

Rural Judges and Territorial Organization in Río de la Plata (17th to 19th Centuries)

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Abstract

This paper focuses on some traces of the challenge of the government of the dispersed population into a larger territory of the Spanish Monarchy throughout 16 - 19 century. The main subject is the creation and implementation of a minor justice: the “alcalde de la santa hermandad” (judge of the brotherhood). This rural judge appeared early at Santa Fe and Buenos Aires and plays like an articulator between urban and rural populations. Based on a large base of research, this work shows what was the role that the office holders allowed to play in the political process equipment planning at the Gobernación of Buenos Aires.

Keywords

Spanish Monarchy, Colonial Government, Justice, Rural Justices, Territory

1. Introduction

Studies of justice and the agents entrusted with imparting it have earned their rightful place as a point of entry towards attaining a better understanding of several aspects of how the Iberian Monarchies functioned throughout their widespread dominions. This phenomenon, consolidated in Spanish language historiographies in the last decade of the 20th century and the early years of the 21st, set the stage for analyses of certain processes in the construction of territorial authorities and identities from previously unexplored angles.¹

The methods of social history have been used to study the prosopographical profiles of magistrates² and the real social relations that unfolded on the ground among officials who performed judicial duties (Aguirre Salvador,

¹For a sample of different approaches to the Peninsula, see AAVV, 1999; Gómez González, 2000, 2003. Studies of the American territories will be cited throughout this article, but Agüero, 2008 is exemplary.

²Burkholder & Chandler, 1977, 1982; Lohmann Villena, 1974; De la Puente Brunke, 1997, 1999; Barrientos Grandón, 2001.

2004) and other actors involved in the day-to-day functioning of legal systems (Uribe, 2000; Pérez Perdomo, 2006). The development of studies of judicial institutions did not lag behind and have also made valuable contributions to Latin American historiography, primarily through institutional studies and novel approaches that recognize the significance of those agents' political and social relations.³

The historiography of Río de la Plata became interested in this field—once seemingly relegated to a place in the history of law—along a path all its own: its systematic and intensive research in the repositories of judicial documents undertaken in a quest to rescue the voices of “subaltern sectors”⁴ centered attention on the interweaving of relations among the figures and institutions that produced those records (Fradkin, 2007, 2009).

Also, studies of judicial practices and the actors involved in their implementation—from judges to criminals, and including scribes, attorneys, auxiliary justices and even witnesses—have shown that the periodizations bequeathed by political or institutional history were inadequate, just not a good fit. A historiographical tradition based on the 19th-century liberal version of Argentina's history (whose main reference in the first half of the 20th century was the work of Ricardo Levene) argued that there were marked discontinuities between the colonial and postrevolutionary juridical-legal orders on the basis of the sharp distinction that judicial history establishes between “Indian” and “patriotic” law. In this vision, which undervalued the doctrinal, normative and procedural continuities concealed behind new names, the history of law and institutions conformed to the rhythm of the key points of a political history canonized by an Argentine State that, in the words of one of its organizers (Bartolomé Mitre), had narrated its own glorious history. For some time now, like the revised rural history of Río de la Plata did earlier (Gelman & Garavaglia, 1998), studies of the history of justice have forged an approach that analyzes the changes that emerged at different rhythms, but without neglecting the existence of transformations.⁵

Among the various reasons that justify this procedure, one stands out with special clarity: the incardination between the functions of justice and government that characterized the so-called ancient regime and, survived in the revolutionary territories long after the bonds of colonialism had dissolved, while some modernizing solutions were consolidating those older forms. This is reflected to some degree in events related to certain measures adopted in Río de la Plata during the short, but convulsive, *rivadaviana* period. Decreeing the separation of the functions of government and justice constituted an attempt to modernize rural administration by definitively legitimizing a kind of “government by judges” in which these officials embodied the traditional indivisibility of attributions (indeed, judges set themselves up as the new bearers of the representative capacities once held by the recently abolished councils [*cabildos*], Ternavasio, 2000).

Governing a population scattered across the barrens and wastelands of the Monarchy's American territories was a fundamental problem. Attempts to solve it involved a wide range of measures—concentrating people in population centers (*reducciones*), establishing outposts, parishes and judgeships of the brotherhood (*alcaldías de hermandad*)—and actors, as doctrinal priests, frontier commanders and magistrates all played key roles in initiatives designed to consolidate Spanish control in the early years of the conquest and, much later—in the first half of the 19th century—in implementing the series of alternatives created when it became necessary to reinvent a republican order, one that no longer depended on the political body of the Monarchy.

