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## The Evolution of Rural Justice in New Spain, Culminating in the Acordata, and Attempts by the Spanish Crown to Institute the Tribunal in Peru

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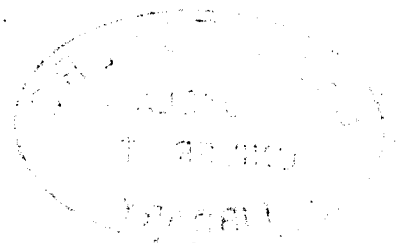
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The Evolution of Rural Justice in New Spain,  
Culminating in the Acordada, and Attempts  
By the Spanish Crown to Institute the Tribunal  
in Peru

by

Barbara Gilbreath Montgomery

A Dissertation Submitted to the Faculty of the Graduate School  
of Loyola University in Partial Fulfillment of  
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## INTRODUCTION

The King's Tribunal of the Acordada presents an opportunity to trace the sequential development of a Spanish colonial institution from its inception in Spain to its abolition in New Spain, a span of four centuries. Not only does it give insight into the history of judicial organization within the Spanish colonial system, but also into the adjustments of the institution to meet new environmental and political needs in the New World.

Out of the period of the Reconquest and the attempts of the Catholic Monarchs, Ferdinand and Isabella, to bring peace to the countryside and subdue anarchical elements came the Santa Hermandad or the Holy Brotherhood, which was transplanted to the New World as a rural constabulary manned by local judges. Because of its success as a law enforcing agency in punishing bandits and robbers, the Santa Hermandad was established throughout the Spanish Indies. Then, when the Bourbon rulers came to the throne of Spain with their emphasis on centralizing administration at home and all over the New World, the Santa Hermandad in New Spain was transformed into the Tribunal of the Acordada under a single judge. It became a powerful royal instrument for law and order. Its duties eventually came to include those cases arising from

arms control, manufacture and distribution of illegal beverages, smuggling, tax evasion, as well as all cases within the jurisdiction of the Hermandad.

The decisions concerning the activities of the Acordada were made in Spain and sent to New Spain for implementation. Even internal disputes invariably were settled in Spain. This is evident from the documents in the Archivo General de Indias in Seville, which present the background of decision-making, while the end result, usually a royal cédula, is found in the Archivo General in Mexico.

The Acordada served the Crown well, and at various times its extension from New Spain, New Viscaya and New Galicia to Guadalajara and the Viceroyalty of Peru was given serious consideration. Although these attempts failed until the very end of the colonial period, the Acordada was still viewed as an effective agency to be established wherever or whenever conditions demanded.

With its increasing number of employees and the large amounts of royal money which passed through its hands, opposition to it arose and it came under tighter control of the Crown. Jealous of its legal prerogatives, the Sala del Crimen complained constantly of the Tribunal's arbitrary judgments and its lack of legal safeguards for the king's vassals. While drastic changes were being considered by the

royal advisors in 1810, revolution swept the empire. The Tribunal, a special court set up by a commission granted by the king, was abolished by the Cortes of Cádiz in 1812 as the throne itself was threatened by liberal forces sweeping Europe.

Although the Acordada has been portrayed as a unique Mexican institution by Mexican historians, including Mariano Cuevas, Lucas Alamán and Vicente Riva Palacio research does not bear this out. Jurisdiction, procedures and officials, all are representative of the Santa Hermandad of Spain. Where the Acordada differed from the latter body was in its single judge and in an increase in duties because of good performance. However, its foundation always rested upon the laws of Castille, the laws of the Hermandad and allegiance to the Crown.

In reviewing the literature of the Acordada, there is no definitive work, at present, written in English about the progressive development of rural justice in the Spanish empire, the Acordada of New Spain or the attempts by Teodoro de Croix to found the Acordada in Lima. A master's thesis in Spanish by Alicia Bazán Alarcón, The King's Tribunal of the Acordada and Crime in New Spain, describes the situation in the viceroyalty which brought about the formation of the Acordada and its unique position in New Spain. However, no reference is made to the Archivo de las Indias in Seville and the documents

there which provide the reasons for the Crown's decisions concerning the Acordada and emphasize overall Spanish control of justice in the kingdoms of the New World. Nor is any mention made of the attempts to introduce the Acordada into Lima and the ultimate success of Crown officials who saw the tribunal as an instrument of Crown control. A doctoral dissertation by Colen Mackay Maclachlan, The Tribunal of the Acordada: A Study of Criminal Justice in Eighteenth Century Mexico, covers the same material as the preceding thesis. A monograph by Fernando Casado Fernandez-Mensaque, "El Tribunal de la Acordada de Nueva Espana," hints at the centralizing force at work within the empire, but in his brief treatment of the Acordada, this is not emphasized. In a final sentence he mentions the attempts of Teodoro de la Croix to introduce the Acordada into Lima, quoting the only other literature available, which is a short introduction by Ernesto Santillan Ortiz of fifteen pages of letters written about the difficulties in extending the Tribunal to Peru. The correspondence is mainly between de la Croix, asking questions of Santa Maria y Escobedo, judge of the Acordada in New Spain, who attempts to point out the difficulties in setting up a Tribunal.

The investigation of a Peruvian Acordada presented some problems because, in an interview with Francis X. Chamberlain, S. J., in Lima, February, 1972, the subdirector of the Archivo

Nacional del Peru stated that the archives contained "nothing on the Acordada in the colonial period." However, Father Ruben Vargas Ugarte, the Jesuit Peruvian historian, in an interview with Francis X. Chamberlain, S. J., during the same period, felt "reasonably certain that the Acordada was established in the Viceroyalty of Peru because of a document he had seen," that "the Acordada was developed out of the Spanish experience, passed on to Mexico, and, it seems, talked about and established in colonial Peru." With the clues provided by Father Ugarte, it was possible to trace certain documents from the Sala de Investigaciones, which provided the key to the Peruvian Acordada, documents ignored and passed over by most Peruvian historians.

Therefore, the purpose of this dissertation is to show the development of rural justice in New Spain by acts of the Spanish Crown and the Council of the Indies, through the instrumentality of the Santa Hermandad of Spain and by the institution of the Acordada in 1719 which the Crown also considered establishing in Peru. It is an attempt to weigh the successes and failures of Spanish policies which moved toward centralization and a firmer control of the administration of rural justice. The effectiveness of the Tribunal is also apparent in a negative sort of way because of the vacuum of power created by its abolition and the problems of rural law



enforcement which plagued Peru in the Republican Period and Mexico into the twentieth century.

The material used in this dissertation from the Testimonios in the Archives of the Indies and the documents from the Biblioteca Nacional of Peru relating to the Acordada have not been translated or used in previous literature about the Acordada. They present a view of the Tribunal by Spanish administrators, the Crown, and "the liberators" of Peru. These particular documents were received through the efforts of Rosário Parra Cala, Directora, Archivo General de Indias; Seville; Graciela Sánchez Cerro, Jefe de la División de Investigaciones Bibliográficas, Biblioteca Nacional del Peru; and Francis X. Chamberlain, S. J., of Lima. To them, my deepest gratitude. And to Charles E. Ronan, S. J., without whose assistance there would have been no second beginning, and the memory of John A. Kemp, S. J., this dissertation has finally been completed and dedicated.

## ABBREVIATIONS

|                     |  |
|---------------------|--|
| AAM                 | Archivo del Ayuntamiento de Mexico                           |
| AGI                 | Archivo General de Indias                                    |
| AGN                 | Archivo General de la Nación de Mexico                       |
| BNP                 | Biblioteca Nacional del Peru                                 |
| <u>Recopilación</u> | <u>Recopilación de los Leyes de las Reinos de las Indias</u> |

## CHAPTER I

### The Background of Rural Justice within the System of Empire, Particularly in New Spain, Culminating in the Acordada

Inasmuch as the kingdoms of Castile and of the Indies are under one Crown, the laws and the manner of government of the one should conform as nearly as possible to those of the other. Our royal Council, in establishing the laws and institutions of government in the Indies, must ensure that those kingdoms are administered according to the same form and order as Castile and Leon, in so far as the differences of the lands and the peoples will allow.<sup>1</sup>

The Spanish kingdoms in the New World reflected many of the institutions which developed in Spain during the Reconquest and the consolidation of power under the crown of Castile. In fact, much of the strength and longevity of the Spanish Empire in America was due to these transported institutions which were often bent or remolded to suit the new environment. The peninsular legal system, with its idea that jurisdiction is an essential function of authority, and its combination of administrative and judicial powers, was transplanted to the New World and enhanced by a great body of

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<sup>1</sup>Recopilación de los Leyes de los Reinos de las Indias  
(Madrid: I. de Paredes, 1681), Ley XIII Título II, Libro II.

statute law enacted during the sixteenth and seventeenth centuries.<sup>2</sup> Ordinances, royal decrees, letters to royal officials asserted the power of the king in the New World and they were meant to be obeyed. To ensure obedience a complicated and elaborate bureaucracy was set up which slowly stifled the system but, paradoxically, kept it lumbering along for three hundred years.

The conquistadors of the New World also reflected the Castilian preoccupation with legality. One of the original stipulations in a conquistador's contract with the Crown was that he should found two or more towns or forts within a specified time. On entering a new region, the first step of the enterprising conquistador without a contract or direct orders from the Crown was to found a city whose cabildo, or town council, would legalize his position. Before marching north to destroy the Aztec empire, Cortés established Vera Cruz and had its cabildo approve his plans; Pizarro founded Lima, city of kings; and Valdivia made Santiago his base for conquest. The Castilian municipality, with its cabildo, therefore, was transported overseas to take its place in the system of empire.

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<sup>2</sup>J. H. Parry, The Spanish Seaborne Empire, Vol. III of The History of Human Society, ed. by J. H. Plumb (New York: Alfred A. Knopf, 1966), p. 192. Hereinafter referred to as Parry, Seaborne Empire.

The towns of the New World with their cabildos served as a general authority for newly acquired territory in the early days of the conquest until the royally appointed officials took over. The task of organizing the political, social and economic processes of the overseas kingdoms was assigned not to the restless adelantados, but to more stable administrators devoted to the royal service, the viceroys. The Catholic monarchs regretted the generosity that rewarded the efforts of the first conquerors with vast power and privileges. Once the initial conquest and settlement were accomplished, the rulers, becoming aware of the size and importance of the new possessions, revoked or limited the privileges previously granted, and consolidated royal control, beginning with town-oriented jurisdictions.

The cabildo exercised police power in the urban community and in the large surrounding rural area through the alguacil mayor, chief constable, who usually sat in the cabildo.<sup>3</sup>

Although the town jurisdiction fanned out to include some of the unsettled area between towns, there was no provision for the vast unoccupied territory and no overall direction of

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<sup>3</sup> Clarence Haring, The Spanish Empire in America (New York: Oxford University Press, 1947), p. 151. Hereinafter referred to as Haring, Spanish Empire.

police action.<sup>4</sup> Legal authority was vested in two kinds of local officials, regidores or town councilors, and alcaldes ordinarios or magistrates, elected by the regidores: one alcalde ordinario was elected in small villages, two in larger towns.<sup>5</sup>

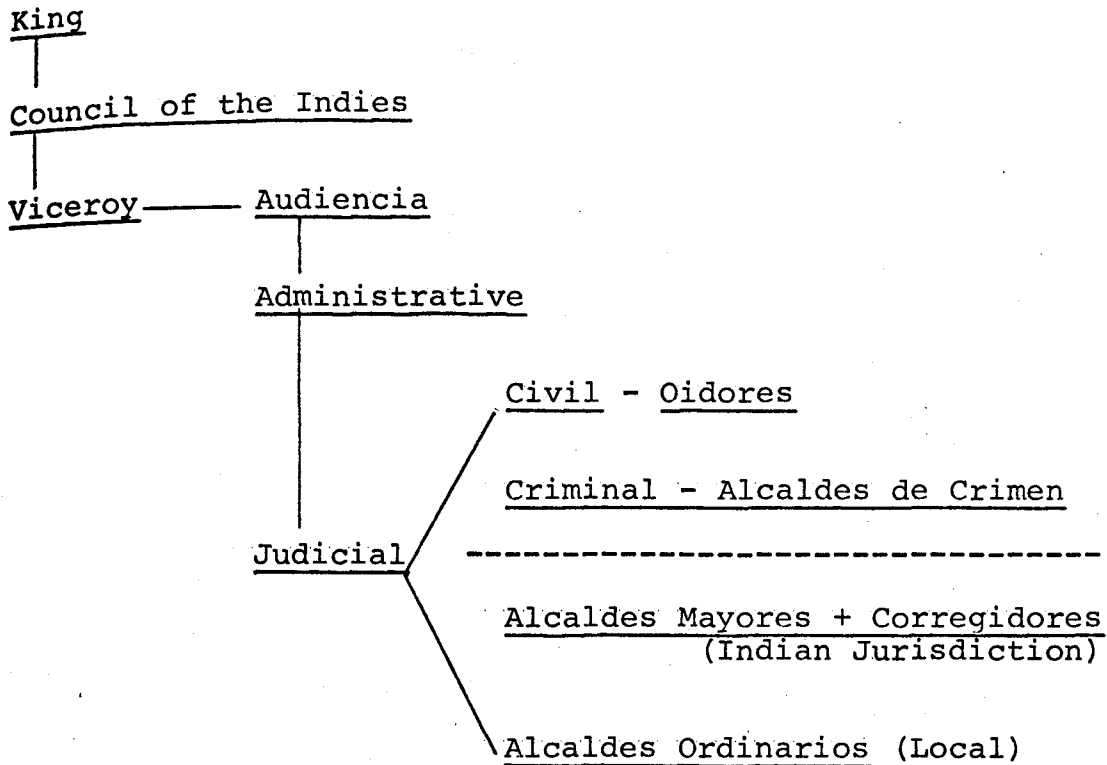
Then, in November, 1529, because of chaotic conditions in Mexico, blamed on the greed and acquisitiveness of the Conquistadors, the combined councils of Castile, the Indies and Finance recommended the appointment of a royal official with the widest powers to develop the administration of New Spain. Antonio de Mendoza, firm, astute and the loyal agent of the king, became the first viceroy in 1535.<sup>6</sup> The political and judicial administrative structure at that time appeared like this:

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<sup>4</sup>Ibid., p. 150. Haring compares the Spanish town to a "city state" which was more than an urban community and maintained jurisdiction over a large surrounding territory.

