS, F.R. de, *Questions politiques et philosophiques. Recueil des articles publiés dans L'Avenir (du 16 octobre 1830 au 15 novembre 1831)*, tome I, Paris, 1840, pp.91-99 y 123-136.

35 TOCQUEVILLE, A. de, *De la démocratie en Amérique*, Paris, 1848, tome 3, pp.213-243.

36 Loi sur les associations 10 avril 1834, art.1, in MIROIR, E.M.M., et BRISSOT de WARVILLE, E., *Traité de police municipale et rurale. Première Partie*, Paris, 1846, pp.151-152: «Les dispositions de l'article 291 du Code pénal sont applicables aux associations de plus de vingt personnes, alors même que ces associations seraient partagées en sections d'un nombre moindre,

In addition to the punishments already in place for the leaders or directors of associations and for those “individuals personally guilty of provocation”, Article 2 extended the punishment to “all those who form part of an unauthorized association”, who could be sentenced to up to 1 year in prison plus a fine of 50 to 100 francs. Recidivism would result in the doubling of the punishment³⁷.

Article 3 considered anyone who lent their house to associations to be an accomplice to the crime, so clarifying the grey areas in the Penal Code, while Articles 4 and 5 were devoted respectively to jurisdictional questions and to specifying that the articles that this Act referred to were not considered in anyway to have been repealed.

This Act came into force in 1834, after which the persecution and punishment of all associations became significantly tougher³⁸. This did not however bring an end to the climate of violence, and political clubs, secret societies and workers associations continued to proliferate outside the Act, feeding on the socialist and anarchist doctrines that began to be disseminated above all in the last years of the July Monarchy.

The popular revolution of 1848 provided an enormous boost and increased legitimacy for associations of this kind. An early *Décret du 29 février 1848* proclaimed for the first time in the liberal era the freedom of association for workers³⁹; and a second decree, the *Décret du 28 juillet 1848*, regulated somewhat more extensively in 19 articles, the right of assembly for associations of all kinds, with the prerequisite that the founders of the association had to make a declaration of intentions before the authorities and that their meetings must always be held in public (secret societies continued to be illegal)⁴⁰.

Article 8 of the French Constitution of 4th November 1848 recognized “*le droit de s’associer et s’assembler paisiblement et sans armes*”, but the need to keep order and guarantee the public peace meant that shortly afterwards this right was once again severely restricted by the *loi du 15 mars 1849, contre les coalitions ouvriers et patronales*, which prohibited these kinds of associations

et qu’elles ne se réuniraient pas tous les jours, ou à des jour marqués. L’autorisation donnée par le gouvernement est toujours révocable».

37 Loi sur les associations 10 avril 1834, art.2: «*Quiconque fait partie d’une association non autorisée sera puni de deux mois à un an d’emprisonnement, et de 50 francs à 100 francs d’amende. En cas de récidive, les peines pourront être portées au double. Le condamné pourra, dans ce dernier cas, être placé sous la surveillance de la haute police, pendant un temps qui n’excédera pas le double de maximum de la peine. L’article 463 du Code penal pourra être appliqué dans tous les cas».*

38 GIBAUD, B., *Mutualité, assurances (1850-1914): les enjeux*, Paris, 1998, p.20.

39 DUVERGIER, J.B., *Collection complète des Lois, Décrets, Ordonnances, Règlements et Avis du Conseil d’État*, tome quarante-huitième, Paris, 1848, p.59.

40 DUVERGIER, J.B., *Collection complète des Lois, Décrets, Ordonnances, Règlements et Avis du Conseil d’État*, tome quarante-huitième, Paris, 1848, pp.397-402.

from carrying out any unauthorized action; and the *loi des 19-22 juin 1849, sur le clubs*, which empowered the government to prohibit for a year any clubs or associations that might disrupt public security (promising the development of the Act regulating the right of association which ultimately never materialized)⁴¹. Another significant Act was the *loi 27 novembre 1849, rappelant l'interdiction des grèves*, which reminded that strikes as a means of political or economic coercion were illegal.

The powers granted to the government for the overseeing or control of all kinds of association for one year were renewed in 1850 (*décrets des 6-12 juin 1850*), and again in 1851 (*décrets des 21-24 juin 1851*). In addition to political or workers associations, these powers also affected simple electoral meetings or gatherings (there was no reference to religious associations). If we bear in mind that together with these limitations, all forms of “secret society” remained illegal, we can conclude that in practical terms by the end of 1851 there had been little change in the situation of associations in spite of their constitutional recognition.

During the Second Empire, there was a return to the situation prior to the Revolution of 1848 via the *Décret du 25 mars et 2 avril 1852, qui abroge celui du 28 juillet 1848, sur les clubs, à l'exception del art.13, et déclare applicables aux réunions publiques les art.291, 292 et 294 du Code pénal, et les art. 1, 2 et 3 de la loi du 10 avril 1834*⁴². This decree repealed all the provisions of the Act of 1848 except for that prohibiting secret societies and returned to the regime set out in the Penal Code and the Act of Associations of 1834.

In this way the suppression of all kinds of political or workers associations, with the exception of those of a mutualist nature, remained in force in France for a further period of over 10 years⁴³.

5 UNLAWFUL ASSOCIATION IN THE FIRST SPANISH PENAL CODE OF 1822

When the Penal Code of 1822 was drafted, the “social question” was still not an issue in Spain. Once the relations of serfdom and guilds had been abolished, all labour relations were reduced to the private contracts sphere via a contract for the rental of works and services, which was referred to in the first projects for the Civil Code within the domain of the rights of people, as one

41 DUVERGIER, J.B., *Collection complète des Lois, Décrets, Ordonnances, Règlements et Avis du Conseil d'État*, tome quarante neuvième, 1849, pp. 233-234.

42 DUVERGIER, J.B., *Collection complète des Lois, Décrets, Ordonnances, Règlements et Avis du Conseil d'État*, tome cinquante deuxième, 1852, p.263.