Among the group of agents involved, rural judges in general, and the *alcaldes de la hermandad* (hereinafter, judges of the brotherhood) in particular, maintained a strong presence in the process of the political organization of the territory, and the imprint of their activities on the settling of the hinterlands that surrounded cities from the 17th century on, the exponential increase in their number in the late 18th century, and the difficulties that arose in replacing them in the first quarter of the 19th, (Fradkin, 2009; Barriera, 2010b) make them an especially attractive vantage point from which to observe the dynamics of territorial organization in times of profound political, economic and social transformations (Suárez & Tornay, 2003; Romano, 2004). In this article, I present a synthesis of the contributions of classic and recent studies to our understanding of the significance of those officials in the process of the political organization of modern Argentina's territory from the 17th century to the dissolution of the councils in the first third of the 19th.

³Parry, 1993; Polanco Alcántara, 1992; Suárez, 1989; Cauzzi, 1984; Martiré, 2009; of the latter, Hespanha, 1989, has been especially inspiring. See also Herzog, 1995.

⁴Among early works in social history that examined judicial archives in search of the voices of subaltern sectors, Mayo, 1989, 2004; Mallo, 2004; Mayo, Mallo, & Barreneche, 1989; Mayo et al. in AAVV, 1999. Garavaglia (1998) published a brief but weighty article that pursued and achieved this objective. Rosario's “subaltern classes” are examined through judicial archives in Bidut, Caula, & Liñán, 1998.

⁵This general problem has been posited from another perspective by Palacio, 2005; see also Agüero, 2010; Candiotti, 2009; Barreneche 2001.

2. Urban Justice Beyond City Limits

From the mid-16th century to the first half of the 19th, cities in the Spanish Monarchy relied on different kinds of officials to achieve an effective jurisdiction over lands that were subject to cities but lay beyond their boundaries. The first magistrates appointed to the colonial councils of Río de la Plata were of two types: “ordinary judges” and “judges of the brotherhood”. This meant that while they imparted ordinary justice from seats in cities, they were allowed to proceed summarily “in those Brotherhood cases that occurred...” outside the urban space.⁶ However, in the early 17th century, several councils in the *gobernaciones* of Río de la Plata, Tucumán and Capitanía de Cuyo began to name judges of the brotherhood, officials who were granted judicial competence over ill-defined territories called *pagos* (hamlets). In the 18th century, the boundaries of some of those hamlets were drawn with the scrupulousness typical of the period, and were called districts (*partidos*). At the same time, the status of other localities was changed from town (*pueblo*) to villa. Jurisdiction over those territories was in the hands of a figure called the Provincial of the Brotherhood (*Provincial de la Hermandad*) and, later, chief justices (*jueces pedáneos*). The former held seats on the councils, where they could speak and vote, while the latter were territorial magistrates created by those councils in the late 18th century; an epoch also characterized by a more systematic designation of commanders with jurisdiction over military matters and, often, appointments of commissioned judges (*jueces comisionados*).

3. Judges of the Brotherhood

To maintain order and administer summary justice beyond city limits, and following the model of the councils of Castile (*concejos*), the councils in Spanish America named “judges of the holy brotherhood” or “judges of the brotherhood”.⁷ Those officials were first named in Río de la Plata in the early 17th century, but did not survive the suppression of the councils that occurred between 1821 and 1832.⁸ It was normal in the Spanish American councils for ordinary judges to hear brotherhood cases (Garretón, 1933: p. 249), in accordance, for example, with Charles V’s *Real Cédula* of 1546⁹ and the *Real Provisión* presented to the Asunción council ten years later by the procurator Martín de Orué. The first judges of the brotherhood in that council were appointed on September 30 1596, at a session called by Juan Ramírez de Velazco, the governor of Río de la Plata. This designation entailed giving the brotherhood’s ‘bar of justice’ (*vara de la justicia*) to two aldermen (*regidores*).¹⁰ In 1586, Ramírez de Velazco ordered the creation of judgeships of the brotherhood in cities in the *gobernación* of Tucumán—“as in Peru”, he wrote (Jaimes Freyre, 1915: p. 108).

In Spanish America, responsibility for naming judges of the brotherhood rested with the councils and, though this faculty was established in dispositions in 1555, the practice did not become widespread in the 16th century, and the cases we know of suggest it was not continuous (Bayle, 1952: p. 170). The election of judges of the brotherhood came after that of ordinary judges and aldermen. Their office did not give them a voice or vote on the council and they did not usually attend its sessions. After 1593 in Cordova, judges of the brotherhood were elected by the outgoing aldermen (Zorraquín Becú, 1947: p. 34). The Council of Mendoza named one judge of the brotherhood in 1605, Buenos Aires appointed two on January 1, 1606,¹¹ at least one was designated in Corrientes by 1607 (Zorraquín 1974: 35), and two were chosen in Santa Fe beginning in 1616.¹² In Montevideo, Bruno Mauricio de Zavala began to name judges of the brotherhood in the first year of the council’s existence (1726).¹³

Up to that time, as noted above, the first judges designated were of the “ordinary” type, and those of the brotherhood followed. This meant that jurisdiction beyond city limits was assigned to the former (Garretón, 1933: p. 249). The man chosen to perform those duties had to meet the same requirements as council members, except for the ability to read and write, which distinguished the office of the ordinary judge. In principal, a candidate had to be a native of one of the kingdoms of Castile and a resident of the city where the designation took place. Preference was given to men deemed worthy (*benemérito*).