<sup>5</sup>Ibid., p. 151.

<sup>6</sup>Ibid., p. 72.



In the administration of justice, the audiencia was the highest royal court in New Spain. It heard and decided appeals from inferior tribunals. Next came the jurisdictions of the alcaldes mayores and the corregidores, and at the bottom of the judicial pyramid, the alcaldes ordinarios. Not included in this hierarchy were special military and ecclesiastical courts, as well as other fueros privados relating to the mint, post office, merchants' guild, miners' guild, mesta, and medical profession--coming into existence at various times during

the colonial period and further fragmenting the administration of justice.<sup>7</sup>

The functions of officials exercising judicial capacity in the towns should also be noted: The first were the Alcaldes Ordinarios, judges of the first instance in civil and criminal cases where litigants did not enjoy special legal privileges or jurisdictions;<sup>8</sup> the second were Alcaldes Mayores y los Corregidores. In Auto Acordada, Numero 58, Instrucción y Orden de gobierno para los Corregidores y Alcaldes Mayores, and Titulo II, Libro V, of the Recopilación these two officials have identical attributes in civil and criminal jurisdictions. However, in some instances, the corregidor was superior because the corregidor was assigned the governorship of districts and towns of major importance. Appeals of decisions made by alcaldes ordinarios went to the corregidor, who often called an asesor, or legal counsel, to assist him during a trial.<sup>9</sup> The third was the Audiencia,

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<sup>7</sup>The administration of justice in Peru was comparable to that of New Spain. However, in New Spain appeals from the alcaldes ordinarios went directly to the audiencia while in Peru, appeals usually went first to the corregidor, then to the audiencia. Horacio H. Urteaga, "La Organización Judicial de la Colonia," Revista Histórica, IX (Lima, 1926), 351-52.

<sup>8</sup>Recopilación, Ley I, Título XVII, Libro V, and Ley I, Título III, Libro V.

<sup>9</sup>See footnote 7. Corregidores de pueblos de Indios exercised judicial authority in Indian towns and saw that tribute to the Crown was paid.



acting as a court of law. The Audiencia heard appeals from inferior tribunals in New Spain, and from its jurisdiction in criminal cases there was no further recourse. Four alcaldes del crimen of the Audiencia served the criminal chamber known as the sala del crimen; they were assisted by a fiscal who acted as an attorney for the Crown. The Audiencia sometimes possessed original jurisdiction if a criminal case arose within Mexico City or within a circumference of five leagues.<sup>10</sup>

The legal provisions applied specifically to towns or districts. But in the unpopulated or sparsely populated areas of New Spain, there were no laws or legal institutions to apply to those who lived beyond the law: mestizo adventurers; Negroes hiding from their masters; vagrants from the various castes driven from the towns or wandering the countryside. They presented a continuing problem for the viceroyalty.

The Spaniards of the New World, like their countrymen at home, were town-centered, and most of the problems of local justice, civil and criminal, were handled by the municipalities through the alcaldes ordinarios. If there was any

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<sup>10</sup> Recopilación, Ley I, Título XVII, Libro II, and Ley LXVIII, Título XV, Libro II.

doubt as to jurisdiction in a criminal case in New Spain, the viceroy alone decided if it should be tried by the *alcaldes ordinarios* or sent on to the *alcaldes del crimen* of the *audiencia*.<sup>11</sup> The Viceroy often found himself uncomfortably in the middle of a jurisdictional squabble.

When bands of criminals began preying on the roads in New Spain beyond the limits of the towns, there were no provisions for apprehending or for trying them. This situation became increasingly serious, and because of his concern, Viceroy Luis de Velasco, (1550-1554) wrote to Charles I about the problem. The latter had already ordered on December 7, 1543, that *alcaldes ordinarios* in Spanish towns of the Indies hear such cases of crimes committed in rural areas involving Spaniards and Negroes as would in Spain be tried by *alcaldes* of the Santa Hermandad. Although not given the title of judges of the Hermandad, they were to pass sentences that would conform to the laws of that tribunal which was not formally established in the Viceroyalty of New Spain until 1603.<sup>12</sup> It is

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<sup>11</sup>Cedulario Indiana, recopilado por Diego de Encinas, con estudio y índices de Alfonso García Gallo (2 vols.; Madrid: Ediciones Cultura Hispánica, 1946), II, 93-94. Hereinafter referred to as Cedulario Indiana.

<sup>12</sup>Vasco de Puga, Provisiones, Cédulas e Instrucciones para el Gobierno de la Nueva España (Madrid: Ediciones Cultura Hispánica, 1945), III, 109. Hereinafter referred to as Puga, Provisiones.

important to note that all sixteenth century documentation speaks as though this institution was in formal existence. For all practical purposes, it was as will be seen and will be referred to accordingly in the dissertation.

Don Luis Velasco again wrote to the king on February 7, 1554, that he had executed his order, that the newly appointed *alcaldes ordinarios* had been notified of their additional jobs acting as judges of the *Hermandad*, and that *cuadrilleros* (bands of horsemen who rode in pursuit of criminals) had been appointed. He went on to say that in the meantime it seemed to him that felonies were decreasing, perhaps because of the fear inspired by the punishments of the *Santa Hermandad*.<sup>13</sup>

At this point it is necessary to consider briefly the history of the *Santa Hermandad* and its relationship to rural justice in New Spain. This Holy Brotherhood of Castile, pacification force of the Catholic monarchs and citizen constabulary in 1474 had risen during a period of anarchy, rapacity and violence. The conditions existing at the time the young queen ascended the throne have been described by Hernando del Pulgar, secretary of Isabella of Castile:

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<sup>13</sup>Mariano Cuevas, S. J., Documentos Inéditos de Siglo XVI para la Historia de México (México, Museo Nacional de arqueología, historia, y etnografía, 1914), p. 211. The punishments included whipping, cutting off of the hands, severing muscles in the leg and shooting with arrows as specified by the laws of the *Santa Hermandad*.

In those days, men tyrannized and robbed, and others of evil intent had the opportunity to steal and terrorize and take over the towns. Justice was administered neither in civil nor in criminal cases, because no one was without fear of conspiracies, murders, robberies and injuries. In homes, in towns, in cities, on the roads, and generally in all parts of the kingdom no one was willing to do anything; no one thought to be law-abiding, nor did any one even pay that which he owed another. For these reasons, the kingdom was full of criminals who feared neither God nor justice.<sup>14</sup>

The majority of Castilian municipalities, weary of disorder, were eager to support a government which offered peace. The towns especially distrustful of the powerful aristocracy which seemed to have profited most from the anarchy, supported Ferdinand of Aragon and Isabella of Castile who were seeking to solidify royal authority. To combat anarchy in the countryside and to bring predatory bands of cutthroats to justice, the towns had organized brotherhoods called hermandades. Responsible citizens joined together in an organization which protected the outlying areas and roads leading into the town. Sometimes, several towns would unite forces in a major effort to clear a territory of bandits. In effect, the towns formed

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<sup>14</sup>Hernando de Pulgar, Crónica de los reyes católicos, Colección de Crónicas Españoles, Dirigida por Juan Mata Carriazo (9 vols.; Madrid: Espasa Calpe, S. A., 1943), V, Part I, LXX. Hereinafter referred to as Pulgar, Crónica.

volunteer, rural constabularies which apprehended criminals and brought them to justice.<sup>15</sup>

At a session of the Cortes of Castile, meeting at Madrigal on April 27, 1476, the towns agreed to place their hermandades under a junta or royal council directly control of the Crown. The junta, presided over by the Bishop of Cartagena, would direct their activities toward bringing order to the countryside. This organization of hermandades was called La Santa Hermandad, the Holy Brotherhood.<sup>16</sup>

The Santa Hermandad was originally instituted for three years in Castile and Leon. It took its instructions from the Crown. It served as both a rural police force and as a court of law. As a police force it relied on contingents of archers

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<sup>15</sup> The historian's knowledge of the first hermandades and their formation is very vague, although several of these brotherhoods were in existence during the reigns of Alfonso VIII and Enrique II of Castile in the twelfth century. The Hermandad Vieja of the fourteenth century combined the brotherhoods of Toledo, Talavera and Ciudad Real to meet a threat to their commerce caused by armed bands of Castilian hidalgos who swooped down on travelers going from Castile to Cordoba and Seville. These early hermandades were unions of towns within a particular area or province, organized to maintain order in the countryside and to protect their interests when the power of the king was insufficient or non-existent. For a more complete discussion, see Luis Suarez Fernandez, "Evolución Histórica de las Hermandades Castellanas," Cuadernos de Historia de España, XVI (Buenos Aires, 1951), 8-36.

<sup>16</sup> J. H. Elliott, Imperial Spain 1469-1716 (New York: The New American Library Series, 1966), p. 84.

from each town, supported and maintained by the town's contributions. Thus the Hermandad was without cost to the sovereigns and the royal treasury. Every one hundred vecinos, or householders, had to equip one horseman; larger towns had companies of horsemen. These troops formed a standing body of 2,000 men under the command of Alonso de Aragón, Duke of Villahermosa, and they fought along with the feudal levies of the rulers in the last campaigns against the Moors.<sup>17</sup> As a court, the Santa Hermandad convened on the local level. Two alcaldes of the Hermandad were elected in each village that had thirty householders--one judge to represent the caballeros and another one for plebeyos, or "common folk." They heard cases in the following categories:

1. Robbery, murder, or rape committed in the country or in deserted places
2. Intent to rob or kill by waiting in ambush in deserted places along the roads
3. Burning of homes, vineyards, and harvests in areas of 30 householders or less
4. Killing, torturing, or kidnapping officials connected with the Hermandad
5. Robbery, banditry, or other crimes committed in the villages during the fifteen days of

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<sup>17</sup>Jean Hippolyte Mariéjol, The Spain of Ferdinand and Isabella, trans. by Benjamin Keen (New Brunswick: Rutgers University Press, 1961), pp. 19-25. Also see Pulgar, Crónica, V, Part I, XCV.

the Junta General against those persons who were assisting at the sessions of the Junta of the Hermandad, or their families, or against the judges named by the Junta.<sup>18</sup>

The crimes in the first four categories were within the jurisdiction of the alcaldes ordinarios in the Indies acting as alcaldes of the Hermandad.

The punishments for robbery or theft in the countryside were set forth according to the amount of money or goods involved in the crime:

1. If the amount of 150 maravedis or less was taken, the robber was to be banished and given a public lashing. He had to pay his victim double the amount taken, and the Hermandad four times the amount taken.
2. If the amount was between 150 to 500 maravedis, the ears of the criminal were cut off and he received 100 lashes.
3. If the amount was between 500 and 5,000 maravedis, a foot was cut off and the criminal could never again ride a horse or a mule. He could also be sentenced to death by arrows.
4. When the amount was more than 5,000 maravedis, the punishment was death by arrows.
5. In other cases, the judge of the Hermandad set the punishment according to Castilian law.<sup>19</sup>

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<sup>18</sup>Novísima Recopilación (Paris: Librerías de Don Vicente Salyá, 1846), Ley I, Título 35, Libro XII.

<sup>19</sup>Nueva Recopilación (Madrid: Consejo de la Hispanidad, 1943), Ley III, Título XIII, Libro VIII. These punishments could be meted out in the Indies only with the approval of the judges of the Audiencia.

The procedure which set the machinery of the Santa Hermandad into motion was as follows: After an act of violence was reported, the cuadrilleros set out in pursuit, raising a hue and cry. For five leagues they tracked the suspect; then another set of cuadrilleros took over the chase for five leagues more, and so on, until the suspect was captured, or driven from Castile and Leon. No one could refuse being searched and there was no area immune from search.<sup>20</sup>

When a suspect was captured, he was returned to the place where the crime was committed. Within the three days, the alcaides of the Hermandad held court. If punishment was decreed, the sentence was executed in the open country near the place where the crime had been committed.<sup>21</sup>

When the crime was punishable by death, the judge could condemn a malefactor to muerte de saeta. The directions for carrying out this sentence were carefully prescribed:

The judges and archers will bring the criminal to the countryside where the crime was committed and tie him to a straight post which should not be permitted to take the form of a cross, and fastened

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<sup>20</sup>Ibid. One Spanish league equals approximately four English miles.

<sup>21</sup>Novísima Recopilación, Ley III, IV, V, VI, Título XXXV, Libro XII. Neither the Nueva Recopilación nor the Novísima Recopilación outline trial procedure, although the suspect seemed to have been considered guilty until proven innocent.



to the center of the post, and his feet made fast with a piece of wood, and there arrows will be shot at him until he dies.<sup>22</sup>

Violence in the countryside was dealt with rigorously, and crime waned. While the Crown concentrated on reconquest and unification, the Hermandad maintained order in the countryside with little expense to the royal treasury. But the municipalities found its support a hardship, and there was grumbling in the towns because of the men and money needed to support it. In spite of this, the Santa Hermandad was confirmed seven times after its inception in 1476.<sup>23</sup> Its jurisdiction was broadened to include populated areas, and it was designated jailer of all those who rebelled against the Crown.<sup>24</sup>

Six years after Ferdinand and Isabella captured Granada, they dissolved the Supreme Junta of the Santa Hermandad. By the Pragmática of Zaragoza, June 29, 1498, provincial judges,

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<sup>22</sup>Novísima Recopilación, note to Ley VI.

<sup>23</sup>Pulgar, Crónica, V, Part III, XCV.

<sup>24</sup>Marvin Lunenfeld, The Council of the Santa Hermandad, A Study of the Pacification Forces of Ferdinand and Isabella (Coral Gables: University of Miami Press, 1970), pp. 9-11.

captains, officers--all who received wages--were dismissed.<sup>25</sup> To the alcaldes aguaciles, the police chiefs of the municipalities, platoon leaders, and their squads went the responsibility for maintaining the roads and policing rural areas, and to the local alcaldes went the responsibility for trying those apprehended. The Hermandad became the citizen constabulary of Castile.<sup>26</sup> In this capacity the institution was extended to the viceroyalty of New Spain at the request of Don Luis de Velasco.