43 ABOUCAYS, C., MARTINAGE, R., *Le code penal, Les metamorphoses d'un modèle. 1810-2010*, Centre d'histoire judiciaire, Paris, 2012.

of the “great domestic relations”⁴⁴. Its “quasi-dominical” nature still allowed them to use the terms “master” and “servant” in the wording of the Act and meant that the appearance of a specific crime against groups or associations of workers who might confront their “masters” was unthinkable and unnecessary. Very limited industrialization was just beginning in the North and East of Spain.

For this reason, in the Penal Code of 1822 there was no mention of the second kind of unlawful association for private purposes. i.e. groups of employers or workers who associated to alter the conditions of the labour market, as set out in the French Penal Code of 1810.

This first Spanish Penal Code (drafted during the Trienio Liberal, a particularly delicate political period) did however deal with unauthorized associations that sought political or religious ends. As in the French Penal Code, this question was dealt with in a Chapter in Part One (“*Crimes against Society*”), Title III (“*Crimes against internal State security and against public peace and order*”), Chapter IV, under the heading “*Factions and sections of prohibited confederations and meetings*” (arts.315-320).

The first of these articles, Article 315, referred to associations or agreements entered into in order to carry out armed violence against public order. In the most serious cases this offence could be compared with political crimes of rebellion or sedition and is therefore beyond the scope of this paper⁴⁵. This was followed by Articles 316 and 317, which dealt with simple associations formed without government authorization to further religious or political ends, which as in France were considered unlawful.

Specifically, Article 316 refers to corporations formed “*under the pretext of religious worship*”, and “*without the knowledge of or licence from the Government*”, obliging them to be wound up immediately and punishing them with a fine of 1 to 30 duros or from two days to two months in prison. For its part, Article 317 was devoted to assemblies, societies or corporations formed without government licence for political purposes, ordering also that they be wound up immediately with a fine of between two and forty duros and from four days to three months’ imprisonment which could be increased to sixty

44 ALONSO OLEA, M., *De la servidumbre al contrato de trabajo*, Madrid, 1987, pp.175-176, and RAMOS VÁZQUEZ, I., “El contrato de arrendamiento de obras y servicios en la codificación civil francesa y española”, *Derecho y trabajo en el siglo XIX*, Madrid, 2016, pp.35.41.

45 C.P: 1822, art.315: “*Los que por emulacion, rivalidad, odio, ambicion, avaricia ó espíritu de venganza ó de partido celebraren entre sí algun concierto para armarse ó hacer que otros se armen contra algunas personas, ó para conseguir por la fuerza que domine alguna faccion, ó para lograr con igual violencia cualquiera otro objeto contra el orden público, serán por este solo hecho obligados a dar fianza de que observarán una conducta pacífica, y los promotores y autores principales del concierto sufrirán ademas un arresto de cuatro dias á tres meses. Si del concierto resultare la perpetracion de otro delito, se aplicará ademas la pena de este. Si el concierto fuere para causar alguna rebelion ó sedicion, ó si le siguiere alguna tentativa para cualquiera de estos delitos, se observará lo dispuesto en el artículo 298*”.

duros and three months to one year in prison if they “*should claim to be the voice of the people or they should attribute themselves some public authority*”⁴⁶.

Thus far, as the member of Parliament Calatrava made clear in a speech to the House, they were punishing “*the mere fact of coming together, whether or not there were any attempt at or consummation of another offence. When there are, those accused will also be subject to the general provisions of the Act*”⁴⁷. It was sufficient for the association not to have the relevant government licence or authorization; no other additional requirement was necessary, such as the coming together of at least 20 people or the permanent, regular holding of meetings required under French Act⁴⁸.

On this question, according to those who drafted the project, the Spanish Act was not based on its French counterpart and instead drew on a Spanish Act promulgated shortly before the Penal Code, the *Ley de Sociedades Patrióticas de 21 de octubre de 1821*⁴⁹. The aim of this Act was to control the development of this kind of Spanish political association, which began to proliferate throughout the country in cafes, debates, theatres, private houses etc after the success of the Riego Revolution, creating space for all kinds of political and religious opinions and creeds⁵⁰.

However, although the Spanish Penal Code did not require unlawful associations to exist over a period of time in order to distinguish them from simple meetings, the recognition of the natural right of all individuals to peacefully come together with their fellows, which was also recognized under French Act, led Spanish actmakers to include a specific article in the Penal Code, Article 320⁵¹.

46 C.P. 1822, art.317: “*Fuera de las corporaciones, juntas ó asociaciones establecidas ó autorizadas por las leyes, los individuos que sin licencia del Gobierno formaren alguna junta ó sociedad en clase de corporacion, y como tal corporacion representaren á las autoridades establecidas, ó tuvieran correspondencia con otras juntas ó sociedades de igual clase, ó ejercieren algun acto público cualquiera, serán tambien obligados á disolverlas inmediatamente, y sufrirán una multa de dos á cuarenta duros , ó un arresto de cuatro dias á tres meses. Pero si como tal corporacion tomanen para algun acto la voz del pueblo, ó se arrogaren alguna autoridad pública, cualquiera que sea, se les aumentará la pena hasta una multa de diez á sesenta duros, y una prisión de tres meses á un año*”.

47 Diario de Sesiones de Cortes Extraordinarias (DSCE), n°113, de 16-01-1822, p.1834.

48 C.P. 1822, art.318: “*Aun entre las corporaciones, juntas ó asociaciones establecidas ó autorizadas por las leyes, toda confederacion que hicieren unas con otras para oponerse a alguna disposicion del Gobierno de las autoridades, ó para impedir, suspender, embarazar ó entorpecer la ejecucion de alguna ley, reglamento, acto de justicia ó servicio legítimo , ó para cualquier otro objeto contrario á las leyes, fuera de los casos en que estas permitan suspender la ejecucion de las órdenes superiores, será castigada con arreglo al capítulo sexto, título sexto de esta parte*”.