⁶*Cédula* of Princess Juana (Regent of Castilla), 26 September 1554, in Bayle, 1952: p. 163; ANA, Sección Nueva Encuadernación [SNE], vol. 319, f. 33.

⁷There were also many difference (Storni, 2002: p. 1628).

⁸Buenos Aires and Luján in 1821, Córdoba and Tucumán in 1824, Mendoza in 1825, Santa Fe in 1832.

⁹BNBA, GGV, Doc. No. BN 1198.

¹⁰ANA, *Actas Capitulares del Cabildo de Asunción del Paraguay*, II, f. 43 v.

¹¹Session, January 1 1606, in *Acuerdos del Extinguido Cabildo de Buenos Aires*, published under the direction of Dr. Vicente Fidel López on the request of the Municipality of the Capital, [hereinafter *Acuerdos...*], Book I, Kraft, Buenos Aires, 1895: p. 173.

¹²AGSF, AC, 2nd Series, vol. I.

¹³*Primer libro del Cabildo de Montevideo*, cited in Ferrés, 1944: p. 15.

In terms of defining the sphere of action of the judges and provincials of the brotherhood, the precepts established, first, the objective of controlling the excesses of idlers, vagabonds and lowlifes (i.e., people not living ‘in good order’ [*policía*], black sheep strayed from the flock), and offering aid and support to the “good-living folk” of remote areas. This meant that in addition to leading a corps of deputies (*cuadrilla*), those judges had the authority to hear cases and punish crimes involving petty material loss or non-material damage, such as insults that besmirched an individual’s honor.

The content of the norms has led some authors to believe that this office was considered necessary because of rural outlawry and pillaging, but others associate it with the emergence of police forces.¹⁴ The judges of the brotherhood, chosen in the same session as ordinary judges and aldermen, had to be confirmed by the Viceroy, the governor or the *Real Audiencia*, according to the specific city’s relationship with higher levels of government. This formality in practice was honored only occasionally, most often when someone wished to block another’s ascent to some such post (Barriera, 2013). The recommendation was that the judges of the brotherhood would serve for one year, but their appointments could be renewed.¹⁵ Those officials heard diverse crimes and resolved most disputes *in situ* and orally. Typical crimes included burglaries in homes or wagons, assaults or insults on roadways, and fisticuffs or brawls that ended in injury. If the amount of the damages involved exceeded 50 pesos, the judge had to present a summary—usually in oral form—upon arriving in the city, so that the council’s ordinary judge could intervene. This also occurred when brawls ended in homicides. Then, the judge presented his summary and, if possible, also the prisoner, shackled and placed at the disposition of the ordinary judge. In cases involving Indians, they had to draft the summary and present it to the judge of the first instance (*alcalde de primer voto*) unless the crime was cattle rustling, when they could hear the case and pass sentence *in situ*. However, much of the work of those judges never produced such summaries, because one of their basic functions was to mediate between neighbors, matters that left no written record.¹⁶ They were responsible for patrolling outlying areas and were expected to have the know-how required to deal with the folk who lived beyond the outskirts of cities. In some cases, they also performed as auxiliaries to ordinary judges or performed simple tasks related to maintaining order in urban areas (Sanjurjo, 1995: pp. 201-202). As noted above, by 1616 the council of Santa Fe was naming one or two judges of the brotherhood each year.

4. Judges of the Brotherhood and Provincials of the Brotherhood

The Castilian office of the judge of the brotherhood was recreated in most councils in Spanish America, though this did not preclude the existence of a Provincial Judge of the Brotherhood (or, simply, Provincial) in the same place. This position was one that could be bought and sold, and held jurisdiction over the same territory and competence in the same crimes as the former, but the scope assigned to the Provincial’s jurisdiction almost always depended on the extension and effectiveness that its holder wished to establish in regard to the prerogatives of his appointment. They had to grant appeals and could name deputies (*cuadrilleros*) to aid them in their work. The *Real Cédula* of May 17 1631 created this sellable (*venal*) office that was under the auspices of the council. At first, some councils thought that the Provincials would replace the judges of the brotherhood, but a second *Real Cédula* soon indicated that both offices were to be filled.