Although the Crown was undoubtedly concerned about justice in the rural areas, it is possible that another motive prompted royal efforts towards the establishment of the Santa Hermandad. As H. I. Priestley says, "When the Hermandad appeared in America, it was as the arm and token of central authority, imposed from above for the protection of the roads against highwaymen," operating in areas between those controlled by

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<sup>25</sup>Diego Clemencín, Elógió de la reina doña Isabel, in Memorias de la Real Academia de Historia (Madrid, 1821), VI, 135: "decretar el alzamiento de la contribución destinada a sostenerla...y consumidos y acabados los cargos que cualquier persona tuviera y usara de la Santa Hermandad, excepción hecha de alcaldes y cuadrilleros, a los cuales mandamos que puedan usar de los dichos oficios y tengan el mismo poder y facultad que para los usar y ejercer solían haber y tener las dichos leyes de la Hermandad, si bien sus salarios serían pagados en adelante por los tesoreros de cada Partido, librándolos con cargo a las rentas reales."

<sup>26</sup>Celestino López Martínez, La Santa Hermandad de los Reyes Católicos (Seville: L. Vilches, 1921), p. 21. However, twenty lancers of the Santa Hermandad sailed with Columbus on his first voyage.

municipal areas and serving "to prevent development of local autonomy." [*italics mine*] Because the Hermandad was considered to constitute a visible arm of Castilian authority, even in its diminished capacity, the Crown may have considered it to be an effective agent in discouraging independent town action and in bringing local justice under Crown control.<sup>27</sup>

The next mention of the Santa Hermandad, subsequent to Velasco's correspondence with the king, appears in 1554. The municipality of Mexico, complying with an order from the viceroy, named Juan de Carbajal and Pedro Zamorano as acting alcaldes of the Hermandad for the year of 1554. They had already completed a satisfactory year in office as alcaldes ordinarios, and "had demonstrated their ability and zeal."<sup>28</sup> They were ordered to attend solely to their new jobs and were not called upon to perform the regular duties of the alcaldes ordinarios, as seems to have been the unenviable position of their counterparts in the smaller towns and villages with two

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<sup>27</sup> Herbert Ingram Priestley, "Spanish Colonial Municipalities," California Law Review, VII (September, 1919), 398. Unfortunately, he does not expound on this particular idea.

<sup>28</sup> AGN, Actas de Cabildo, Libro del cabildo y ayuntamiento desta ynsine e muy leal ciudad de Tenuxtitlan, 1554, VI, 123.

alcaldes ordinarios, who were required to know how to read and write in order to carry on their paperwork.<sup>29</sup>

The same arrangement for alcaldes ordinarios to act as alcaldes of the Hermandad was ordered for Peru in 1559. The wording is similar to the 1543 cédula for New Spain and in both Mexico and Lima the newly elected officials were then called alcaldes de la Hermandad, although the Tribunal itself had not been officially established yet.<sup>30</sup> So the Crown introduced the titles of the Hermandad into the two viceroyalties at a very early period to provide a legally constituted authority in sparsely populated frontier regions. The necessity for royal action to combat rural crime indicates that it was a problem which concerned the Crown during the first several decades of settlement and thereafter. The causes of the problem were complex, but several contemporary observers advanced reasons, if not solutions, for rural crime. Father Juan de Zumárraga, the first bishop of Mexico, blamed the conduct of the Spanish vagrants, who, he said, led the Indians into crime in rural areas.<sup>31</sup> Martín Cortés also

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<sup>29</sup>Recopilación, Ley V, Título III, Libro IV.

<sup>30</sup>Cedulario Indiano, III, 43.

<sup>31</sup>Joaquín García Icazbalceta, Don Fray de Zumárraga (México: Editorial Porrúa, 1947), II, 240-241.

complained of the Spanish immigrants whom he described as "infinite numbers of wanderers" who lived by rustling cattle.<sup>32</sup> The existence of these "vagabundos" presented a serious problem for the authorities in the mines and at the haciendas as well. They were described as being "like corks floating on water."<sup>33</sup> Commercial restrictions and crown monopolies prevented the formation of new industries and occupations which could have employed many of the idle and thus prevented them from taking to a life of wandering.<sup>34</sup> The craft guilds of New Spain, established soon after the conquest, were also highly restrictive and membership was limited.<sup>35</sup>

The king seems to have considered unemployment as an important factor contributing to criminal activities in the countryside, because he ordered Viceroy Velasco, in a cédula of October 3, 1558, to resolve the problem and urged the

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<sup>32</sup> Francois Chevalier, Land and Society in Colonial Mexico (Berkeley: University of California Press, 1963), pp. 28-29. Hereinafter referred to as Chevalier, Land and Society.

<sup>33</sup> Norman F. Martin, Los Vagabundos en la Nueva España, Siglo XVI (Mexico: Editorial Jus., 1957), pp. 167-168. Hereinafter referred to as Martin, Los Vagabundos.

<sup>34</sup> Ibid., p. 36.

<sup>35</sup> Haring, Spanish Empire, pp. 252-253. On p. 123, Haring also writes that "banditry was very common in most of the colonies, owing chiefly perhaps to the great number of idle homeless vagabonds issuing from the irregular unions of the three races."

following action: that vagrants be placed where workers were needed; that there be jobs where they could earn a living; that the Spaniards who would not work and were not married be expelled from New Spain; that the Viceroy take the lead in bringing Spaniards together to found a town, mestizos to form another, and Indians to found a separate town. Land was to be apportioned, seeds supplied, and money provided to build houses. The money was to be in the form of a loan from the Real Hacienda, the king's treasury, which would be repaid in installments determined by the king's officials.<sup>36</sup>

There is no record that the Viceroy was successful in implementing the king's suggestions, although a later Viceroy, Marqués de Guadalcazar, (1612-1621), ordered the founding of Lerma in the Toluca valley in 1613 to curb the bandits operating on the road from Toluca to Mexico.<sup>37</sup> Four vecinos of Huatusco petitioned for and received permission to found the village of Córdoba on April 26, 1618, because of the depredations of "negros cimarrones," who were runaway slaves.<sup>38</sup>

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<sup>36</sup> Puga, Provisiones, III, 204.

<sup>37</sup> Manuel Orozco y Berra, Historia de la Dominación Española en México (México: Antigua Librería de Robredo, de José Porrúa e Hijos, 1938), III, 107. It was considered that towns would bring the benefits of civilization to the lawless areas.

<sup>38</sup> Ibid., p. 114. Córdoba, located about forty miles southwest of Vera Cruz, became a sugar refining center in the following century.

In spite of the necessity for local action, there is no record between 1564 and 1595 of *alcaldes de la Hermandad* being named by the *cabildo* of Mexico City to judge rural criminals. The reasons for this are not clear. However, Philip II in 1595 renewed the earlier provisions for selecting *alcaldes* of the *Hermandad* because of an increase in lawlessness.<sup>39</sup> At the same time, he also ordered this done for Lima, where the yearly election of the *alcaldes* was also left to the *cabildo*, as it was in Spain and Mexico.<sup>40</sup> However, Lima found it difficult to hire competent *cuadrilleros* to track down criminals. The *alguacil mayor* and the *alcalde* of the *Hermandad* in 1580 even had to buy "two Negroes for *cuadrilleros* because no one wanted the job," but they were quickly sold by the *alcalde* for fear they would be killed and the money spent for them would be lost.<sup>41</sup>

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<sup>39</sup>AGN, *Actas de Cabildo de México*, 1600, XIV, 151-152. The increase in lawlessness may have been due to a marked decrease in mining production and a consequent layoff in men, although there is little documentation that relates directly to unemployment and criminal activities during this period.

<sup>40</sup>Constantino Bayle, *Los Cabildos Seculares en la América Española* (Madrid: Sapiencia, 1952), p. 170.

<sup>41</sup>*Ibid.*, p. 171. Bayle also mentions the *alcaldes de mesta*, justices for the cattlemen's association, which was informally organized in New Spain in 1539. Norman Martin in *Los Vagabundos*, p. 68, has implied that the *alcaldes de mesta* also acted as *alcaldes* of the *Hermandad*, possibly because both would have been interested in cattle rustling. The *Actas de Cabildo* show the appointment of two sets of officials, one for the *mesta* and one for the *Hermandad* until 1564, then only the *alcaldes de mesta* are listed, and they were assigned specific jurisdictions in the areas of the great estates.

Eight years after Philip II renewed the provisions for selecting *alcaldes de la Hermandad*, his son, Philip III (1598-1621) formally established the Tribunal of the Hermandad in 1603 in Mexico expanding its jurisdiction to other towns in New Spain if this could be done without expense to the treasury.<sup>42</sup> At the same time, he also set up the new office of *provincial de la Hermandad*, whose principal duty was to preside over the Tribunal and to oversee the activities of the *alcaldes de la Hermandad*.

The Viceroy of New Spain, Luis de Velasco (1607-1611), son of the first Velasco, put the order into effect on March 30, 1609. According to the royal order the Viceroy was to name two provinciales of the Hermandad, one to reside in Mexico City and the other in Puebla. They were to visit all of the haciendas in the countryside seeking contributions in gold to pay for the costs of their service in setting up the Hermandad but were not to apply pressure to the hacenderos for money. They were also to oversee the elections of two *alcaldes* of the Hermandad for the next year in each Spanish town from among the more prominent citizens.<sup>43</sup> These elected *alcaldes* were charged with the duties formerly carried out by the *alcaldes ordinarios* according to the 1543 decree of Charles I. (supra, p. 8)

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<sup>42</sup>AAM, Cedulario de la Ciudad de México, I, 269. It was quickly expanded throughout New Spain.

<sup>43</sup>Ibid., p. 270.



They were placed under the jurisdiction of the newly appointed provinciales. Apart from their duties as judges, the alcaldes were to assist the provinciales in the collection of money gathered from the hacenderos which was to be placed in a box that had three keys. The money, all records of collections, and elections results were to be taken to Mexico City in December. According to the decree the Viceroy was supposed to confer titles and authority on condition that the alcaldes and provinciales were successful in getting the money.<sup>44</sup> Apparently the required funds were collected, as the Viceroy named Alonso Perez de Vocanegra as "Provincial, Juez Executor de la Hermandad," of Mexico City late in 1610.<sup>45</sup>

Only one appointment was made at this time. In the provision naming Vocanegra to his new job, there is a brief mention of some of the "Cities of Peru where it (the Hermandad) had been tried with good results."<sup>46</sup>

The king must have been satisfied with the workings of the Hermandad in New Spain, because he decided to institute the new office of Provincial of the Hermandad for the entire

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<sup>44</sup>Ibid., pp. 293-294.

<sup>45</sup>Ibid., pp. 294-295.

<sup>46</sup>Ibid., p. 296.

Spanish Indies on May 27, 1631.<sup>47</sup> Prior to this time the office of provincial was not sold. But in dire need of money, the Crown now allowed the office to be sold to the highest bidder,<sup>48</sup> who would then receive a salary in his new position. However, the sale of this office was not to affect the office of the alcaldes of the Hermandad which always remained elected by the cabildo in the towns and villages of the Indies.<sup>49</sup> The alcaldes and provinciales were forbidden to have anything to do with the disputes involving Indians, (these cases were heard by the corregidor) except in cases of cattle stealing, when the provinciales could try the accused.<sup>50</sup> However, according to the Recopilación, in order to proceed against an Indian, the culprit must be brought to the main jail before he was

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<sup>47</sup>Recopilación, Ley, I, Título IV, Libro V.

<sup>48</sup>Della M. Flusche, "A Study of the Cabildo in Seventeenth Century Santiago, Chile, 1609-1699" (unpublished Ph.D. dissertation, Loyola University, 1969), pp. 125, 135-138. Between 1647 and 1664 the office of Provincial de la Hermandad was sold in Santiago to the highest bidder. The salary of the Provincial was set at 100,000 maravedis (about 370 pesos) annually. However, in 1645 the figure was changed to correspond to the amount paid for the job. The office was still in existence in 1722, held by José Valeriano. In 1671 the office of Provincial in Buenos Aires sold for 1300 pesos, Priestley, "Spanish Colonial Municipalities," p. 403.

<sup>49</sup>Recopilación, Ley III, Título IV, Libro V. J. H. Parry, The Sale of Public Office in the Spanish Indies Under the Hapsburgs (Berkeley: University of California Press, 1953), p. 30. The sale of judicial office was forbidden in Spanish law although the law was not always obeyed. The alcaldes of the Hermandad could be considered as judges of a court of the first instance.

<sup>50</sup>Recopilación, Ley IV, Título V, Libro V.

sentenced and the case must be carefully substantiated. The Recopilación ordered other officials of local government (justicia mayor and the alcalde ordinario) to proceed in the same way, although alcaldes ordinarios were allowed to handle these cases when the alcaldes of the Hermandad were in error.<sup>51</sup> Appeals from any of these decisions could legally be heard by the Sala del Crimen of the Audiencias in Mexico City and in Lima.

Not until 1651 were the first provinciales de la Hermandad named for Valladolid, Tlaxcala, Puebla, and Querétaro, and the first comisarios (lesser officials) named for San Luis, Salamanca, Celaya, Zamora and Córdoba with instructions to clean out "cruel and vicious persons in New Spain."<sup>52</sup>

Despite these appointments, the next fifty years of the Hermandad are very confusing because of a lack of documentation. There are few records of those brought to justice by the acting alcaldes or by the provinciales. In 1622 the Hermandad seems to have experienced a decline, for in that year, for unascertainable reasons, Viceroy Marqués de Gelves (1621-1624) had to organize rural troops to track down criminals, a job that should have fallen to the Hermandad. He estimated, with

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<sup>51</sup>Ibid., Ley V, Título IV, Libro V.

<sup>52</sup>Juan de Ortega y Montañes, Instrucción Reservada al Conde de Moctezuma (México: Editorial Jus., S. A. 1965), Pp. 168-170. Hereinafter referred to as Montañes, Instrucción.

obvious exaggeration, that he executed more men than had been put to death from the Conquest until that time.<sup>53</sup> This would seem to indicate that the Hermandad was not very lively during this period.