49 DSCE, n°113, de 16-01-1822, p.1835.

50 GIL NOVALES, A., *Las Sociedades Patrióticas*, Madrid, 1975.

51 C.P. 1822, art.320: “*Lo dispuesto en este capítulo es y debe entenderse sin perjuicio de la libertad que tienen todos los españoles para reunirse periódicamente en cualquier sitio público á fin de discutir asuntos políticos, y cooperar á su mutua ilustración, con previo conocimiento de la*

Finally, Article 319 set out the specific punishments to be applied to those who took part in a “*secret meeting*” in which those present had begun to “*plot, prepare or execute any action contrary to the Act*”, clearly distinguishing between “*individuals*” or simple members, and the “*leaders, directors and promoters*” and those who “*knowingly and voluntarily lent their home or room for such purposes*”. Unlike the previous articles, in this case they were not punishing the mere fact of coming together but also the beginning of a positive action of any degree, stating that the simple members should be punished with four days to four months in prison or with a fine of from two to sixty duros, while the leaders or promoters or those who had lent their houses for such purposes would receive double this punishment⁵².

While recognizing the importance of this Penal Code of 1822 as the first of its kind in the history of Spain and because it offered an insight into the social situation at that time and into juridical thinking, its short-lived application due to the immediate return of Absolutism⁵³ prevents us from reaching broader conclusions. The fall of the Trienio Liberal ushered in the *Década Ominosa* (Ominous Decade 1823-1833)⁵⁴ a period of Absolutism in which the Penal acts of the Ancien Regime were reintroduced. For the purposes of this paper we will therefore move directly on to the next Spanish Penal Code of 1848, which is more important than its predecessor due to the fact that it remained in force for a much longer period.

autoridad superior local, la cual será responsable de los abusos, tomando al efecto las medidas oportunas, sin excluir la de suspensión de las reuniones”

- 52 C.P. 1822, art.319: “*Es delito toda reunion secreta para tramar, preparar ó ejecutar alguna accion contraria á las leyes. Los individuos que en cualquiera de estos casos resultare haber entrado voluntariamente y á sabiendas en la reunion, serán castigados por este solo hecho con un arresto de cuatro dias á cuatro meses, ó con una multa de dos á sesenta duros. Los gefes, directores y promotores de la reunion sobredicha, y los que á sabiendas y voluntariamente hubieren prestado para ella su casa ó habitacion, sufrirán doble pena; todo sin perjuicio de que á unos y otros se les impongan las demas que merezcan por el delito que hubieren cometido*”.
- 53 ALONSO y ALONSO, J.M., “De la vigencia y aplicación del Código Penal de 1822”, *Revista de Estudios penitenciarios*, 11 (1946), pp.2-15, ANTÓN ONECA, J., “Historia del Código penal de 1822”, *Anuario de Derecho Penal*, 1965, pp. 263-287, ALVAREZ GARCÍA, F.J., “Contribución al estudio sobre la aplicación del Código Penal de 1822”, *Cuadernos de Política criminal*, 1978, pp. 229-243, FIESTAS LOZA, A., “Algo más sobre la vigencia del Código penal de 1822”, *Revista de Historia del Derecho*, Universidad de Granada, 1977-1978, II-1, pp. 57-87, CASABÓ RUIZ, J.R., “La aplicación del Código penal de 1822”, *Anuario de Derecho penal y Ciencias penales*, fasc. II, 1979, pp. 333-344, BERMEJO CABRERO, J.L., “Sobre la entrada en vigor del Código Penal de 1822”, *Anuario de Historia del Derecho Español*, 66 (1996), pp.967-972, or BENITO FRAILE, E. de, “Nuevas aportaciones al estudio sobre la aplicación práctica del Código Penal de 1822”, *Foro. Nueva época*, nº8/2008, pp.41-68.
- 54 BARÓ PAZOS, J., “El derecho penal español en el vacío entre dos códigos (1822-1848)”, *Anuario de Historia del Derecho español*, nº83 (2013), pp.105-138.

6 UNLAWFUL ASSOCIATIONS AND COMBINATIONS IN THE SPANISH PENAL CODE OF 1848

The Penal Code of 1848, drafted by the General Codes Commission and approved with almost no Parliamentary discussion, could be classified within the second generation of codes, or “classical codes” which were being drawn up in Europe in the middle of the 19th century⁵⁵. It bore the mark of other European Penal Codes, in particular the French, and was also influenced by those of Austria and Naples. Penal Codes from the Americas such as the Brazilian Penal Code were also referenced⁵⁶.

They all shared a doctrine of a moderate nature (French *doctrinarisme* and Spanish *moderantismo*), represented in penal science by the so-called neoclassical school of Pellegrino Rossi⁵⁷ or Joseph-Louis-Elzéar Ortolan⁵⁸, and in Spain fundamentally by the “penal retributionism” of Joaquín Francisco Pacheco⁵⁹, although other authors such as Cayetano Cortés⁶⁰ or Florencio García Goyena⁶¹ also subscribed to this line of thought.

55 MARTINAGE, R., *Histoire du droit pénal en Europe*, Paris, 1998, pp.75-85, SÁNCHEZ GONZÁLEZ, M.D., *La Codificación penal en España: los códigos de 1848 y 1850*, Madrid, 2004, INIESTA PASTOR, E., *El Código penal español de 1848*, Valencia, 2011, and MASFERRER DOMINGO, A., *The Western Codification of Criminal Law. A Revision of the Myth of its Predominant French Influence*, Springer, 2018.

56 MASFERRER DOMINGO, A., *Tradición y reformismo en la codificación penal española*, Jaén, 2003, MASFERRER DOMINGO, A. and SÁNCHEZ-GONZÁLEZ, M.D., «Tradición e influencias extranjeras en el Código penal de 1848», *La Codificación española. Una aproximación doctrinal e historiográfica a sus influencias extranjeras, y a la francesa en particular*, Pamplona, 2014, pp.271-349, and ALVARADO PLANAS, J., “La codificación penal en la España isabelina: la influencia del Código Penal de Brasil en el Código penal español de 1848”, *V Seminario Duque de Abumada. España en la época de la fundación de la guardia civil*, Madrid, 1990, pp.43-82.

57 ROSSI, P., *Traité de droit pénal*, Paris, 1829, first translation into Spanish by CORTÉS, C., *Tratado de Derecho penal*, Madrid, 1839.