Though at times the two offices seemed homologous in the Laws of the Indies, this equivalence was seen only when they referred to the need that the Monarchy hoped to fill by naming one or the other, thus rendering them effectively indistinct. From the Monarch’s point of view, it was convenient to designate provincials or judges of the brotherhood because of the aforementioned conditions that often plagued the countryside (see note 18). In addition to the difference that the office of provincial could be bought and sold—by no means an unimportant distinction—these two positions were distinguished by a second key aspect: Provincials had seats, voice and votes on the council. Thus, it was a sellable office that carried “...bar and sword, voice and vote, a seat and a place with the council’s senior judge (*alcalde mayor*)”, while the judgeships of the brotherhood offered only a bar of justice and were not for sale.

Some observers emphasize that the title “Provincial” reflected that figure’s jurisdiction over “a province” (similar to the term’s use in the religious orders), and in Montevideo, Provincials were also called “Judges of the Fields”—*juéz de los campos* (Ferrés, 1944: p. 13). As will be shown below, this meant that the titleholder’s scope

¹⁴Romay, 1963; Ensínck, 1967: p. 62; Ots Capdequí, 1968: p. 156; Galvani Celso, 1993; Birocco, 1998: p. 55; Garavaglia, 2009: p. 173.

¹⁵Despite norms that impeded outgoing ordinary judges from becoming judges of the brotherhood; Bayle, 1952: p. 114.

¹⁶Garavaglia, 2009: p. 176. On the mediating function of the judicatures of the ancient regime, see Hespanha, 1993 and Mannori, 2006.

of action extended only to a point where a third party might feel affected, though it is important to note that in this context, ‘province’ did not coincide with *gobernación*, as Montevideo and Santa Fe both pertained to the *gobernación* of Río de la Plata and, in any case, their councils were the seat of this office, as was that of Buenos Aires.

In Cordova in 1636 the office of the Provincial of the Brotherhood was sold for 3200 pesos (Zorraquín Becú, 1981). In Buenos Aires, the title was sold in 1639, in Santa Fe in 1651 and in Corrientes in 1670. In Montevideo, Zavala named two joint ordinary judges, one of the brotherhood, the other a Provincial of the brotherhood (Ferrés, 1944: p. 11). In the city of Buenos Aires, Juan Crespo Flores presented his title as Provincial of the Brotherhood, for which he had paid 1650 pesos in Potosí on June 1 1639 (*Acuerdos*, VIII: 382). The council of that port, like Cordoba’s, eliminated the judges of the brotherhood, but this caused disputes. Then, in 1643, a *Real Cédula* stipulated their attributes: they could hold a “...high bar and sword of justice and had a seat, voice and vote on the council, like that of Seville...” (Levaggi, 2008: p. 422). By 1649, the council of the port was once again designating judges of the brotherhood.

The Monarchy’s legislation allowed and fostered such overlapping jurisdictions. Law three, title 4 of book V of the *Recopilación* of 1680 refers to a *Real Cédula* issued in Aranjuez by Philip IV that reads: “It is our will that the creation and sale of the offices of Provincials not affect the election of Judges of the Brotherhood that once existed in the Cities and Villas of the Indies”. The king put those offices up for sale and if that resulted in overlapping competencies and jurisdictional disputes—as it certainly did—then satisfactory elements that allowed the imposition of some kind of order of precedence or specificity were to be found to resolve them. However, as in many other cases, such solutions were often provisional and conflicts tended to recur.¹⁷

5. Advantages and Disadvantages of the Office

The first judge of the brotherhood named by the Santa Fe council for the poorly defined jurisdiction of the hamlet of Los Arroyos knew there was nothing more in that place than a few modest ranches. The council gave him neither house nor seat because there were no population centers: only a chapel and a few small, dispersed homesteads. Juan Álvarez characterized that first judge of the brotherhood as “...an itinerant functionary [who] roamed around poorly defined borders...” (Álvarez, 1998). Shortly after taking office on January 8 1725, Francisco de Frías presented a brief report to the council, in which he wrote that he had traveled around his jurisdiction but was unable to determine its limits¹⁸ Apparently, he was unaware of the limits of his jurisdiction and his attributions, though this latter point may be ironic, as Frías had been elected judge of the brotherhood by his peers in Santa Fe in 1717.¹⁹

Performing the duties of these offices entailed considerable risk, as the titleholder’s jurisdiction included a population as diverse as it was dispersed; one that demanded a deep familiarity with the terrain. Clearly, there were cases where such designations were better understood as a burden and might even be correctly characterized as punishment. Thus, not all the jurisdictions in the cities or their hinterlands were tempting sites for those offices; and the same can be said of different time periods. While the hamlet of Los Arroyos may have been seen as a promising destination in the early 19th century, there is no question that the first judge assigned there in 1725 and the one named in 1816, had very different impressions.