If one might hazard a guess as to the reason for the slump in the activity of the Hermandad during these years, perhaps an explanation can be found in what Chevalier calls "the decentralization of seventeenth century justice" which the Crown will attempt to end with the formation in the next century of the Acordada, under a single judge.<sup>54</sup>

It appears that at the end of the century there was one noteworthy attempt to instill new life into the stagnant Hermandad. Perturbed by the situation for Viceroy Conde de Galve (1688-1696) and the Sala del Crimen forwarded to the king a pamphlet, written by Licenciado Don Simón Ibañez, in which he proposed the appointment of justices, who were well instructed in the laws of Castile, and who would be faithful

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<sup>53</sup>Andrés P. Cavo, Historia de México, ed. by P. Ernesto J. Burrus, S. J. (México: Editorial Patria, S. A., 1949), p. 285. After an interview with Dr. J. Ignacio Rubio Mañe, director of the Archivo General of Mexico, Mexico City, February, 1971, Roberto Luis Newman, who went to speak with Dr. J. Ignacio Rubio Mañe on the writer's behalf, wrote that Dr. J. Ignacio Rubio Mañe could find little evidence of criminals in rural areas being brought to justice during this period.

<sup>54</sup>Chevalier, Land and Society, p. 296.

enforcers of the law in the countryside.<sup>55</sup> It would seem that the king was impressed by Ibañez' suggestions, because in 1688 he ordered the granting of Comisiones de Hermandad (special commissions to handle cases involving rural crime) without compensation, other than the honor of the appointment and the possessions of the defunct criminal.<sup>56</sup>

One of the first commissions conferred was on Captain Joseph Cumplido in 1695 to pursue criminals in the rural territories of the Archbishopric of Mexico and Michoacan.<sup>57</sup> The viceroy further assigned him to guard the pass at Cerro Gordo and the roads from Mexico to Cuernavaca and from Mexico City to Toluca. The king, however, did not approve the additional job at Cerro Gordo, although Cumplido had already been on patrol there. At the request of the Sala del Crimen, the king credited him with a good job but did not approve funds to pay for his men on patrol. Nevertheless, the Audiencia

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<sup>55</sup>Colección de Documentos inéditos para la historia de Ibero-América, Diccionario de Gobierno y Legislación de Indias (Madrid: Compañía ibero-americana de publicaciones, S. A., 1929), No. 4., pp. 100-101. Hereinafter referred to as Diccionario.

<sup>56</sup>Ibid., No. 5, p. 101.

<sup>57</sup>Diccionario, No. 6, pp. 101, 102.

authorized full payment to his horsemen and half payment to the muleteers.<sup>58</sup>

A further commission was granted to Miguel Velásquez Lorea of Querétaro and Celaya, who received his commission on June 19, 1697 from Viceroy Joseph Sarmiento, Conde de Moctezuma (1696-1701), to pursue bandits and those of "mal vivir."<sup>59</sup> Even with the granting of the commissions the viceroy wrote that due to diverse circumstances, "como las de la vasta extensión del país," he did not think that the Hermandad was very effective."<sup>60</sup>

Although the aforementioned "comisiones de Hermandad" are cited in only one source, they seem to be a crucial link between the Santa Hermandad and the future King's Tribunal of the Acordada, a centralizing agency for law enforcement in New Spain. In the first place the authority granted to a recipient of a commission under the "comisión de Hermandad" indicates that the official was a judge of the Hermandad as well as the one who went out and apprehended criminals. He took office only after he had received his commission directly from the

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<sup>58</sup>AAM, Cedulario de la Ciudad de México, XII, 58-60.

<sup>59</sup>Montaños, Instrucción, p. 170.

<sup>60</sup>Ibid.

king, who made the final selection from a list of candidates proposed by the viceroy.<sup>61</sup>

Secondly, the duties of the judges of the Acordada as well as those granted a "comisión" were three-fold as with the judges of the Santa Hermandad of Castile: police action, judicial and punitive action.

Unfortunately, we have the names of only several of the special judges whose attention to duty prompted the king to expand the powers of the Hermandad even though the viceroy was not convinced of its effectiveness. The names of three of them, taken from various documents, are Joseph Cumplido, Francisco Alvarez and Miguel Velásquez Lorea. Another provincial may have been José Rincón de Gallardo, who in 1692 was authorized "to pursue, imprison, or deliver to higher authority" thieves and brigands on the highways. He also could hear civil and criminal cases. This extensive jurisdiction was granted, at this time, only to those with "a comisión de Hermandad."<sup>62</sup>

Although the complaints about bandits, robbers, vagabonds seemed to flow to the Viceroy in an endless stream, it was one particular incident that had serious repercussions and triggered the discussions of the Real Acuerdo, which eventually led first

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<sup>61</sup>Diccionario, No. 6, p. 102.

<sup>62</sup>Chevalier, Land and Society, p. 296.

to the strengthening of the Santa Hermandad and, then, to the establishment of the Tribunal of the Acordada.<sup>63</sup>

It began in 1707 with the journey of Don Juan Martín Berdugo, "royal official of the treasury in Zacatecas," who was the unwitting catalyst in the events surrounding the formation of the Acordada. He was on his way to Mexico City with his family, traveling the road from Pachuca. At 4:30 in the afternoon, as they reached a high, narrow place in the road, they were attacked by four "well-dressed bandits on good horses, armed with arquebus and pistols."<sup>64</sup> Don Berdugo's men drove off the bandits, although two of his people were wounded and one of them died the next day at the Hacienda de Villanueva.<sup>65</sup> Don Berdugo wrote directly to Viceroy Francisco

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<sup>63</sup>Haring, Spanish Empire, p. 124. When the audiencia met to discuss questions of political administration, it was known as the Real Acuerdo, and the decisions reached were called autos acordados. Although the word reestablished is used in connection with the Santa Hermandad by historians and even in official documents, the Santa Hermandad was never officially disestablished. At different periods it was strengthened or reinvigorated as in 1710, but not reestablished. Throughout the dissertation these two words will be used. "Re-establecer" in this context means to instill new life or invigorate.

<sup>64</sup>AGI, México 1671, Testimonio del Quaderno veinte, relativo al atraso de causas; y facultades del Señor Juez de la Acordada, p. 1. A testimonio is a collection of documents or statements made by a number of persons relating to a particular subject.

<sup>65</sup>Ibid., p. 2.



Fernandez de la Cueva, Duke of Alburquerque, (1702-1710) about the incident, protesting the lack of law enforcement, and the attitude of the "single teniente who interviewed his servants but did not even bother to interview him."<sup>66</sup>

Although Don Berdugo's letter was written to the Viceroy, it was referred to the Real Acuerdo as the agency of action on a complaint by someone of Don Berdugo's status. The Real Acuerdo in special session blamed the Sala del Crimen for the upsurge in crime because it had prohibited the *alcaldes ordinarios* and *alcaldes de la hermandad* from executing sentences that involved corporal punishment, especially the death sentence, without first consulting it.<sup>67</sup> The appeals of sentences to the Sala from local jurisdictions took a long time, and the offenders were usually acquitted. Then the judges and witnesses were exposed to the vengeance of those brought to trial in the local court.<sup>68</sup> The Real Acuerdo proposed, especially in view of Don Berdugo's attack, that a senior *alcalde* of the Sala del Crimen go forth with the

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<sup>66</sup> Ibid.

<sup>67</sup> Ibid., p. 9. A long-standing *auto acordado* of 1601 gave the sala this authority. A section of the *Testimonio* discusses the effects of the order on law enforcement.

<sup>68</sup> Ibid., p. 10.

approval of the Sala, (of course), taking with him twenty-five or thirty horsemen and eliminate the bandits on the pachuca road.<sup>69</sup>

Accepting the report of the Real Acuerdo, the Viceroy issued a decree on January 26, 1707, naming Don Pedro de Equarás, alcalde of the Sala, to lead twenty-five men "in the administration of justice to those parts of New Spain where he was ordered."<sup>70</sup> Five days later he was also ordered to expedite a bando prohibiting the use of firearms and short swords with the penalty of ten years in prison and a whipping as well as prison to those of the castes who disobeyed the law.<sup>71</sup>

Despite the action taken, a new report of criminal activities came from the alcalde mayor in Lerma near el Monte de las Cruces. He wrote the Viceroy that swineherders had found five dead Indians, naked, hands tied behind their backs,

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<sup>69</sup>Ibid., p. 12-13.

<sup>70</sup>Ibid., p. 13. Each horseman was to receive two reales for this service.

<sup>71</sup>Ibid.

robbed of their cattle and tortured.<sup>72</sup> He blamed the guardas, under José Cumplido, who were supposed to be patrolling the area and asked if additional steps could be taken to bring the murderers of the Indians to justice.<sup>73</sup>

To meet the new situation, the Duke of Albuquerque once again called a special session of the Real Acuerdo on June 21, 1707. However, the alcaldes of the Sala del Crimen did not come because they were all sick.<sup>74</sup> The only action taken was to close all gambling houses of "gente ordinaria," because it was thought that these contributed to disorder.<sup>75</sup> The bando announcing the decision was not popular and soldiers had to be sent with the crier who made the announcement.<sup>76</sup>

At this time, the Alcalde of the Sala del Crimen, Pedro de Equarás, who had been rounding up criminals and bringing them in for judgment, tried to obtain for his men and for himself

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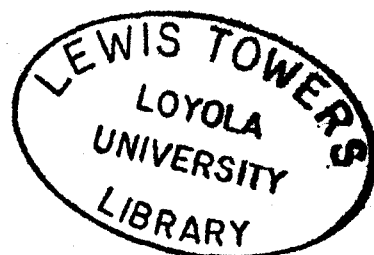
<sup>72</sup>Ibid., pp. 17-18.

<sup>73</sup>Ibid., p. 19.

<sup>74</sup>Ibid., p. 26. The Sala was jealous of its prerogatives, and it probably considered that the Viceroy might force action to repeal the auto acordado of 1601.

<sup>75</sup>Ibid., pp. 28-29.

<sup>76</sup>Ibid.



some of the money supposedly provided for the operation during the period when indignation was high over the affront to Don Berdugo. It took him several years and considerable paperwork, including a letter to the king, before he could collect the debt. But first he had to defend himself against charges that he had exceeded his commission in sentencing criminals without allowing appeals to the Sala. The two specific cases mentioned in which his sentences were revoked were those of Antonio Perez Lozano, given ten years of exile in the Marianas and perpetual banishment from New Spain, and José Ortiz de León de la Vega, given 100 lashes and six years in the Presidio at hard labor.<sup>77</sup> Although the Viceroy praised Don Pedro's zeal, the two criminals were returned to be judged locally.<sup>78</sup> Then the Viceroy tried to solicit funds for special commissioner Equarás, and with the approval of the Real Acuerdo, the Consulado was selected to contribute and was so ordered to pay 15,000 pesos on July 15, 1709, so Equarás finally received payment.<sup>79</sup>

The following year a new Viceroy, Fernando de Alencastre, Duke of Linares, (1710-1716) arrived in New Spain and was

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<sup>77</sup>Ibid., p. 36.

<sup>78</sup>Ibid., pp. 43-44.

<sup>79</sup>Ibid., p. 66.

ordered almost immediately by the king to call his council together and act upon a petition from the citizens of Querétaro.<sup>80</sup> They had written in praise of the provincial of the Hermandad, Captain Miguel Velázquez for the excellent job he had done in eliminating bandits from their area, and also praised his son Miguel for the same reasons. However, the former had retired for reasons of health and, once again, the criminal element had become bolder. The petitioners now asked the Viceroy to reinstate Miguel Velázquez Lorea promising that they would all contribute to his expenses.<sup>81</sup> This was done immediately, and the king further granted a commission to him with a new title of Alcalde Provincial de la Hermandad. But more important, the monarch reinstated in New Spain the titles, forms, punishments and procedures of the ancient Santa Hermandad of Castile. The cédula listed the duties of the alcalde provincial to apprehend bandits and robbers and try them by the laws of the Santa Hermandad with appeals going to the Sala del Crimen.<sup>82</sup> The cédula repeated the crimes which came under

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<sup>80</sup>Ibid., p. 75.

<sup>81</sup>Ibid., pp. 77-78.

<sup>82</sup>Ibid., p. 79. Until this time, there had been alcaldes of the Hermandad and provinciales, but no alcaldes provinciales in the New World. The title and the jurisdiction correspond to those of the ancient Castilian Hermandad. Only Velázquez received the title at this time.

the jurisdiction of the Hermandad and the prescribed punishments including "muerte de saeta."<sup>83</sup> The procedure that he was to follow was also spelled out: The alcalde provincial was to proceed on the information available until a wrongdoer had been captured and charged with a crime. This was to be done in a circumspect manner.<sup>84</sup> The sentence was to reflect the seriousness of the crime committed, and the penalty handed down was to be given with the advice of a letrado, (lawyer) known in the province. The condemned had ten days in which to appeal his sentence to a higher judge.<sup>85</sup>

The king gave Velázquez the power to appoint his comisarios and cuadrilleros without having them approved by the Viceroy.<sup>86</sup> And further, "all corregidores, alcaldes mayores and ordinarios, and remaining justices of all the cities, towns and villages" were to give assistance to the alcalde provincial.<sup>87</sup>

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<sup>83</sup>Ibid., p. 80.

<sup>84</sup>Ibid., p. 82.

<sup>85</sup>Ibid., p. 84.

<sup>86</sup>Ibid., p. 85.

<sup>87</sup>Ibid., p. 86. Another account of the circumstances in the dispatch of this title to Don Miguel Velázquez may be found in AGI, Seville, Mexico 1671, Testimonio de el Expediente en virtud de Reales Cédulas en que se declara, que el Juez de la Acordada exerza su Comizión con total independencía de la R. Sala de el Crimen, 1775, p. 11.