58 ORTOLAN, J.L.E., *Curso de legislación penal comparada : lecciones pronunciadas en la Facultad de Derecho de Paris por M. Ortolan*, translated in Madrid, 1845, or *Éléments de droit pénal: pénalité, juridictions, procédure : suivant la sciencce rationale, la législation positive et la jurisprudence par M. Ortolan*, Paris, 1855.

59 PACHECO, J.F., *Estudios de derecho penal*, 1^o ed. Madrid, 1842, or *El Código penal concordado y comentado*, Madrid, 1848. See also ANTÓN ONECA, J., “El Código penal de 1848 y D. Juan Francisco Pacheco”, *Anuario de Derecho Penal y Ciencias Penales*, n°18 (1965), pp.473-495, TOMÁS y VALIENTE, F., “Joaquín Francisco Pacheco y la Codificación penal”, *Códigos y Constituciones (1808-1978)*, Madrid, 1989, pp.39-79, TELLEZ AGUILERA, A., *Estudio preliminar a El Código Penal concordado y comentado de Joaquín Francisco Pacheco*, edic. Madrid, 2000, pp.24-25, SÁNCHEZ GONZÁLEZ, M^o D. del M., *La codificación penal en España: Los códigos de 1848 y 1850*, Madrid, 2004, pp.49-57, or INIESTA PASTOR, E., *El Código Penal español de 1848*, Valencia, 2011, pp.266-273.

60 CORTÉS, C., *Tratado de Derecho penal*, Madrid, 1839.

61 GARCÍA GOYENA, F., *Código criminal español según las leyes y práctica vigentes, comentado y comparado con el penal de 1822, el francés y el inglés*, Madrid, 1843.

The new doctrine was based on the reintroduction of the retributive principle of punishment due to the breach of moral order inherent in any offence, in a proportionate manner that fitted the circumstances of each criminal so as to ensure the achievement of absolute justice. In general, this idea resulted in a more detailed description of the different crimes and offences and an important increase in the number of punishments, so as to individualize as far as possible the response of the justice system to the responsibility of each perpetrator or participant.

This increase in the range and number of offences and their penal consequences as well as the greater technicality resulting from the influence of other more consolidated codes such as the Napoleonic Code can effectively be seen in the field we are studying here, namely unlawful association. Although the Spanish Penal Code of 1848 had a very similar structure to the previous code of 1822, it introduced two important new changes, the extension of Chapter 4 and its division into two sections devoted to unlawful associations within Part Three of Book Two (“*Crimes against internal State security and public order*”); and the appearance of the second kind of unlawful association for private or economic purposes which had not been mentioned in the previous Spanish Penal Code (although it did appear in the French one). This second kind of unlawful association was described in Chapter 5 (“*Scheming to alter the price of things*”) of Title XIV of Book II (“*Crimes against property*”).

The first section of Chapter 4 of Title III of Book II on “*unlawful associations*” was aimed particularly at prohibiting so-called secret societies, (in the previous code of 1822 they had only gone so far as to talk of “*secret meeting*”). As Pacheco⁶² pointed out, on this issue the Spanish actmakers appear to have taken the Austrian Penal Code as a model, as the French code made no specific reference to this kind of society.

In his commentary on the Spanish Penal Code, Pacheco takes us on a journey through the history of so-called “*secret societies*” (including for example masonic lodges) coming to the conclusion that it was necessary to repress them for the common good⁶³. Four articles were devoted to this issue. Article 207 defined “*secret societies*” as “*those whose members are obliged, under oath or not, to hide from the public authorities the purpose of their meetings or their internal organization*”, or “*those in which the correspondence with members or with other associations is conducted in figures, hieroglyphics or other mysterious signs*”. This vague generic article was based simply on the grouping together of people and keeping it hidden from the authorities without any other prerequisite.

62 PACHECO, J.F., *El Código penal concordado y comentado*, 5ª ed. Madrid, 1881, t. II, pp.246-247.

63 PACHECO, J.F., *El Código penal concordado y comentado*, 5ª ed. Madrid, 1881, t. II, p.248.

Article 208 laid down the punishment for this offence, distinguishing between the different degrees of participation: *prisión mayor* (long periods of imprisonment) for the presidents or leaders of the secret society and for those who lent their houses for such activities; banishment for simple members; and absolute perpetual disqualification from holding office for all of them. Pacheco highlighted the “softness” of these punishments above all taking into account that during the previous Absolutist period, those found guilty of such offences would have been treated as criminals guilty of “*lèse-majesté*” and condemned to death⁶⁴.

In addition, according to Article 209, these punishments could be reduced to a mere “*caución*” (in which a bond had to be lodged to prevent recidivism) for those “*members of a secret society, whatever their category, who should spontaneously appear before the Authorities declaring to them what they know about the purposes and plans of the association. When the Authorities receive this declaration, they may not question them about the people that make up the society*”. In this case, as it was a minor offence, unlike the punishments for crimes of treason or “*lèse-majesté*”, this “*spontaneous*” decision did not imply betraying one’s comrades, as the last sentence in the article strove to make clear⁶⁵.

However, Article 210 concluded that if there was evidence that the purpose of a secret society was any of the crimes set out in Chapters I and II, then both the leaders and members would be punished as conspirators and if there was evidence that the purpose was any other crime, the leaders would be punished for an “attempted” crime and the members for a “foiled” crime.

For its part, Section 2 of Chapter IV of Title III of Book II was devoted to the repression of other unlawful associations (*De las asociaciones ilícitas*) and showed much more evident similarities with the Napoleonic Penal Code. There are many similarities for example between the first article of this section of the Spanish Code of 1848 and Article 211 and Article 291 of the French Penal Code of 1810, which we discussed above:

Art. 211: All associations of more than 20 people who meet daily or on set days to discuss religious or literary affairs or of any other kind will also be considered unlawful, if they have not been formed with the consent of the public authorities or if they have breached the conditions that said authority had laid down for them.