It is also true, in many cases, that they performed their functions with scarce resources and little company. Though the medieval tradition held them to be leaders of armed bands, some testimonies lead us to amend that possible image: certain arrests made near a stream in the south of the province show those “leaders of armed bands” with no more weaponry than two deputies on horseback armed only with heavy sticks. In Buenos Aires, a 1714 initiative to give form and content to the “forces” that accompanied judges of the brotherhood in their tasks, the Provincial created the post of sheriff of the holy brotherhood (*alguacil de la santa hermandad*), while Viceroy Cevallos (in 1777) ruled that, “...if to capture delinquents or some other task, there is a need for aid, [they] may turn to any one of the guards, who shall provide what is necessary.”²⁰ Whatever the case, testimonies by judges of

¹⁷Some examples in Cervera, 1907: pp. 401, 442, 446 and 730; Levene, 1946: pp. 253, 259-260 and 263; Sanjurjo, 1995: p. 203; Birocco, 1998: pp. 64-66; Tío Vallejo, 2007: p. 238; Levaggi, 2008: pp. 426-427; Zamora, 2009: p. 54; DEEC-SF, EC, vol. LIII, exp. 17: *Autos y diligencias hechas con el Capitán Juan de Cifuentes [...] sobre los pregones del oficio de alcaldes provincial de la Sta. Hermandad y otras cosas...* ff. 73.93 v. (1646); DEEC-SF, EC, XVIII, 345, *Renuncia del empleo de Alcalde Mayor Provincial de la Santa Hermandad, don Juan José Morcillo a favor de sus hijos*, Santa Fe, 13 May 1776, 67 ff.

¹⁸AGSF, Vol. IX, f. 219. Álvarez, 1998: p. 35.

¹⁹AGSF, ACSF, Vol. VII, f. 311 a 313.

²⁰Viceroy Pedro Zavallos, Buenos Aires, 31 December 1777. Transcript in Levene, 1946: p. 246.

the brotherhood—replete with grievances and complaints concerning their difficulties in pursuing evildoers or making arrests—can be found for every jurisdiction throughout the period in which that figure existed.²¹ Though it is true that provided them with a certain justification when they were unable to carry out some particular task, numerous indirect testimonies corroborate an imbalance between the duties and functions that judges were expected to perform and the resources with which they were provided.

6. Judges of the Brotherhood in the Universe of Rural Authorities

Judges of the brotherhood also co-existed, and negotiated jurisdictional limits with, still other types of authorities, some formal—such as the chief guards at certain riverside locales who answered to the governor and occasionally stirred up his lieutenants on the Santa Fe council—others informal, like ranch foremen (*patrones de estancia*). However they maneuvered not only among commissioned judges, local leaders, protectors of Indians, militia captains, heads of posts (*encargados de postas*), garrison commanders, and ranch owners, but also had to deal with the fact that such positions of authority meant different things depending on the factions to which their titleholders pertained at any given time.

In the Buenos Aires countryside, judges of the brotherhood named auxiliaries for different tasks in areas more remote from the hamlets in their jurisdiction. On occasion, they were superseded by other commissioned agents sent by the Buenos Aires council, the governor, or his lieutenant, all of whom had greater authority. Birocco, however, maintains that conflicts between the councils and other officials over precedence in rural areas were infrequent and states that, “...judges, commissioned judges and corps leaders co-existed without interfering with one another” (Birocco, 1998: p. 63). In 1784, a judge of the brotherhood sent a letter to the Mendoza council asking it to clarify “how far the bar of the Holy Brotherhood extends”, and inquiring as to the effects of appointments of commissioned judges on the its jurisdiction, [whether they] “...restrict the jurisdiction of the bar of the Holy Brotherhood on the points it is granted by law”.²² Commissioned judges—who, as we have seen, could be sent by Provincials of the brotherhood, the council, a governor, or his lieutenant—often abused their authority. The appearance of such accusations in the records is surely due to the fact that the more stable authorities, like judges of the brotherhood, tried to undermine them in order to defend their authority, though real abuses may well have occurred because commissioned judges—who were just “passing through”—had no reason to worry about future co-existence or relations with the people under their authority. In contrast, as Sanjurjo’s work shows, judges of the brotherhood were deeply concerned with those issues, not only because their links with local families were more long-term, but because aggressions by local people or drifting laborers could affect their concrete interests.²³

Garavaglia has pointed out that the jurisdictional authority of commissioned judges and militia commanders, including repressive functions and the capacity to apply summary justice, not only competed with that of the Judges of the Brotherhood, but “penetrated into remote places, as in the case of Areco, where it could include Rincón de San Pedro”. When no judge had been appointed, or where one was named but not present, “the militia commander played an even more important role” (Garavaglia, 2009: p. 30). Such military positions could not be taken lightly, Commanders often disputed jurisdictional functions in penal matters with Judges of the Brotherhood (or special commissioned judges), and conflicts among those officials were frequent and ongoing (Garavaglia, 2009: p. 186; Suárez & Tornay, 2003: pp. 540-541).