Just in case the preceding measures did not have the hoped-for-effect, the king by royal cédula on December 21, 1715, gave the Viceroy extraordinary powers to increase the authority of the alcalde provincial.<sup>88</sup> The Viceroy called a meeting of both the Real Audiencia and the Sala del Crimen with the financial advisor present on December 31 to consider a proposal he wished to make of suspending the auto acordada of 1601 which ordered that no sentences of death, mutilation or other corporal punishment be imposed without first consulting the Sala del Crimen. And further, to give special commissions to persons "of major satisfaction," who, with expert lawyers assisting them, would proceed against bandits and robbers, executing sentences, even death, without the approval of the Sala, although an accounting was to be made after the execution of sentences.<sup>89</sup>

Although Viceroy Linares did not use the extraordinary powers, his successor, Baltasar de Zuñiga, Marqués de Valero (1716-1722) did. Using as his authority the aforementioned cédula of 1715, he named four special alcaldes provinciales of the Hermandad on January 28, 1719.<sup>90</sup> Re-naming Don Miguel

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<sup>88</sup>Ibid., p. 94.

<sup>89</sup>Ibid., p. 95.

<sup>90</sup>Ibid., p. 93.

Velázquez Lorea, he also appointed Don Juan Francisco de Ascona, Don Bernardino Maldonado and Don Nicolas Lopes de San Vincente.<sup>91</sup> He assigned each alcalde provincial a salary of 200 pesos per month twelve cuadrilleros or more "if necessary," a company of eighty dragoons and assistance from the justices in all parts of the kingdom.<sup>92</sup> One difference from the proposals of Viceroy Linares in 1715 was that they were to consult the Sala before executing sentences, although the Viceroy criticized the Sala for being inflexible and "the corregidores, alcaldes mayores y ordinarios as insufficient for the ordinary legal remedies."<sup>93</sup>

The Sala evened the score with the Viceroy because its ministers complained to the king about the expense of the alcaldes provinciales and the cuadrilleros.<sup>94</sup>

While Viceroy Zuñiga's letter was on its way to the king, informing him of what he had done, he was taking steps to provide an even more centralized control of law enforcement.

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<sup>91</sup>Ibid. This is the only document which records the four names. Usually, only that of Miguel Velásquez Lorea is given.

<sup>92</sup>Ibid., pp. 91-92.

<sup>93</sup>Ibid., pp. 92 and 95.

<sup>94</sup>In AGI, México 1671, Testimonio, 1775, the Sala agreed with the measures taken by the Viceroy at the time, then reversed itself and complained of the expense.



He convened a council consisting of three oidores and an alcalde del crimen on November 9, 1719 to discuss crime in the rural areas.<sup>95</sup> Two days later, the junta unanimously agreed that to resolve the situation the Viceroy should grant a single "comisión" to a person of great integrity, a judge or an alcalde provincial, for instance, who would be counseled by expert lawyers, as proposed by Viceroy Linares in 1715, and who would be authorized to proceed against all rural criminals, robbers or highwaymen in secrecy. He could apprehend them, substantiate the cases against them in as brief a time as possible, and execute sentences, even the death penalty, without previously consulting the Sala del Crimen. And, after the execution, he would give an account of the events to the Viceroy and the Sala.<sup>96</sup> The proposal, known as the Comisión Acordada por la Audiencia was forwarded to the king for approval. This was given on May 22, 1722, together with the confirmation of the commission of Alcalde Provincial de la

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<sup>95</sup>AGI, México 1671, Testimonio del Quaderno veinte, p. 96.

<sup>96</sup>Ibid., pp. 96-98. Although not stated in the Testimonio, it may be assumed that the Comisión Acordada gave the recipient authority over the other alcaldes and provinciales of the Hermandad. These offices were not abolished but continued to function within the framework of the Acordada.

Acordada which was bestowed on Miguel Velázquez Lorea.<sup>97</sup> It is from this commission that the Tribunal of the Acordada was instituted and given its name.<sup>98</sup> Instead of creating a new tribunal, the Crown revitalized the Santa Hermandad and built upon what was already in existence and what was thought to be reasonably effective within the sphere of Spanish experience. The new element introduced was the centralization of the administration of rural justice in the hands of a single individual.

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<sup>97</sup> AGI, México 1671, Yndice de los documentos relativos al establecimiento del Juzgado de la Acordada de México, y otros incidentes ocurridos sobre sus facultades, y jurisdicción, que se pasan a la secretaría del Perú en virtud del Oficio de 13 de Sept<sup>re</sup> último con que los pidió, "Al Virrey de Nueva España remitiéndole la Zédula de gracia para Don Miguel Velázquez Lorea, y ordenándole le mantenga la autoridad de la Corte acordada por el tiempo y en la forma se expresa," May 22, 1722. Hereinafter referred to as AGI, México 1671, Yndice.

<sup>98</sup> AGI, México 1671, Yndice. A notation by a Crown official, compiling the documents for transmission to Peru, considered November 19, 1719 to be the date of the Acordada because of the acuerdo, or agreement, of the junta on increasing the powers of the Alcalde Provincial and terminating the auto of 1601.

Clarence Haring wrote that the Santa Hermandad was "reestablished as the Acordada in 1710." The ancient Santa Hermandad was strengthened in Mexico in 1710 but not as the Acordada, which is not mentioned in royal orders until 1719. Lucas Alamán used the first date of 1703 in the Ramo Acordada. Some of the cases of Miguel Velázquez Lorea, as a provincial in Querétaro, are listed in the Ramo for that date and are therefore misleading as a date for the Acordada.

The basic administrative change now taking place, one that further centralized Crown control of rural justice, is explained in detail in the Testimonio recorded by Secretary Don Joseph de Vorráez for Viceroy Antonio María de Bucareli in 1775. It reviews the royal orders by which the Judge of the Acordada exercised his commission independently of the Sala del Crimen:

Because of the "extraordinary powers" which the royal order of December 21, 1715 permitted the Viceroy to grant to Miguel Velázquez Lorea, the auto acordada of 1601, by which judges could not pass a sentence of corporal punishment without first consulting the Sala, was nullified. As alcalde provincial of the Hermandad, he could institute criminal proceedings and punish those who committed crimes in the rural areas, and as judge of the Acordada, he could do the same in towns and villages of the kingdom. However, at all times he had to answer to the king if he overstepped the powers set forth in his commission which, in turn were determined by his duties as alcalde provincial of the Hermandad, the laws of the Santa Hermandad, the laws of Castile and his special powers as judge of the Acordada.<sup>99</sup> A centralized police force with judicial authority, answerable only to the Crown, was at last operating in New Spain.

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<sup>99</sup> AGI, México 1671, Testimonio de el Expediente...1775, p. 15.

## CHAPTER II

### Successes and Failures of the Tribunal in New Spain: Jurisdictional Disputes, Judge Concha and His Special Problems, José de Gálvez and the Acordada

The newly established Acordada functioned as a roving court, similar to the Santa Hermandad of Spain before its powers were curtailed in 1498. From Mexico City, the headquarters of the Acordada, Velázquez went forth accompanied by lieutenants, cuadrilleros, members of the court, a clerk who wrote an account of the proceedings, a chaplain who gave condemned criminals spiritual assistance, a trumpeter who led the group, along with a standard bearer with the purple banner of the Santa Hermandad of Toledo. When the members of Acordada were pursuing a large armed band, they were sometimes accompanied by a detachment of mounted troops, which was probably assigned by the Viceroy, although there seems to have been no formal arrangement.<sup>1</sup>

When a bandit was caught, a quick trial was held with identifying witnesses in attendance. If the crime committed warranted the death penalty, the condemned was shot with arrows

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<sup>1</sup>Toribio Esquivel Obregón, Apuntes para la Historia del Derecho en Mexico (5 vols.; Mexico: Editorial Polis, 1938), II, 361.

or hung from the branch of a tree--hopefully in view of the road to serve as a warning to other bandits in the area.<sup>2</sup>

At last it seemed that there was an effective force operating against the criminal element. But one agency of justice, the Sala del Crimen of the Audiencia, was especially jealous of the prerogatives of the Acordada. This body was no longer consulted before the death penalty was imposed by the court of the Acordada, nor was there any appeal to it from that sentence. The Sala on March 22 and 27, 1723, wrote to the king and complained about this blow to its authority. The Sala had been the court of appeals; now, in cases of rural crime, it was that no longer. It also attacked the legitimacy of Don Miguel Velázquez' appointment as judge, and accused him of sending prisoners to presidios in the Philippine Islands without informing anyone.<sup>3</sup> The king set the record straight with a cédula of June 26, 1724, taking note of the Sala's complaints, but pointing out that he had confirmed the appointment to the special court commissioned by the Crown and had made the office hereditary.<sup>4</sup>

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<sup>2</sup>Artemio del Valle Arizpe, Historia de la Ciudad de México según los relatos de sus cronistas (México: Editorial Pedro Robredo, 1946), p. 463. This was in keeping with the royal cédula of 1710, reestablishing the Santa Hermandad and its procedures and punishments.

<sup>3</sup>AGI, México 1671, Yndice de los documentos, A la Sala del Crimen de México...June 26, 1724.

<sup>4</sup>Ibid.

The complaints of the Sala del Crimen against the Acordada continued with an accusation that it was not given an account of the sentences passed by the latter tribunal as agreed in the original commission. (supra, p. 39) In reply dated November 10, 1724, the king related that there had been a good effect on law enforcement produced by the Acordada and seemed inclined to permit Velázquez to continue his methods at the discretion of the Viceroy.<sup>5</sup>

However, once again the Sala del Crimen complained. In a letter of May 7, 1726, it made new charges that Velázquez used torture to obtain confessions from the accused and that he held them incommunicado, not permitting visitors on Saturdays or on holidays. The king sent a new cédula to his Viceroy, Juan de Acuña, Marqués de Casa-Fuerte (1722-1734), on November 28, 1727, which resolved the question by shifting the responsibility of investigation and decision to the Viceroy as his immediate representative.<sup>6</sup> Visiting hours may have been a problem for the judge because he was forced, by lack of funds, to keep prisoners in his home. Later he rented a workshop owned by Don Baltasar

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<sup>5</sup>AGI, Mexico 1671, Yndice. A la Sala del Crimen de Mexico, November 10, 1724.

<sup>6</sup>AGI, Mexico 1671, Yndice. Al Virrey de Nueva España... November 28, 1727.

de la Sierra for 600 pesos a year, paid out of his own salary.<sup>7</sup> It had been closed for some time before he rented it, but a trustee of the Sierra estate had had the walls reinforced and other repairs completed before the prisoners were moved in.<sup>8</sup> That Don Miguel was also interested in the spiritual welfare of his prisoners was noted by Father Lazcano, a Jesuit contemporary of the Juez. He described the judge's "singular devotion" in insuring that the prisoners, especially those condemned to death, had the opportunity to make their peace with God.<sup>9</sup> However, this did not resolve his problems with the Sala.

The three aforementioned royal cédulas of 1722, 1724 and 1727 which set forth complaints of the Sala against the Judge of the Acordada, as well as the king's reply, were incorporated into the Yndice de los Documentos of 1787 for use by other officials considering the possible extension of the Acordada. The documents indicate the limits placed upon the judge's power by the laws of Castile and of the Hermandad, and emphasize that after executing the sentences, the judge must account for his

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<sup>7</sup>AGN, Ramo Acordada, V, 18.

<sup>8</sup>Ibid., p. 119.

<sup>9</sup>Francisco Xavier Lazcano, Vida Exemplar y Virtudes Heroicas del venerable padre Juan Antonio de Oviedo de la compañía de Jesús (Mexico: en la imprenta del Real, y Mas Antiquo Colegio de San Ildefonso, 1760), pp. 216-217.

actions in a letter to the king. During his administration Don Miguel had the full support of the king as the documents indicate.

In the two years preceding the death of Don Miguel, the criticisms of the judge by the Sala became more personal. Although the Sala did not write to the king of his senility, it did say that he was unable to mount his horse and therefore could not patrol the roads and carry on with his other duties.<sup>10</sup> The king was not impressed, because he wrote to Don José, the judge's son, praising him for helping his father in his old age and feeble condition.<sup>11</sup>

For twenty-two years, Velázquez retained his commission as a provincial of the Hermandad, but it was only since 1719 that he held the commission of Captain and Judge of the Acordada. When he died in Mexico City, September 7, 1732, at the age of sixty-two, he was buried in the Jesuit Church of the Profesa. The Gazeta de México carried his obituary and a eulogy.<sup>12</sup>

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<sup>10</sup>AGI, Mexico 1671, Testimonio del Quaderno veinte, cédula de June 20, 1731, p. 122.

<sup>11</sup>Ibid., p. 119.

<sup>12</sup>Gazeta de México, (Mexico 1784-1821), ed.D. Felipe de Zuñiga y Ontiveros, September, 1732, p. 456. It also stated that he had been Alguacil Mayor of the Inquisition. However, Dr. Richard Greenleaf, authority on the Mexican Inquisition, in an interview with the writer in Mexico City, August, 1968, said that he had found no evidence linking the activities of the Acordada with those of the Inquisition, and therefore, this title was probably honorary.



The graph on the following page indicates the number of criminals sentenced by the Acordada between 1719 and 1731, the dates of Don Miguel Velázquez Lorea's tenure as Captain and Judge of the Acordada.\*

Most of the criminals were found guilty of highway robbery or banditry and the death penalty was usually imposed. For the crime of sacrilege, flogging was the prescribed sentence. In 1723 the gang of Francisco Escobedo was charged with arson in Mexico City, but when they fled to the countryside, they came under the jurisdiction of the Acordada, and when captured, they were executed.

The term "sold" in the second column is used to denote those criminals whose time of servitude was purchased by owners of sugar refineries or mills. The decline in the number of executions after the first year may have been due to the need for labor in strengthening the presidios in Texas and Florida, although there is no documentation to support this thesis.

Although Miguel Velázquez was named alcalde provincial in 1719, the king did not approve the "comisión Acordada" until 1722, which could account for the lack of cases resolved by the Acordada during the first two years, when the Sala de Crimen considered itself the court of appeals for capital offenses.