The second article devoted to this question in the Spanish Penal Code, Article 212, was also directly inspired by Articles 292 and 294 of the Napoleonic Code and can be summarized as follows:

64 PACHECO, J.F., *El Código penal concordado y comentado*, 5ª ed. Madrid, 1881, t. II, pp.250-251.

65 PACHECO, J.F., *El Código penal concordado y comentado*, 5ª ed. Madrid, 1881, t. II, p.252.

the association described in the previous article will be dissolved and its directors, leaders or administrators will be punished with a fine of from 20 to 200 *duros*, and in the case of recidivism with that of *arresto mayor* (1-6 months in prison) and double the fine. The same punishment will be applied to those who lend to the association the houses they own, administer or dwell in.

Although Pacheco mentioned other similarities, specifically with the Neapolitan and Brazilian Penal Codes, the main influence of France can also be seen when the author made a specific reference to the *Loi sur les associations 10 avril 1834*⁶⁶ in his comments.

In short, the Spanish Penal Code of 1848 contained the same type of crime and the same requirements as the French Penal Code: association without governmental licence of over twenty people and regular meetings. The method for applying for authorization was not laid down in the Spanish Penal Code or in the French one. According to Pacheco, this was left to the discretion of the political or civil leader or the Mayor.

The only difference from the French model was that the punishments were milder and, unlike the provisions of Article 293 of the French Penal Code (the only provision that was not followed), only affected the leaders of the association or those who offered their houses to it, and never affected simple members. According to Pacheco, the Spanish Penal Code was less severe because associations in Spain were less developed and therefore less “*frightening*” than in France (“*so far in Spain we have neither socialism nor workers’ organizations*”)⁶⁷.

However, although the workers movement was still not particularly strong in Spain, the news arriving from the “*manufacturing countries*”, and the aforementioned influence of the other European codes when it came to drafting the Spanish Penal Code caused legislators to decide to include the second type of crime of association or unlawful association, specifically intended to repress all those “*coligaciones*” (combinations) aimed at altering the conditions of the labour market, within the crimes against property set out in Chapter V of Title XIV of Book II, under the heading “*Scheming to alter the price of things*”.

The influence in this type of crime continued to be French above all⁶⁸. But the fact that such crimes were still rarely committed in Spain at that time meant that the three articles on this question in the French Penal Code were summarized in one in the Spanish Penal Code, Article 461:

Those who associate to increase or reduce the price of labour abusively, or to regulate their working conditions, will be punished, providing that the combination has begun to be executed, with penalties of *arresto mayor* and a

66 PACHECO, J.F., *El Código penal concordado y comentado*, 5ª ed. Madrid, 1881, t. II, p.257.

67 PACHECO, J.F., *El Código penal concordado y comentado*, 5ª ed. Madrid, 1881, t. II, p.258.

68 PACHECO, J.F., *El Código penal concordado y comentado*, 5ª ed. Madrid, 1881, t. III, pp.383-385.

fine of 20 to 100 duros. If the combination were to be formed in a town with less than 10,000 souls, the punishments will be *arresto menor* and a fine of 15 to 50 duros. In both cases, punishments of the highest degree will be given to the leaders and promoters of the combination and to those who use violence or threats to ensure its success, unless they deserve more severe sentences.

This Article considered the unlawful action of both employers and workers who consciously formed an association with the intention of altering the conditions of the labour market (salaries, working hours, rest days etc.). The punishments did not depend on the social group at which they were directed (they were the same for employers or workers), and instead varied according to the population of the town in which the crime had taken place, on the basis of the different level of alteration of public order and the degree of participation, with more severe punishments for the promoters of the association than for mere participants.

7 UNLAWFUL ASSOCIATIONS AND COMBINATIONS IN SPAIN UNTIL THE PENAL CODE OF 1870

Shortly after the definitive outlawing of guilds, an important Royal Order (*Real Orden de 28 de febrero de 1839*) was issued in Spain, permitting on an exceptional basis the setting up of Mutual Aid Societies (*Sociedades de Socorros Mutuos*)⁶⁹. These societies shared the same spirit as the French Mutual Aid Societies and like them were grouped according to trades and workplaces⁷⁰.

The reaction of the bosses to the growing workers movement that was gradually carving itself out under the auspices of this kind of association, soon became evident in a series of proclamations, decrees and orders between 1840 and 1842 that tried to limit these actions, reminding the Mutual Aid Societies that they should be exclusively devoted to charity work or mutual aid. Some of the most radical, such as the Society of Weavers of Barcelona, were wound up⁷¹.

The mistrust towards the increasingly numerous mutual aid societies, which under the guise of charitable work were suspected of covering up other actions of a political nature, led Queen Isabel II to issue a Royal Order (*Real Orden de 25 de agosto de 1853*) which suspended the provisions of the previous order of 1839 allowing these societies to be set up⁷². Although the progressive

69 ALARCÓN CARACUEL, M.R., *La asociación obrera en el derecho histórico español: 1839-1900*, Sevilla, 1973, Annexes, p.15.

70 CASTILLO, S., "Las Sociedades de Socorros Mutuos en la España Contemporánea", *Solidaridad desde abajo*, Madrid 1994, pp.1-29, or ILLADES, C., *De los gremios a las sociedades de socorros mutuos*, Instituto de Investigaciones históricas, vol.13, 1990.

71 On these events and the documents on which they are based, ALARCÓN CARACUEL, M.R., *La asociación obrera en el derecho histórico español: 1839-1900*, Sevilla, 1973, Annexes, pp.16-18, and pp.40-42.

72 ALARCÓN CARACUEL, M.R., *La asociación obrera en el derecho histórico español: 1839-1900*, Sevilla, 1973, Annexes, pp.18-19.

period of government known as the Bienio Progresista (1854-1855) seemed to provide a new boost to worker associationism⁷³, after the violent events during the first general strike in Spain in 1855 (declared illegal), another period of strong reaction against it began⁷⁴.