At times, the judges of the brotherhood received orders to carry out tasks not precisely related to the administration of rural justice, which—in the absence of officials explicitly charged with that responsibility—made them in reality polyvalent functionaries. In the early 19th century, the issue of the levy took center stage in the activities of rural authorities, as the recruitment of men required for the militarization of the coast was answered by including criminals and other individuals who lived outside the law. The principal source of such delinquents was information provided by residents, rumors, or the ‘fame’ of unattached men. The judges of the brotherhood received such intelligence and, of course, decided how to use it. As studies of Buenos Aires’ hinterland from the Bourbon reforms to the *rosismo* show, “the threat of repression as a form of securing domestic servants (*conchabo*) is a concrete fact, one clearly perceived from early times”, and the prohibitions established to legitimize the realization of this threat in the form of detentions and making men available as a work force, or frontier soldiers, were maintained and augmented until very late in the 19th century.

²¹Letters sent to the Virrey in 1795 by the judges of the brotherhood at Pergamino, Los Arroyos and la Cañada de Morón (all in AGN, Sala IX, 19, 7, 7), cited in Levaggi, 2008: pp. 425-426.

²²AHM, Col., c. 23, cited in Sanjurjo, 1995.

²³Birocco, 1998: p. 63 and ff., has collected several accounts that illustrate the abusive actions of commissioners and some of the concerns shared by judges of the brotherhood in regard to such events.

7. Who Were They? What Kind of Justice Did They Administer?

There are few complete, long-term studies demonstrating connections between the ongoing performance of this office by a man or men from one family, and those families' relations to the activities carried out in their jurisdiction. One of the few approaches that present a collective portrait of the men who occupied judgeships of the brotherhood in the 18th century is the work of Birocco, whose research has generated some conclusions on this topic with which one can carry on a dialogue while awaiting similar analyses for other regions. Birocco holds that the judges of the brotherhood in Cañada de la Cruz and Areco were named by the Buenos Aires and Luján councils "...in recognition of their influence in their homeland" (Birocco, 1998: p. 56). The names on that list reflect a high degree of endogamy through links based on the possession of lands in the area—a total of seven interlinked family groups were identified (Birocco, 1998: pp. 80-84; Garavaglia, 2009). The judges of the brotherhood assigned to Areco tended to reside on lands that belonged to San Antonio de Areco, or in Capilla del Señor, two very small localities, but goes on to mention that 60% of those officials owned some black or afromestizo slaves and were involved mostly in livestock raising, though a few also practiced agriculture. Only rarely did they act as tax collectors. Mayo affirms that in the 18th century in the hinterlands around Buenos Aires, the judges of the brotherhood were, above all, ranchers who in their pursuit of vagrancy sometimes affected others of their kind (Mayo, 2004: p. 162).

With respect to the nature of the justice they administered, we find that most of their work was done orally (Garavaglia, 2009: p. 178). Though certain legal historians affirm that some judges of the holy brotherhood were "functionaries with some education..." (Tomasini, 1999). Most of the men who held that office were acutely aware of the potential problems that written culture might hold for them. Vidal, judge of the brotherhood at the hamlet of Los Arroyos, complained that he could not apprehend vagabonds, thieves and rustlers with any more proof than the public 'fame' of their reputations. He also commented that offenders were often not arrested "...to avoid getting caught up in judicial formalities that, while perhaps not impossible to effectuate here, are at the very least tremendously burdensome..." Indeed, he admitted that he often set prisoners free "...because he did not know how to wrap up their cases..."²⁴

Mayo has recovered sentences handed down by the *Real Audiencia* of Buenos Aires in which rural judges were admonished for their crudity and for accusations of conduct that could be considered abusive of their authority.²⁵ Mayo is interested in showing that colonial rural justice was not a simple instrument of a well-off class (indeed, he points out that it is clear that ranchers from colonial Buenos Aires did not hold the highest administrative positions), and states that at times the preferred targets in the pursuit of rural crimes such as 'vagrancy' were not the individuals that those hacendados would have preferred to see locked up.²⁶ Indeed, at times justice seemed to function in exactly the opposite direction to what one might expect of a class-based 'power apparatus', because the higher that appeals for such crimes climbed, the greater the probability that prisoners would see their sentences reduced, or even dismissed, because the learned men who occupied positions on the *Real Academia*, for example, were more interested in their own careers than in offering any kind of functional service to ranchers they barely knew and to whom they owed virtually nothing (Mayo, 2004: chap. 9).