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\*AGN, Ramo Acordada, I, Inventory of Cases.

|        | FLOGGING | SOLD | HARD LABOR | EXECUTED | BANISHED | ACQUITTED |
|--------|----------|------|------------|----------|----------|-----------|
| 1719   |          |      |            |          |          | 1         |
| 1720   |          |      | 1          |          |          |           |
| 1721   |          |      | 1          | 25       |          |           |
| 1722   |          | 2    | 14         | 6        | 1        | 6         |
| 1723   |          | 8    | 16         | 17       |          | 2         |
| 1724   | 4        | 5    | 10         | 1        | 3        | 9         |
| 1725   |          | 2    | 14         | 6        |          | 1         |
| 1726   | 24       | 36   | 38         | 3        |          | 5         |
| 1727   | 3        | 3    | 32         |          | 1        | 9         |
| 1728   |          | 1    | 23         | 1        |          | 2         |
| 1729   |          | 2    | 6          |          |          | 2         |
| 1730   |          |      | 14         | 12       |          | 11        |
| 1731   | 4        | 10   | 45         | 3        |          | 8         |
| TOTALS | 35       | 69   | 214        | 74       | 5        | 56        |

The graph on the following page indicates that the majority of cases tried by the Judge of the Acordada involved whites, not the castes.\* The most famous bandits of the time, listed in the Inventory of Cases, were usually Spaniards. This seems to coincide with the statements on page 19 that the vagrants from Spain were interested in neither service nor work and they filled the jails of New Spain. Nationals of foreign powers were also accused of contributing to the crime rate, but they do not have a separate designation in the chart.

The rural crime rate rose sporadically until it hit a high point in the year of Miguel Velázquez's death in 1731. Improved organization and an increase in personnel probably contributed to apprehension of criminals.

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\*AGN, Ramo Acordada, I, Inventory of Cases.

| YEAR         | BLANCAS | INDIOS | NEGRD. | MEST. | MULA. | COYOTES | LOBOS |
|--------------|---------|--------|--------|-------|-------|---------|-------|
| 1719         | 6       |        |        |       |       |         |       |
| 1720         | 9       |        |        |       |       |         |       |
| 1721         | 11      |        |        |       |       |         |       |
| 1722         | 28      | 1      |        |       | 1     | 1       |       |
| 1723         | 35      | 1      |        |       | 3     |         |       |
| 1724         | 24      | 1      |        | 2     | 1     |         |       |
| 1725         | 51      |        |        |       |       |         |       |
| 1726         | 78      |        |        |       | 3     |         |       |
| 1727         | 68      | 2      |        |       | 1     |         |       |
| 1728         | 55      | 1      |        |       |       | 1       |       |
| 1729         | 50      |        |        |       | 2     |         |       |
| 1730         | 47      |        |        | 1     |       |         |       |
| 1731         | 89      | 1      |        |       | 2     |         | 1     |
| <u>TOTAL</u> | 551     | 7      |        | 3     | 13    | 2       | 1     |

In a letter sent to Don Miguel on June 2, 1734, which arrived almost two years after the judge's death, the king confirmed the appointment of his son Don José Velázquez Lorea to succeed his father in the commission of the King's Tribunal of the Acordada for Nueva España, Nueva Galicia and Nueva Vizcaya. He was to have "the same agreement and the same jurisdiction, authority, and freedom" that his father had exercised.<sup>13</sup> The king acknowledged in this correspondence "the jealousy of the Sala del Crimen and its ministers "against you and your commission," but he indicated his approval of the progress that had been made "in apprehending and punishing "criminals."<sup>14</sup>

To confirm his order, the king wrote to the Sala on August 26, 1736, stating that Don José had succeeded his father and that he was to proceed in the same manner "without admitting appeals of the criminals to the Sala."<sup>15</sup> The Sala had evidently asked the king to hold a residencia for the

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<sup>13</sup> AGI, Mexico 1671, Yndice A Don Miguel Velázquez Lorea... June 2, 1734.

<sup>14</sup> Ibid.

<sup>15</sup> AGI, Mexico 1671, Yndice, A la Sala del Crimen de Mexico, August 26, 1736. Although the Ramo Acordada, IX, 437, contains the viceregal appointment, and a cédula of November 8, 1734 contains a confirmation, the two cédulas from the Yndice are those which the Crown considered to be of more importance in establishing the Acordada in another kingdom of the empire. It should also be noted that the jurisdiction at this time includes three kingdoms and not merely New Spain.

Judge of the Acordada every five years, because he also turned down this request as an "inconvenience," due to the necessary secrecy of the cases and stated that his Viceroy could hear and decide charges made against the conduct of the judge.<sup>16</sup>

At this time the Viceroy and the Audiencia agreed to increase the authority of the judge so that he would be able to patrol the streets of Mexico City also, apprehending and punishing those who committed crimes that fell under the jurisdiction of the Santa Hermandad. In other cases, the judge could apprehend and try delinquents under the laws applicable in the city, with the Viceroy hearing any appeals from these cases.<sup>17</sup> This action was taken because of an upsurge in crime in the city, in which robbers, called "guerristas" emerged from the barrios of Santa Maria and Santiago, struck quickly, and fled back to the barrios. Idleness was blamed,

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<sup>16</sup> Ibid. Haring, Spanish Empire, pp. 138-139, describes the residencia as a judicial review of a public official's conduct in which he was held accountable for all acts during his term of office. If an official had proprietary rights to his office, a residencia was supposed to be conducted every five years by a judge, even an oidor, appointed by the viceroy. This provision in the Recopilación would seem to apply to the Judge of the Acordada. However, as Haring points out, the system could discourage initiative, and it may have been that the king, pleased with the progress in apprehending criminals, wanted the judge to proceed without fear of malicious criticism. The judge was the king's man and his commission could be revoked at any time by the Crown if things did not work out.

<sup>17</sup> AGI, Mexico 1671, Yndice, Al Virrey y Audiencia de la Nueva España September 15, 1744.

not the lack of strict laws. In fact, Viceroy Conde de Fuenclara was praised for sending convicts to the workshops of Vera Cruz, to Florida and to Pensacola. All this was reviewed in a cédula that the king sent to the Viceroy and the Audiencia on September 15, 1744.<sup>18</sup> However, the king was very critical of the alcaldes of the Sala del Crimen who were failing to patrol the streets in their districts and quarters. He ordered them to "discharge...[their] obligations immediately with all vigilance and haste."<sup>19</sup>

The cédula probably did not improve the relationship between the Acordada and the Sala. The judges of the Sala viewed their role as judicial and were perfectly willing to permit someone else to patrol the barrios, while they heard appeals from the justices of their districts. However, the king did not approve of their relinquishing part of their specified job without attempting to do what the law required. And in a letter to the Sala on September 16, 1745, he reminded them that the alcaldes mayores, the alcaldes ordinarios and the justicias ordinarios could not order sentences of death, whipping or other

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<sup>18</sup>Ibid. The outbreak of the War of Jenkins' Ear in 1739 and the War of Austrian Succession caused fear in New Spain. This may have contributed to the rising crime rate, as men tried to escape army service.

<sup>19</sup> AGI, Mexico 1671, Yndice, A la Sala del Crimen de Mexico, September 15, 1744.

corporal punishments without first giving an account of the judicial proceedings to the Sala, and it was the responsibility of the Sala to see that this provision was met, otherwise, it was not doing its duty. Only in the case of the judge of the Acordada, acting in his capacity of alcalde provincial of the Santa Hermandad, was the law not applicable.<sup>20</sup> The king and his advisors were keeping the judicial system in balance by constant attention to the duties of the various justices and by sometimes setting one jurisdiction against the other. There was still another reason for expanding the authority of the Acordada into Nueva Galicia and Nueva Viscaya before the death of Don Miguel. It was hoped that the military would be freed from patrolling the roads in these areas to meet the attacks of marauding Indians in the north.<sup>21</sup> In February, 1756, while Don José Velázquez was on routine trip taking three criminals to Querétaro, his native city, for execution, he suddenly died there on February 17 at the age of 49. He was buried in Querétaro. Viceroy Agustín de

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<sup>20</sup>AGI, México 1671, Yndice, A la Sala del Crimen de la Audiencia de México, September 16, 1745.

<sup>21</sup>William B. Griffen, Culture Change and Shifting Populations in Central Northern Mexico (Tuscon: University of Arizona Press, 1969), p. 47.



Ahumada y Villalón, Marqués de Amarillas, (1755-1758) informed the king of the death of his trusted official. He also praised the accomplishments of both Don Jose and of his father Don Miguel, in bringing peace to the rural areas of New Spain.<sup>22</sup>

The death of Don José brought an era to a close, and the Acordada would shortly reflect the changes and reforms being made by the Bourbon rulers of Spain, especially Charles III, who would come to the throne in 1759. Of major concern to the Crown was the commercial relationship between the kingdoms in America and Spain. Illegal production of liquors, which might prejudice the sale of the Spanish product, the contraband trade, flourishing in spite of restrictive policies, and the enforcement of the new tobacco monopoly would bring the Acordada increased responsibilities as the Crown sought to tighten the threads of empire. The agent of change, José de Gálvez, Visitor-General of New Spain, arrived in New Spain in 1765, determined to strengthen the Spanish empire and prevent encroachments by the English and Russians and a disaster similar to the French defeat in the Seven Years' War ending in 1763. There is no specific mention of José de Gálvez in the records of the Acordada. However, some evidence links him to the third judge

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<sup>22</sup>Instrucciones que los Virreyes de la Nueva España dejaron a su sucesores (2 vols.; Mexico: imprenta de Ignacio Escalante, 1867), I, 290. Hereinafter referred to as Instrucciones.

of Acordada, Don Jacinto Martínez de Concha, and to the added responsibilities and power that will come to the Acordada.

Although the office of alcalde provincial and judge of the Acordada was hereditary, the sudden death of Don José Velázquez had created a vacuum of authority. The public, frightened by increased lawlessness, demanded action by the Viceroy in naming a new judge of the Acordada. The Viceroy, consulting the Real Acuerdo, appointed the aforementioned Don Jacinto Martínez de Concha, who was a lieutenant in the Acordada with twenty years of service in apprehending criminals.<sup>23</sup> This appointment, in effect, set aside the claims of Don Josef Velázquez Merino, son of the deceased judge. The Viceroy gave as the reason the youth of the claimant, who was then nineteen.<sup>24</sup> However, he ordered that some position in the Acordada be found suitable for the young man, who was not at all satisfied with the Viceroy's decision.<sup>25</sup> The importance and power of the office of judge of the Acordada was recognized

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<sup>23</sup>AGN, Ramo Acordada, II, 3.

<sup>24</sup>AGI, Mexico 1671, Extracto de lo representado por Don Jacinto Martínez de la Concha, Juez de la Acordada de México, sobre el estado de su jurisdicción, y motivos que tiene para pedir se la admita la renuncia que hace de su empleo ...p. 13.

<sup>25</sup>Ibid., p. 23. Hubert Howe Bancroft, History of Mexico: 1600-1803 (6 vols.; San Francisco: A. L. Bancroft and company, 1883-1888), III, 273-276, quotes Don José as imploring his son "not to accept the succession to the office which had been conferred in perpetuity." However, it would seem that the son did not heed his advice because he attempted to obtain the job. Hereinafter referred to as Bancroft, Mexico.

by the Viceroy in not wanting it to pass to someone who was not mature enough to handle it, but it made Concha's position more difficult. At the same time the Sala del Crimen renewed its effort to control the judge's appointment, by requesting the Viceroy to set a time for naming a judge so that it could assist him.<sup>26</sup> The Real Acuerdo backed the Viceroy and informed the Sala that the Acordada came under the authority of the Viceroy alone as the agent of the king.<sup>27</sup>

The Viceroy had written immediately to the king of the death of Don José Velázquez Lorea and of the problem of naming a qualified person to succeed him. In one of his more prompt replies, the king commended the care with which the Viceroy took in selecting Don Jacinto of the village of Leon, who had been a comisario and lieutenant of Velázquez.<sup>28</sup> He acknowledged the impossibility of giving a minor judicial responsibility and regretted that the only other person of the Velázquez family who could inherit the office was a secular priest in the Philippines. The king further ordered that the Sala del Crimen

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<sup>26</sup>AGN, Ramo Acordada, II, 9.

<sup>27</sup>Ibid., p. 27.

<sup>28</sup>AGI, Mexico 1671, Yndice, copy of a royal cédula, without introduction or salutation, dated August 26, 1756, Madrid.

"should not interfere in the selection of the Alcalde Provincial," and in the future the Viceroy should give the king a prompt report of all that occurred.<sup>29</sup> The king consistently pointed out the special position of the alcalde provincial and judge of the Acordada in relation to the Crown and to the viceroy as the king's vice regent. The duties of the alcalde provincial and judge were set by them and he was responsible directly to them.

This settled the Viceroy's problem but not Concha's. Two years later, after the Viceroy's death and in the subsequent confusion of the interim period, Concha's position was once again attacked by the son of José Velazquez, this time with the powerful backing of Don Antonio Joaquín de Rivadeneyra, Fiscal of the Sala del Crimen and Oidor of the Audiencia,<sup>30</sup> who led a power struggle to make the Acordada subservient to the Sala del Crimen. Concha in a secret memorandum complained directly to the king that Don Antonio had influenced Colonel Don Philippe Cavallero and had convinced Don Jacinto Marfil, secretary of the deceased Viceroy, that the vote of the alcaldes

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<sup>29</sup>Ibid.

<sup>30</sup>Diccionario, pp. 152, 157, No. 12 gives an objective view of Concha's difficulties, while the Extracto de lo representado por Don Jacinto Martínez de la Concha... presents his side of the case, in which he accuses Don Antonio of harboring hate for Concha and seeking the ruin of the Acordada. It is interesting to note that none of these proceedings are recorded in the Ramo Acordada.

of the Sala in the absence of a Viceroy was sufficient to proceed in naming Don Josef Velázquez Merino as Alcalde Provincial of the Santa Hermandad and in setting up the Tribunal de la Acordada in Puebla.<sup>31</sup> Moreover, Concha continued, assistants were actually appointed in the name of Don Josef, who included Don Diego Ibirréu, a former servant of the Oidor, Don Josef Pancheco, who had both been dismissed from service by Concha for "bad procedures."<sup>32</sup> A job was also to be found for Don Juan Diego Milgarejo, brother-in-law of Don Josef.<sup>33</sup>

In his letter Concha was astute enough to avoid recriminations against Oidor Rivadeneyra. Instead he concerned himself with the threat to viceregal authority and the effect of the appointments on the public, who looked to the Acordada for protection.<sup>34</sup>

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<sup>31</sup>AGI, México 1671, Extracto, p. 16. Marfil warned the new Viceroy, Francisco Cagigal de la Vega (1758-1760), that the Acordada was a hated institution as well as a useful one. He wrote that without the authority of the king it would be oppressive and that it was necessary to control the Tribunal in order to guarantee service. His experience with Concha at this time may have influenced his letter. Instrucciones, p. 110, "Noticias Instructivas que por muerte del Señor Amarillas dió su secretario D. Jacinto Marfil al Exmo. Señor D. Francisco Cagigal," May 4, 1760.