In spite of the repression, the workers movement continued to develop underground, often via cultural associations in which members began to be instructed in a specific political ideology. The Spanish workers also heard news of the holding in London of the First Workers International in 1864 and of the creation at that event of the International Workingmen's Association (IWA). More contacts were made and the Spanish issue began to be discussed abroad. At the second Congress of the IWA in Lausanne in Switzerland in 1867 messages were received from the still clandestine Spanish workers associations⁷⁵.

In this context the debate about the right of association, became increasingly important in Spain and abroad, leading to the preparation of the first Bill on Public Societies of 29th January 1866⁷⁶. The text of this Act was drafted by Posada Herrera just two years after the promulgation in France of the *Loi Ollivier, du 25 mai 1864*, opening up a period of tolerance and decriminalization of the actions taken by workers associations⁷⁷. Unfortunately, this draft Act was never debated in Parliament.

In Spain we would have to wait for the triumph of the Democratic and Republican parties after the Glorious Revolution of 1868 for the winds of change to blow through the country. In an early Decree of 1st November 1868, the Provisional Government permitted the right to peaceful meeting⁷⁸; and shortly afterwards another very interesting Decree of 20th November 1868 recognized general freedom of association for the first time in Spain (“*one of the clearest, fairest and most strenuously defended demands of our glorious revolution*”). The various articles of the decree provided for a certain degree of administrative control such as the requirement that associations should inform the local authorities of their purpose, regulations and decisions. It also had

73 FABIÁN CAPARRÓS, E., “Aproximación histórica al tratamiento jurídico de la huelga en España. Siglo y medio de represión penal de la huelga de trabajadores (1822-1975)”, *Revista del Trabajo y la Seguridad Social*, nº5, 1992, pp.21-42.

74 ALARCÓN CARACUEL, M.R., *La asociación obrera en el derecho histórico español: 1839-1900*, Sevilla, 1973, Annexes, pp.31-35.

75 TERMÉS ARDEVOL, J., *El movimiento obrero en España. La I Internacional (1864-1881)*, Barcelona, 1965, or *Anarquismo y sindicalismo en España (1864-1881)*, Barcelona, 1972.

76 ALARCÓN CARACUEL, M.R., *La asociación obrera en el derecho histórico español: 1839-1900*, Sevilla, 1973, Annexes, pp.38-39.

77 DUVERGIER, J.B., *Collection complète des Lois, Décrets, Ordonnances, Règlements et Avis du Conseil d'État*, tome soixante quatrième, 1864, pp.162-195: «Art. 1. Les art. 414, 415 et 416 c. pén. [Code pénal] sont abrogés. Ils sont remplacés par les articles suivants (...)».

78 ALARCÓN CARACUEL, M.R., *La asociación obrera en el derecho histórico español: 1839-1900*, Sevilla, 1973, Annexes, pp.62-65, and *Gaceta de Madrid*, nº 307, 02-11-1868, p.2.

the enormous merit of expressly abolishing Articles 211 and 212 of the Penal Code⁷⁹.

After a fascinating debate in the Congress⁸⁰, the Constitution of 1869 soon gave the green light to the right of association together with the right of assembly. Citizens were also given the right to present individual or collective petitions to the authorities in an extensive Article 17, which permitted the exercise of these rights “*for all purposes of human life which are not contrary to public morals*”⁸¹. Article 19 however made clear that when the members of an association committed a crime, this association could be dissolved or suspended by the administrative authority, while the case was being heard by a judge. Any association whose ends or means undermined State security could also be wound up.

The suspicious attitude towards associations which could still be seen in this article of the Constitution and in the debates that preceded it in Parliament was also transferred to the Penal Code of 1870, which was drafted above all to adapt the previous Penal Code to the new individual rights enshrined in the Constitution⁸². In this way the treatment of “unlawful associations” in general was separated from the group of crimes against the “internal security of the state” or “crimes against public order” and was instead included in a new Chapter II of Title II (“*Crimes against the Constitution*”), under the heading “*Crimes committed during the exercise of the individual rights guaranteed by the Constitution*”.

This chapter devoted almost all its first section (Articles 189-202) to describing respectively, “*non-peaceful meetings or demonstrations*” (as opposed to the constitutional right of assembly), and “*unlawful associations*” (as opposed to the constitutional right of association). In other words, thanks to

79 ALARCÓN CARACUEL, M.R., *La asociación obrera en el derecho histórico español: 1839-1900*, Sevilla, 1973, Annexes, pp.65-70, an Gaceta de Madrid, n° 326, 21-11-1868, pp.2-3.

80 DSC, n° 56, de 22-04-1869, pp.1276 onwards, and DSC, n° 57, 23-04-1869, pp.1308 onwards, and DSC, n° 68, 07-05-1869, pp.1684 onwards.

81 OLÍAS de LIMA, B., *La libertad de asociación en España (1868-1974)*, Madrid, 1977, PECES BARBA, G., *Sobre las libertades políticas en el Estado español (expresión, reunión y asociación)*, Valencia, 1977, YBORRA, J.A., *Los orígenes del derecho de asociación laboral en España (1800-1869)*, Valencia, 1978, ROJAS SANCHEZ, G., *Los derechos políticos de asociación y reunión en la España contemporánea (1811-1936)*, Pamplona, 1981, VELLOSO, M.L., “Los orígenes constitucionales del derecho de asociación en España (1868-1923)”, *Revista de Derecho Público*, núm.88-89, Madrid, 1982, or PELAYO OLMEDO, J.D., “El derecho de asociación en la historia constitucional española, con particular referencia a las leyes de 1887 y 1964”, *Historia Constitucional (revista electrónica)*, n°8, 2007.