On occasion, nonetheless, inquiries conducted by judges of the holy brotherhood found their way into ordinary judicial processes and so survived in the records of justices of the peace. The interrogations they carried out reflected attempts to establish links between the prisoner, the territory and people who had lived there for some time. Other studies show that the definition of the figure of the delinquent could be functional for certain concrete purposes: though it might affect the *hacendados* negatively to some degree, the usefulness of criminalizing itinerancy, bachelorhood, no territorial attachment and, above all, cattle rustling (the crime that truly defined the nature of 'damage'), resided in preparing people who were destined to join the frontier population (Rustán, 2005). Another trait of the justice that the judges administered was that it could be contaminated by the social distance between officials and the people under their jurisdiction (*justiciables*). It was not only the importance of the increasing physical proximity of the judges to the population they administered that was *in crescendo* in the late 18th century, but also the former's inclination to unscrupulously favor the settled population and the people closest to them (often including members of their own family and other relatives), above the interests of itinerants, travelers

²⁴AGN, Santa Fe, 1807-1809, Sala IX, 20-5-7.

²⁵Mayo, 2004: p. 161. Other testimonies of abuses in Birocco, 1998 and Levaggi, 2009.

²⁶Judicial practice in Río de la Plata defined "vagrancy" as being out of work and willing to elude the possibility of establishing relations with an employer (*conchabarse*), itinerancy (a phenomenon more stereotypical than real) and being single; Mayo, 2004: p. 152 and ff.

or recently arrived outsiders (Garavaglia, 2009: p. 259 and ff.).

It is interesting to see that in addition to imparting summary justice, those judges also carried out activities that could be understood as facets of the production of the norms themselves; for example, the judges of the brotherhood on the Buenos Aires and Luján councils, among others, dictated “acts of good government” (Tau Anzoátegui, 2004) that established precise descriptions of “lowlifes” and restricted their movements or the activities they could perform, in order to legitimize pursuing them and punishing unattached outsiders, whom the members of Río de la Plata’s rural societies saw as ever more threatening to the activities they valued (livestock, agriculture). Their security, in contrast, resided in forming a stable relationship with an employer and the land; a condition called “being attached” (*estar conchabado*). In Santa Fe in the late 18th century, responsibility for evicting families from the provinces in the center and north (Santiago, Tucumán, Córdoba) who were living in irregular settlements in the countryside fell to the judges of the brotherhood, though the *alguacil mayor* and sergeant majors shared in that faculty (Suárez & Tornay, 2003: p. 549). The differences that appear in the actions performed by these rural judges are more closely related to the place their activities occupied in the framework of the social and political relations in which they were active players, than to the nature of the justice they imparted. Here, the case of José Tiburcio Benegas (Tomasini, 1999: pp. 15-16) is an exception.

8. Apogee and Elimination of the Office

The council of Buenos Aires had jurisdiction over certain hinterlands that in the late 18th and early 19th centuries were densely populated and of growing economic importance; a situation that led it to succeed in having its designates to office take charge. Certain statistics bear out this affirmation: around 1810, the council of that port city managed to name twenty-two judges of the brotherhood to the same number of districts. Product of the segmentation of older jurisdictions or the formation of new ones in frontier areas seized from the indigenous population, the number of districts requiring a Justice of the Peace (the office that replaced the judges of the brotherhood after the suppression of the councils of Buenos Aires and Luján in 1821) reached 29 in 1822 and 48 in 1852 (Gelman, 1999: p. 113).

In this same period, the judges of the brotherhood of the Santa Fe council held sway in just a few hamlets. That council had lost influence in the north and been displaced from the easternmost lands on the other bank of the Paraná River after the Rocamora reforms of the 1780s (Barrera, 2012). Meanwhile, the council of Tucumán quadrupled the number of judges of the Holy Brotherhood that it had in 1796: from two to eight (Zamora, 2009). Contrary to the situation in Santa Fe, where parishes were created shortly after the designation of a judge of the brotherhood—though, as we know, the presence of parish priests preceded both the creation of parishes and the appointment of judges—(Barrera, 2010a) the six new judges of the brotherhood in Tucumán were assigned to existing parishes (Tío Vallejo, 1998).