<sup>32</sup>Diccionario, p. 153.

<sup>33</sup>AGI, México 1671, Extracto, p. 16.

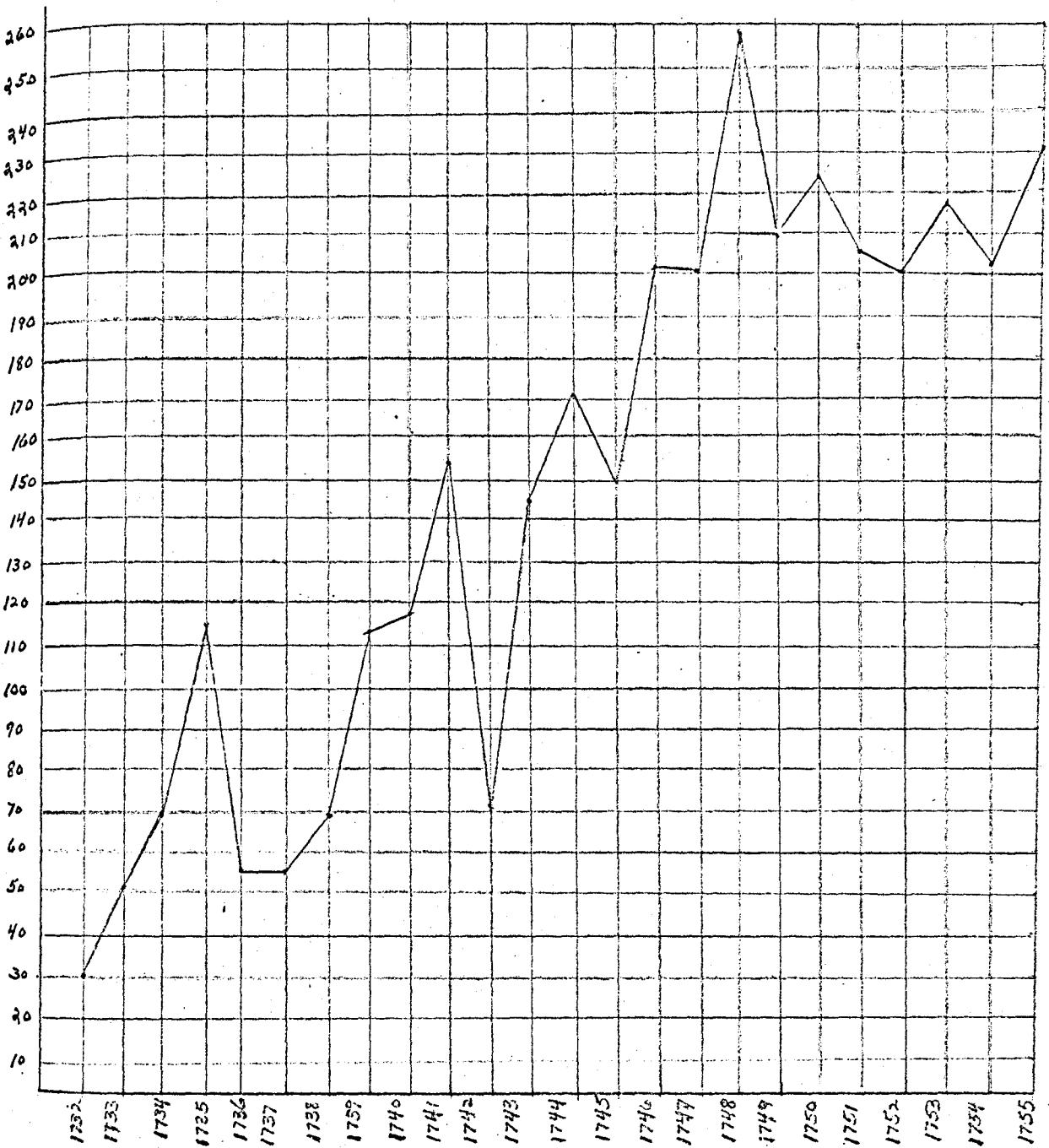
<sup>34</sup>AGI, México 1671, Extracto, p. 23.

The graph on the following page indicates the large increase in the number of cases brought before the Acordada during the term of Don José Velázquez, 1732-1755, second Judge of the Tribunal and son of Miguel Velázquez Lorea, first Judge of the Acordada.\* The outbreak of the War of Jenkin's Ear and the War of Austrian Succession caused panic, forced loans and fear in New Spain. This may have contributed to the rising crime rate through 1748, then a slight drop after peace was restored. The increase in cases was also due to the added responsibility of the judge in patrolling the streets of Mexico City (see page 48) and in the jurisdictions of Nueva Galicia and Nueva Viscaya.

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\*AGN, Ramo Acordada, I, Inventory of Cases.

-55B-



The graph on the following page indicates that most cases tried by the Acordada between 1732 and 1755 were still committed by whites. The increase in cattle and horse stealing is reflected by the number of Indians brought before court since this is the only crime for which the court could try and sentence Indians. Although 3,559 cases were tried by the Acordada, only 2,853 were resolved. Faulty records may account for some of the "lost" cases, but it is possible that the army acquired many of those who were willing to "volunteer" for service. Others may have been sold but the transaction not recorded because this procedure was frowned upon by the Crown.

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\*AGN, Ramo Acordada, I, Inventory of Cases.



| AÑOS   | WHITES | INDIANS | NEGROS | MEST. | MULA | COYOTES | LOBOS | TOTALS |
|--------|--------|---------|--------|-------|------|---------|-------|--------|
| 1732   | 29     |         |        |       | 1    |         |       | 30     |
| 1733   | 48     |         |        |       | 3    |         |       | 51     |
| 1734   | 68     | 1       |        |       |      |         |       | 69     |
| 1735   | 113    | 1       |        |       |      | 1       |       | 115    |
| 1736   | 55     |         |        |       |      |         |       | 55     |
| 1737   | 55     |         |        |       |      |         |       | 55     |
| 1738   | 69     |         |        |       |      |         |       | 69     |
| 1739   | 111    |         |        |       | 2    |         |       | 113    |
| 1740   | 116    | 1       |        |       |      |         |       | 117    |
| 1741   | 152    | 1       |        |       |      | 1       |       | 154    |
| 1742   | 70     | 1       |        |       | 1    |         |       | 72     |
| 1743   | 145    | 1       |        |       |      |         |       | 146    |
| 1744   | 169    |         |        |       | 1    |         | 1     | 171    |
| 1745   | 147    | 1       |        | 1     | 1    |         |       | 150    |
| 1746   | 199    | 1       |        | 1     | 1    |         |       | 202    |
| 1747   | 198    | 1       |        | 1     |      |         | 1     | 201    |
| 1748   | 255    | 2       |        | 1     |      |         |       | 258    |
| 1749   | 247    | 1       |        |       |      | 1       |       | 249    |
| 1750   | 221    | 3       |        |       |      |         |       | 224    |
| 1751   | 205    | 1       |        |       |      |         |       | 206    |
| 1752   | 198    | 1       |        | 1     | 1    |         |       | 201    |
| 1753   | 217    |         |        |       |      |         |       | 217    |
| 1754   | 202    | 1       |        |       |      |         |       | 203    |
| 1755   | 228    | 2       |        |       |      | 1       |       | 231    |
| TOTALS | 3,517  | 20      |        | 5     | 11   | 4       | 2     | 3559   |

In answer to Concha's appeal, the king in a long and instructive cédula of December 21, 1765, reviewed the testimony, letters and complaints of the past four years for and against Concha and the proceedings of the Acordada. The cédula provides a running account of the business of the Acordada from 1765 to 1771, at least in those matters which the Crown deemed to be most important:<sup>35</sup>

First the king expressed satisfaction with the results of good administration by Judge Concha. Then matters of jurisdiction were discussed. Beginning in 1761 with a case brought to the Crown's attention by Oidor Rivadeneyra, the king once again outlined the action he had taken, which was to approve Concha's jurisdiction over several Indians of Zicapuzalco who had killed a comisario of the Santa Hermandad.<sup>36</sup> Although the Recopilación prohibited alcaldes and provinciales

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<sup>35</sup>The cédula of December 21, 1765, included in the Yndice de los documentos is much longer than the cédula found in AGN, Ramo Reales Cédulas Originales, LXXVIII, Exp. 65. It is possible that several copies were made and the later ones shortened for easier reading. The copy in the Yndice has a number of corrections and deletions. The pages are numbered by the author because of the length of the document.

<sup>36</sup>AGI, México 1671, Yndice, April 22, 1761, Al Virrey de la Nueva España participándole averse aprobado la declaración que hizo su Antecesor sobre tocar al Juez de la Acordada el conocimiento de la causa que se expresa contra los Indios del Pueblo de Zicalpuzalco en aquellas Provincias.

of the Hermandad from trying cases involving Indians, except in cases of cattle rustling, the king assumed that this was the original cause of the comisario's dealings with the Indians, which brought about his death; therefore the case belonged to Concha.<sup>37</sup>

The king reiterated his disapproval of Rivadeneyra's attempts to alter the powers of judge of the Acordada, especially in cases of Indian cattle thieves. This concern he pointed out, did not lie within the limits of the oidor's office.<sup>38</sup>

Then he took up the problem of the two Acordadas and the two judges, which, he said, had produced prejudicial effects on cases pending in both courts, where defense attorneys were not obliged to defend the accused in Concha's court but were assigned to the new jurisdiction in Puebla instead.<sup>39</sup>

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<sup>37</sup> AGI, México 1671, December 21, 1756, A Don Jacinto Martínez de la Concha, Juez de la Acordada de las Provincias de la Nueva España, participándole lo resuelto para el buen gobierno del expresado Juzgado; y previniéndole lo demás que se refiere, pp. 18, 29.

<sup>38</sup> AGI, México 1671, Yndice, December 21, 1765, A Don Jacinto Martínez de la Concha...p. 30 and April 22, 1761, Al Fiscal de lo Civil de la Audiencia de México disaprován-dole su proceder en queren [sic] alterar la Jurisdicción del Juez de la Acordada de aquella Ciudad, y ordenándole no la indisponga, y se contenga en los límites de su oficio en la forma, que se expresa...

<sup>39</sup> AGI, México 1671, Yndice, December 21, 1765, A Don Jacinto Martínez de la Concha...pp. 12.

He disapproved of the manner in which the young Don Josef had been made alcalde provincial and judge of the Acordada. The election was therefore nullified by his age, because, he pointed out, the law specified that to exercise jurisdiction, a judge must be twenty-five years old. All cases pending in Puebla were ordered to Mexico City, where Concha was truly the only judge of the Acordada.<sup>40</sup> Royal policy was designed to keep this special tribunal functioning smoothly and efficiently. The Crown did not want it to become a pawn of a powerful oidor.

"To improve communications and the process of justice," the king asked the Viceroy to name two procuradores, two defense lawyers, another asesor, and a clerk of the court, assigning them salaries collected from those convicted of crimes.<sup>41</sup>

Several jurisdictional points of friction were also clarified. The judge could send convicted criminals to presidios with a simple notification to the Viceroy listing those sent and to which presidio.<sup>42</sup> He could also regulate the time of

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<sup>40</sup>Ibid., p. 12, 21, 22.

<sup>41</sup>Ibid., p. 7.

<sup>42</sup>Ibid., p. 10.

criminals at presidios, according to his knowledge of their crimes, and the work assigned to them.<sup>43</sup>

Because of the great number of cases pending, the king ordered the judge to act with his usual zeal to eliminate the backlog, and, in the future, under no circumstances were the lieutenants or comisarios to proceed against Indians, but to direct these cases to the justicias ordinarias.<sup>44</sup> A further admonition to the judge was "to be careful of his safeguards," taking an oath among the members of the Tribunal "to exercise loyally and legally your offices and guard the inviolable secrecy."<sup>45</sup>

The king also acknowledged the "little appreciation given... [him]," and in a further gesture of generosity, bestowed on Concha as a reward for his services the honors of a Judge of the Audiencia of New Spain.<sup>46</sup>

While the king was reviewing the prerogatives of the Acordada and its judge, Viceroy Joaquín Monserrat, Marqués de

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<sup>43</sup>Ibid., p. 23.

<sup>44</sup>Ibid., p. 23.

<sup>45</sup>Ibid., p. 24.

<sup>46</sup>Ibid., p. 32.

cruillas (1760-1766), anxious to preserve the Tribunal's strength in the frontier areas of Nueva Vizcaya and Nueva Galicia, issued a proclamation in 1761 which prohibited the alcaldes mayores (district administrators) from diminishing the power of the Tribunal by harrassing its comisarios or local agents, who reported directly to Concha in Mexico City. Viceroy Joaquín Monserrat noted that certain municipal officers and, specifically, the Alcalde Mayor of Yxmiquilpam, Gregorio Fernando de Olloqui, had insisted that new local officials of the Acordada be duly sworn in each time one succeeded the other, and that the judge of the Acordada be limited in his authority to pronounce prison sentences.<sup>47</sup>

The Acordada had reported the actions of Alcalde Mayor Olloqui, complaining that the apprehension of criminals had been curtailed by his actions. In reply to the charge, the Viceroy issued an order on October 12, 1761, that stated when the comisarios presented their documents of verification for the first time to the alcalde mayor, he was to place no restrictions on their offices. The documents were to be placed in the town's archives so that succeeding comisarios would have the same privileges without their reaccreditation by the Viceroy.