82 This was stated by the architects of the project, Montero Ríos y Groziard, and its main supporters on Cortes, as Francisco Silvela, in DSS, n°307, 15-06-1870, p.8883, or Madrazo in DSC, n°308, 17-06-1870, p.8900. See also ANTÓN ONECA, J., “El Código penal de 1870”, *Anuario de Derecho Penal y Ciencias Penales*, n° 23, fasc.2, (1970), p.250, or NUÑEZ BARBERO, R., *La reforma penal de 1870*, Salamanca, 1969, p.58.

the constitutional recognition of these individual rights, the Penal Code of 1870 no longer made any reference to the old “secret societies” of the Penal Code of 1848. It also dispensed with Articles 211 and 212 which considered any association of more than 20 people without public authorization illegal (as did the Napoleonic Penal Code). Nonetheless, the Penal Code of 1870 dedicated 13 complete articles (Articles 189 to 202) to imposing limits or pointing out the abuses that might be committed in opposition to the rights of assembly or association, defining the “*non-peaceful meetings or demonstrations*” (including those held in breach of police orders, in the open air or at night, with weapons, or for the purpose of committing crimes), and “*unlawful associations*” (in other words those that were “*contrary to public morals*” or those whose “*purpose was to commit some of the crimes punishable under this Code*”).

However, if the recognition of the rights of assembly and association in the Constitution served as a boost for the modifications in the section of the Penal Code of 1870 on political meetings or associations, it had no effect whatsoever on the second part of the code which amongst the Crimes against Property, described the unlawful associations with economic purposes or “combinations”.

In fact, the literal text of the article on this question in the Penal Code of 1870 in Title XIII (“*Crimes against property*”), Chapter V (“*Scheming to alter the price of things*”) reproduced almost unchanged Article 461 of the Penal Code of 1848⁸³.

One of the most important commentators on this Code, Alejandro Groizard, argued that this article, which had been inherited from earlier eras and had hardly been debated in Parliament, was wrongly positioned amongst “Crimes against Property”, as in his opinion it should have been classified amongst “Social Crimes”⁸⁴. The term “social crime” had been coined in international doctrine and in political and journalistic language in the late 19th and early 20th centuries, although it was never included in any act to refer specifically to criminal behaviour resulting from labour conflicts and the union movement⁸⁵.

83 C.P. 1870, art.556: “*Los que se coligaren con el fin de encarecer ó abaratar abusivamente el precio del trabajo ó regular sus condiciones, serán castigados, siempre que la coligación hubiere comenzado á ejecutarse, con la pena de arresto mayor. Esta pena se impondrá en su grado máximo á los jefes y promovedores de la coligación y a los que para asegurar su éxito emplearen violencias ó amenazas, á no ser que por ellas merecieren mayor pena*”.

84 GROIZARD, A., *El Código penal de 1870, concordado y comentado*, t. VII, Salamanca, 1897, pp.312-313: “*Ninguno de los actos castigados en el presente capítulo constituye un atentado contra la propiedad. Todo hombre es libre para contratar, pero tiene que respetar esa misma libertad en los demás (...)* Despréndese de estas consideraciones que los hechos de que vamos á ocuparnos no son delitos naturales, sino verdaderos delitos sociales”.

85 MARINELLO BONNEFOY, J.C., “Los delitos sociales en la España de la Restauración (1874-1931)”, *Anuario de Historia del Derecho Español*, t. LXXXVI (2016), pp.521-545.

The radicalization taking place at that time in the workers movement fundamentally from the perspective of anarchist thought which viewed the general strike as a revolutionary instrument, as well as subscribing to other more violent actions such as terrorism or *pistolero*, meant that a whole set of crimes from the most serious of terrorism or murder to the most minor such as assembly, unlawful association or striking began to be considered within this ambiguous concept of “social crime” whenever they were aimed at altering social conditions or the labour market.

This is why when Groizard commented on this crime, he instantly related it with striking, the main form of demonstration at that time⁸⁶. According to this author, although employers’ combinations (also unlawful according to Article 556) were less frequent than those of workers and did not produce so much alarm within society, they should also be punished as they were crueller and easier to form and because “*they reveal the incapacity of the public authorities to provide a peaceful and fair solution to industrial strife*”⁸⁷.

Many other authors from this period also declared themselves in favour of this doctrine relating “combination and striking” with “social crime”. This was a question of hot debate because these views were opposed by the international workers movement and the new ideologies, not only of a socialist nature such as communism and anarchism, but also within the Liberals, Progressives and Democrats’ own ranks. This coincided above all with the development of Krausism to demand greater state intervention in labour relations, via urgent measures of “social reform” so as to correct the errors of the liberal system against the working class⁸⁸.

The intellectual tension that surrounded the right of association and the right to strike and their legitimacy became evident the moment the Code was promulgated. The main question focused on discovering whether any association entered into in support of a strike was unlawful pursuant to Article 556 or only those that were carried out with the specific purpose of “abusively” increasing or reducing the price of labour⁸⁹. This was the interpretation that ultimately

86 GROIZARD, A., *El Código penal de 1870, concordado y comentado*, t. VII, Salamanca, 1897, pp.328-329.

87 GROIZARD, A., *El Código penal de 1870, concordado y comentado*, t. VII, Salamanca, 1897, p.330.

88 MONTERO GARCÍA, F., “La polémica sobre el intervencionismo y la primera legislación obrera en España (1890-1900). Primera parte: el debate académico”, *Revista del Trabajo*, nums.59-60 (1980/1981) pp.121-165, CLAVERO, B., “Institución de la reforma social y constitución del Derecho del Trabajo”, *Anuario de Historia del Derecho Español*, 49 (1989), pp.859-884, PALOMEQUE LÓPEZ, M.C., *Derecho del Trabajo e ideología. Medio siglo de formación ideológica del Derecho Español del Trabajo (1873-1923)*, Madrid, 5ª ed., 1995, MONEREO PÉREZ, J.L., *Fundamentos doctrinales del derecho social en España*, Madrid, 1996, or CABRERA, M.A., *El reformismo social en España (1870-1900)*, Madrid, 2014.

89 Francisco Silvela in DSC n° 307, 15-06-1870, p.8887, or Salmerón in DSC, n°129, 27-10-1871,

became laid down by the First Circular of the Prosecution Service of the Supreme Court of 27 November 1871, which argued that for the combination to be considered unlawful, it had to act in an “abusive” manner, that is using violence, threats, damage or any other means that in themselves constituted a crime or offence⁹⁰.

The wellknown policy of social harmonization on which the restoration of the Bourbon Dynasty in the person of King Alfonso XII was based was expressed in Article 13 of the constitution of 1876, which once again recognized the right of association without any subsequent article limiting this right, except for Article 14 which referred the regulation of the rights of citizens to subsequent legislation.