When Rosario was recognized as an “illustrious and loyal village” (*ilustre y fiel villa*) in 1823, the act presupposed a renewal of its jurisdictional relationship with Santa Fe, whose Assembly of Representatives ratified the town’s statute (*pueblo*) shortly afterwards, in 1826. That villa became the administrative center (*cabeza*) of the district of the same name. Though an *alcalde mayor* had been named for the new district, the few inchoate, ordinary judicial causes that arose in those two years in the Los Arroyos jurisdiction were handled by commissioned judges named by the supreme government and authorized in documents signed by the villa’s *alcalde mayor*.²⁷ Those judges (together with neighborhood judges [*alcaldes de barrio*] from the city of Santa Fe) also played a fundamental role in compiling voter lists and regulated the administration of the ballots that determined the luck of the peasants *vis-a-vis* the province’s general command.²⁸

The judges of the brotherhood disappeared with the councils: in Buenos Aires and Luján—the first ones eliminated—in 1821, then in Santa Fe in 1832-33, the final one. Their office was replaced by a variety of figures, though the Justices of the Peace stand out as the first lay judicature recognized in official emoluments. What proved much more difficult was to remove from the imaginary and institutional schemes one of the most fundamental features of monarchical and Catholic political organization: the linkage between government and justice.²⁹ The suppression of the Santa Fe council took a few months more than planned and that institution retained

²⁷AMHPRJM, AT, vol. I, leg. 1, exp. 11.

²⁸Registro Oficial de la Provincia de Santa Fe [hereinafter ROSF], vol. I, p. 10. Mariano Vera, 9 April 1816.

²⁹Ternavasio (2007) highlights some of these continuities.

administration of ordinary justice until the last moment, primarily because it functioned as the nerve center of a new style of “good government” that simulated republicanism. Article one of chapter one of the Regulations of 1833 established that the provincial capital would have “one judge of the first instance for Civil and Criminal [matters], with equal jurisdiction throughout the province” Through this measure, the ordinary judges were effectively replaced by a professionalized figure. The ensuing chapters established other offices: “for the *chacras* (an *ad honorem* office that replaced the judges of the brotherhood in hamlets near Santa Fe), a salaried prison warden, and a Justice of the Peace for Villa del Rosario with ‘ordinary jurisdiction in that entire department’”. They were the real substitutes for the judges of the brotherhood.

9. Final Considerations

Though uneven with respect to the different regions, the current state of research does allow us to establish certain points. First, the bar of the judges of the brotherhood became interesting quite early on in places where the period’s predominant economic activity—livestock—developed most strongly: that is, the hinterlands of Buenos Aires and, above all, regions that were well communicated by heavily traveled roads (e.g. lands to the west towards Córdoba, or the route to the hamlet of Los Arroyos). In contrast, this authority figure received much less attention in the more weakly defended areas known as the “Indian frontier”. Northern Santa Fe and villages to the southwest of that city are good examples.

Second, differences in chronology are also suggestive: while around 1730 being a judge of the brotherhood in the hamlet of Los Arroyos near Santa Fe almost qualified as a punishment, similar posts in Areco or Luján were valuable opportunities usually reserved for families that held ascendancy over the dispersed population of those areas. In any case, it must be emphasized that the political administration of the hinterlands dependent on cities in the *gobernación* of Buenos Aires (including Santa Fe) was based on two axes: first, the council’s support of the judges of the brotherhood and, second, the agreement between the civil and ecclesiastical diocesan organizations on the need to cooperate and adopt coordinated measures to attract people to the signs of the bar of justice and the cross.

Third, the constant interference that rural judges experienced in their jurisdictions was characteristic of the form of political power in which they participated: just as certain bars of justice superseded them (as did the office of the Provincial after the 1630s), so too in the 18th century the authorities at forts and command posts (*comandancias*) prevailed and at times extended their capacity to impart justice far beyond what we would consider today an acceptable “military jurisdiction”. Nor should we forget that during those processes of political specialization (i.e., the political organization of the Monarchy’s territory), this phenomenon did not arise only in “barren and unpopulated lands”. As other studies have shown, the way in which the Monarchy delegated authority and power not only impeded the creation of monopolies on the capacity to judge and repress, but also favored the coexistence and overlapping of different authorities with similar attributions and jurisdiction over the same lands and peoples. That approach freed local dynamics to determine or resolve the interplay of forces that always surrounded the Monarchy’s resources and, clearly, instead of opening that dynamic up to discussion, worked to reinforce it. The concern with delimiting jurisdictions and competencies began its long journey more clearly in the first quarter of the 19th century with early attempts to develop a constitutional organization of a republican character.

Finally, in the second half of the 18th century judgeships on the lower rungs of the justice system were increasingly filled by small rural landowners from local jurisdictions. Far from constituting the long arm of a remote and anonymous form of political power, still unborn, those rural judges emerged from local molecular relations and maintained relationships with their centers of political legitimacy (i.e., the councils), based on mutual dependence and regulated in turn by whatever economic, political and social conflicts that those agents might encounter in the region. In the Buenos Aires and Santa Fe hinterlands (though with a difference of several decades and despite disputes with other authorities) the properties of many of the men who acted as judges of the brotherhood functioned as axes around which clusters of families grew up that, in some instances, evolved into towns. Local toponymy in those places conserves their names in streams, glens and streets.

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