In the case of the right of association, this came in the General Act on Associations of 30th June 87, which although it stipulated that government control was required for the constitution and development of associations (they were obliged to present their statutes, regulations and decisions to the Governor of the province and inform him of the days, time and place of their ordinary meetings)⁹¹, it achieved a wide consensus and remained in force for a long period. The main trades unions were created under its protection, the first of which was the General Workers Union (Unión General de Trabajadores) in 1888, at a time in which in Spain and in France, the unions began to relinquish their divisions into “trades” to form a genuine “class” or transversal union movement⁹².

For its part a new Circular from the Prosecution Service of the Supreme Court, dated 4th March 1893 continued interpreting Article 556, emphasizing the need for abusive or non-peaceful behaviour⁹³. This was the doctrine applied by the courts to try those arrested in the numerous strikes or demonstrations that were considered unlawful. But this crime was increasingly viewed as outdated and incompatible with the right of workers to associate.

pp.3238-3244.

90 ALARCÓN CARACUEL, M.R., *La asociación obrera en el derecho histórico español: 1839-1900*, Sevilla, 1973, Annexes, pp.79-80.

91 Gaceta de Madrid, n° 193, 12-07-1887, pp.105-106.

92 GARCÍA VENERO, M., *Historia de los movimientos sindicalistas españoles (1840-1933)*, Madrid, 1961, RON LATAS, R., *Los sindicatos horizontales*, Granada, 2003, PERFECTO GARCÍA, M.A., “El corporativismo en España: desde los orígenes a la década de 1930”, *Pasado y memoria: Revista de historia contemporánea*, n°5 (2006), pp. 185-218, or PALOMEQUE LÓPEZ, M.C., “El sindicato en la historia de España”, *Sindicalismo y democracia: el “Derecho sindical español” del profesor Manuel Carlos Palomeque treinta años después (1986-2016)*, Madrid, 2017, pp.123-137.

93 Memoria del Fiscal del Tribunal Supremo de 15 de septiembre de 1893, pp.85-91: “No cometerán abuso punible los trabajadores que voluntariamente nieguen su concurso al patrono o empresario que no les remunere con el jornal y las condiciones de servicio que estimen proporcionadas; pero excederán su derecho, cayendo en responsabilidades criminales exigibles, los que intenten lograrlo por la violencia o la intimidación o cobijando de otro modo la libertad de aquel o de sus propios compañeros”.

The Commission on Social Reform⁹⁴ was commissioned to analyse this question in 1901 after an intense debate in Parliament after a consultation by various members regarding the charges by the Army and the people that had been killed in the latest strikes in La Coruña and Seville that year⁹⁵.

On the basis of this preparatory work the first Bill on Combinations and Strikes of 29th October 1901 was presented to the Congress. This Bill expressly derogated Article 556 of the Penal Code⁹⁶, but it never came into force. This was the first project in an enormously lengthy process which culminated several years later during the reign of King Alfonso XIII after the discussion of several different projects and corrections in both the Senate and the Congress in an endless to and fro between the two houses. The end result was three important Acts promoted by the then President of the Council of Ministers, Antonio Maura y Montaner, who always proudly claimed to have finally secured their passage: the Acts on Conciliation and Arbitration and on Industrial Tribunals of 19th May 1908, and the Act on Strikes of 27th April 1909⁹⁷.

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94 PALACIO MORENA, J.I., *La institucionalización de la reforma social en España, 1883-1924: La Comisión y el Instituto de Reformas Sociales*, Madrid, 1988, DE LA CALLE, M.D., *La Comisión de Reformas Sociales (1883-1903). Políticas social y conflictos de intereses en la España de la Restauración*, Madrid, 1989, or GONZÁLEZ SÁNCHEZ, J.J., “La Comisión de Reformas Sociales (1883-1903)” *Segismundo Moret Presidente del Consejo de Ministros de España: cuestión social y liberalismo*, Madrid, 2016, pp.71-132.

95 DSC n° 25, 10-07-1901, pp. 456-461, y p. 482.

96 DSC, n°65, 20-11-1901, Apéndice 12°.

97 GONZÁLEZ SÁNCHEZ, J.J., “Maura, reforma y legislación: la Ley de Conciliación y Arbitraje de 1908 y la Ley de Huelgas y Coligaciones de 1909”, *Antonio Maura, Presidente del Consejo de Ministros de España: la legislación social*, Madrid, 2015, pp.25-74, y LÓPEZ AHUMADA, J.E., “El tratamiento de la huelga y las coligaciones obreras durante los gobiernos de Sagasta: el tortuoso camino hacia la Ley de huelgas de 1909”, *Práxedes Mateo Sagasta*, *Presidente del Consejo de Ministros de España: política y cuestión social, 1874-1902*, Madrid, pp.123-189. SÁNCHEZ, J.J., “Maura, reforma y legislación: la Ley de Conciliación y Arbitraje de 1908 y la Ley de Huelgas y Coligaciones de 1909”, *Antonio Maura, Presidente del Consejo de Ministros de España: la legislación social*, Madrid, 2015, pp.25-74, and LÓPEZ AHUMADA, J.E., «El tratamiento de la huelga y las coligaciones obreras durante los gobiernos de Sagasta: el tortuoso camino hacia la Ley de huelgas de 1909», *Práxedes Mateo Sagasta, Presidente del Consejo de Ministros de España: política y cuestión social, 1874-1902*, Madrid, pp.123-189. SÁNCHEZ, J.J., “Maura, reforma y legislación: la Ley de Conciliación y Arbitraje de 1908 y la Ley de Huelgas y Coligaciones de 1909”, *Antonio Maura, Presidente del Consejo de Ministros de España: la legislación social*, Madrid, 2015, pp.25-74, and LÓPEZ AHUMADA, J.E., “El tratamiento de la huelga y las coligaciones obreras durante los gobiernos de Sagasta: el tortuoso camino hacia la Ley de huelgas de 1909”, *Práxedes Mateo Sagasta*