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<sup>47</sup>Joaquín Monserrat, Royal Order, Laws, Statutes, Exp. 652, Ayer Collection, Newberry Library, Chicago, Illinois.

furthermore, the Viceroy declared that aid requested by the Acordada should be granted by the alcalde mayor. The Viceroy did acknowledge that the comisarios were sometimes immoderate. In this event, the alcalde mayor was to send evidence of wrongdoing to the Viceroy, because the Viceroy alone could deal with an offending comisario. For the first offence, he could impose a fine of 500 pesos--after that, the matter was left up to his discretion.<sup>48</sup>

Viceroy Cruillas generally sided with Concha in jurisdictional matters and made use of the special skills of the Acordada when a specific problem arose. On June 8, 1763, Cruillas ordered Concha to strictly enforce the prohibition on the manufacture, sale and use of arms by all classes, because of the escalation of crime.<sup>49</sup> However, the working relationship between Viceroy and judge became strained with the arrival in 1765 of José de Gálvez, Visitador-General of New Spain. Gálvez saw in the Acordada a tool that could be used to strengthen the defenses of New Spain, and, as Haring quotes from the king's instructions to Gálvez of

adjusting this great kingdom and making its political and economic system uniform with that of the metropolis,

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<sup>48</sup>Ibid. The order to Olloqui was designed to prevent local officials from decentralizing law enforcement.

<sup>49</sup>Monserat, Marqués de Cruillas, Mexico, June 8, 1763, Calendar of Edicts compiled by Antonia Matosa, Ayer Collection, Newberry Library (Chicago, Illinois, 1959), No. 30. Herein-after referred to as Calendar of Edicts.

from which would result, among many other advantages revealed by time, the fact that its government would be calibrated with the higher government in Spain, and that those who come out to take office would not have to learn rules contrary to, or at least different from, the rules which are observed at home.<sup>50</sup>

These instructions are similar to the laws of the Recopilación, quoted on page one, which were to insure the uniformity of institutions of government in the Indies and Spain. The Viceroy, who was seldom consulted by the Visitador as he went about his job, was offended by his independent acts, and the Acordada was sometimes caught in the middle. In one instance the comisarios of the Acordada, at his request, seized and brought before him a thief who had stolen two mules and money from his employer. Gálvez sentenced him to four years of forced labor on the fortifications at San Juan de Ulloa. Cruillas resented the interference of Gálvez and reprimanded the governor of Vera Cruz for receiving the prisoner for work in his territory. He had the prisoner placed in the city jail in Vera Cruz and then demanded from Gálvez the records of the case. Gálvez refused to give up the records so that the case was never reviewed by the Viceroy.<sup>51</sup>

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<sup>50</sup>Haring, Spanish Empire, pp. 107-108.

<sup>51</sup>Herbert Ingram Priestley, José de Gálvez, Visitor-General of New Spain (1765-1771) (Berkeley: University of California Press, 1916), pp. 150-159. Hereinafter referred to as Priestley, José de Gálvez.



Although Gálvez is generally given credit for establishing the lucrative monopoly over the manufacture and sale of tobacco, the first steps were taken by Cruillas in 1764 and put into effect in 1765.<sup>52</sup> This is supported by a bando issued to justices in Mexico City, September 14, 1765, "to prevent all fraud against the establishment of this tax." The bando was reissued on November 12, but as of this date "the Judge of the Acordada, Don Jacinto Martínez de Concha and his lieutenants and comisarios," were "to pursue with zeal" those who would contravene the tax.<sup>53</sup> The additional assignment of preventing tax evasion was given to the Acordada.

The following year Viceroy Cruillas returned to Spain to be replaced by Marqués Francisco de Croix (1766-1771), who was reported to drink heavily and who tried desperately to avoid clashing with Gálvez, busy proceeding with his grand design. Viceroy Croix was informed by Gálvez of the secret decree of Charles III for the expulsion of the Jesuits from the Spanish empire. When it reached him in May, 1767, he called upon the Acordada for assistance in carrying out the measure. Father Alegre relates that early on the morning of June 25, 1767, at

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<sup>52</sup>Haring, Spanish Empire, p. 276.

<sup>53</sup>México 1765, El Marqués de Cruillas Estando resuélto por la Real Junta de Tabacos...MS., de Golyer Library, Southern Methodist University, Dallas, Texas.

san Ildefonso, "Don Jacinto Concha read the command of Charles III to arrest and remove all of the Jesuits. He (Concha) was so nervous that he was not able to pronounce each syllable."<sup>54</sup>

A very pressing problem that arose during the term of Juez Concha, one for which Gálvez would find financial assistance, was the terrible condition of the Acordada's prison, which, it will be recalled, was an old workshop rented by the first judge. Describing the situation to the Viceroy, Concha wrote that the walls were falling down and the prisoners were escaping across the rubble. This building had been a workshop owned by Don Baltasar de la Sierra, which had been rented by the first judge of the Acordada. Nothing but minor repairs had been made during Don Miguel's term and that of his son Don José.<sup>55</sup> New quarters were now mandatory.

Convinced by Concha's arguments, the Viceroy approved the building of a new prison on Calvario Street (today Avenida

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<sup>54</sup>Francisco Javier Alegre, S. J., Historia de la Provincia de la Compañía de Jesús de Nueva España, eds. Ernest J. Burrus, S. J., Felix Zubillaga, S. J. (4 vols.; Rome: Institutum Historicum Societatis Jesu, 1956-60), IV, 7.

<sup>55</sup>AGN, Ramo Acordada, V, 118-119.

Juárez), which was dedicated in December, 1759.<sup>56</sup> It cost approximately 68,000 pesos and most of this amount came from wealthy persons, church donations, and the Consulado. The viceroy made the first contribution of 12,000 pesos. The municipal government gave the Tribunal the land for the prison which was situated next to the Hospital of the Poor and in front of the Chapel of Calvary. The graveyard of the Chapel was also the burial ground for criminals.<sup>57</sup>

Although the building was begun on July 17, 1757, an earthquake destroyed most of the foundations. During that period, prisoners were kept in a jail on the street of Puente de los Gallos. When work commenced on the prison, the Consulado gave the city an additional 30 varas of its own property adjoining the site. This gave the prison the overall dimensions of 66 varas wide and 90 varas deep.<sup>58</sup>

The plans for the two-story building are inserted into the pages of the Ramo Acordada, Vol. 9, pp. 103-104. They

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<sup>56</sup>Luis Gonzalez Obregón, México Viejo (México: Tip. de la Escuela correccional de artes y oficios, 1891), p. 29. Herein-after referred to as Gonzalez Obregón, México Viejo. The prison building was also known as the Acordada and retained the name long after the abolition of the Tribunal. It also gave its name to a revolt of troops bilited there in 1828.

<sup>57</sup>Ibid.

<sup>58</sup>Ibid. The vara as a unit of measure in New Spain was equal to 32.99 inches. Handbook for Translators of Spanish Historical Documents, ed. J. Villasana Haggard (Oklahoma City: University of Oklahoma Press, 1941), p. 84.

show the quarters of the judge of the Acordada who, once again, would live in proximity to the prisoners as he had when they were kept in his home.<sup>59</sup> To obtain money for the upkeep of the new prison, Gálvez requested in 1767 an additional tax on pulque which was granted immediately.<sup>60</sup>

During the administration of Concha, the Acordada also became associated with the Judgeship of the Special Tribunal of Prohibited Beverages, which was charged with the enforcement of the prohibition of the manufacture and use of intoxicating beverages.<sup>61</sup> However, these added duties made it more difficult for Concha to keep up with his work, so he petitioned the king to permit him to retire because of poor health and advancing

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<sup>59</sup>The jail was described as spacious and well-ventilated with room for 1200 prisoners, among them smugglers and warlike Indians from the northern frontier. The prison hospital was also in the main building. During the epidemic of 1761-1762, a total of 159 patients died of typhus. Donald B. Cooper, Epidemic Disease in Mexico City 1761-1813 (Austin: University of Texas Press, 1965), p. 52.

<sup>60</sup>Priestley, José de Gálvez, p. 359.

<sup>61</sup>AGN, Ramo Acordada, X, 198. Although this court was officially instituted in 1754, the Acordada did not become involved with this office until 1763, when the problem of enforcement was turned over to the Tribunal. When the king ordered the prohibition on aguardiente de cana (brandy) lifted in 1796, the work of the Special Tribunal was reduced drastically and was finally abolished on February 23, 1813. For further information on this tribunal, see Alicia Bazán Alarcón, "El Real Tribunal de la Acordada y la Delincuencia en la Nueva España" (M. A. thesis, University of Mexico, 1963), pp. 219-227.

years. But the king refused to accept his resignation and told him in the letter of December 21, 1765, that the Viceroy had been ordered to give him some assistance.<sup>62</sup>

Croix tried to support further Concha's jurisdictional authority by a decree on October 10, 1766, that the Juez should apprehend and punish all manner of criminals in Mexico City as well as in the countryside, the supposition being that cases, not necessarily those classified as belonging to the Santa Hermandad, would come before the Acordada.<sup>63</sup> This meant the virtual control of all criminal justice in New Spain by the Acordada.

The decree was challenged immediately by the Sala del Crimen but defended by the Viceroy on the grounds that the captains, commissioned by the Sala were lax and further action had to be taken to protect the city.<sup>64</sup> The Sala presented a long argument against the extension of the powers of the judge of the Acordada; at least the seventy-six of the eighty-five

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<sup>62</sup>AGI, México 1671, Yndice, December 21, 1765, A Don Jacinto Martínez de la Concha...p. 31.

<sup>63</sup>AGI, México 1671, Consejo de las Indias, October 29, 1767, De Orden de V. M. remitió el Baylio Fr. Don Julian de Arriaga, con papeles de 24 de Enero, y 17 de febrero de este año (1767), dos representaciones;...p. 6.

<sup>64</sup>Ibid., p. 7.

pages of testimony presented to the Council of the Indies on the decree reflected the Sala's point of view of immediately curtailing the powers of the judge. At this point, the tremendous legal powers that the judge of the Acordada had acquired since 1719 become apparent. The Sala was concerned that the jurisdictional balances and its own powers would be destroyed.<sup>65</sup> The only official with sufficient authority to veto any decision to apprehend, try, or punish any criminal was the Viceroy, and this, the Sala maintained, was altering the fundamental laws under which the Sala had prerogatives in the jurisdiction of criminal law.<sup>66</sup>

The case on which the Sala decided to press its charge against the extension of the judge's powers involved the jurisdiction over two accused murderers, who the Sala claimed should have been tried by the *justicia ordinaria*. However, the Sala accused Concha of taking them to the jail of the Acordada and refusing to give them up.<sup>67</sup> The testimony of the Sala then turned to the problems within the legal structure. One particular difficulty was that those accused by the Sala were

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<sup>65</sup>Ibid., pp. 33-35.

<sup>66</sup>Ibid., p. 8.

<sup>67</sup>Ibid., p. 11.

defended by "a lawyer of the poor," but bad pay, lack of funds, and only one fiscal for both civil and criminal cases made both defense and prosecution difficult.<sup>68</sup> And the incidental problem was raised of the numerical decrease in the population within the barrios.<sup>69</sup> The testimony of the Sala repeated the complaint of no appeal from the decision of the judge of the Acordada--only an account to the Viceroy, after an execution had taken place.<sup>70</sup> It maintained that criminals should have the opportunity to defend themselves, appeal a decision, and then, if condemned, it should be by three votes of the Sala, not the arbitrary decision of one man.<sup>71</sup> The Sala asked if the Viceroy had been given the authority to extend the powers of the judge and was this extension legal. It sought a return to the Auto Acordada of March, 1601, which made it mandatory to consult the Sala in all sentences involving corporal punishment, especially the death sentence,<sup>72</sup> and which would again give the Sala the supreme criminal jurisdiction in Mexico.<sup>73</sup>

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<sup>68</sup>Ibid., p. 21.

<sup>69</sup>Ibid., p. 22. A typhus epidemic swept Mexico City in the year of 1761.

<sup>70</sup>Ibid., p. 26.

<sup>71</sup>Ibid., p. 24.

<sup>72</sup>Ibid., p. 58.

<sup>73</sup>Ibid., pp. 72, 73, 79.

The royal decision in favor of the Sala did not come until 1771. Then there was no doubt that certain restraints were to be placed upon the Acordada. In three royal cédulas, all dated September 15, 1771, the Sala del Crimen, the Viceroy of New Spain, and the Juez of the Acordada were informed of the king's decision, contained in a report from the Council of the Indies dated May 28, 1771.<sup>74</sup>

In accord with royal orders in the first cédula, Concha was informed by Croix, that the extension of his powers to include all classes of criminals prejudiced the jurisdiction of the Sala del Crimen.<sup>75</sup> His specific jurisdiction, as outlined in the original acuerdo of 1722, was "a limpiar las tierra de ladrones, salteadores de caminos, y gente de mal vivir, con facultad para perseguir a estos de día y noche, no solo en el campo y despoblados, si no en esa capital y demás ciudades, villas, y lugares de ese Reyno." Concha was also informed that if the comisarios of the Acordada intervened in a crime, not

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<sup>74</sup>AGI, México 1671, Yndice, Consejo de las Indias a 28 de Mayo de 1771.

<sup>75</sup>AGI, México 1671, Yndice, September 15, 1771, Al Juez de la Acordada de México, participándole lo resuelto, sobre lo extensión de facultades que el Virrey Marqués de Croix conocido a su Juzgado...



specified as belonging to the Hermandad, they were to immediately turn the culprit over to the jueces ordinarios for trial and punishment.<sup>76</sup>

The cédula to the Viceroy was in stronger terms; he could not change the established law. Since the new Viceroy, Antonio Mario de Bucareli y Ursua (1771-1779) had just taken office, the king gave an account of the Sala's complaints, namely, that his predecessor had illegally extended the powers of the Acordada. Bucareli was informed that Concha was permitted only the authority granted in royal cédulas since 1719. He was warned that if any comisarios of the Acordada committed a crime they were subject to the justicia ordinaria of the district, the regular court of the first instance, and not to the judge of the Acordada.<sup>77</sup>

In the third cédula, the Sala was told to guard the established laws and was complimented on its past performance as the supreme jurisdiction in criminal cases.<sup>78</sup>

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<sup>76</sup> Ibid.

<sup>77</sup> AGI, México 1671, Yndice, September 15, 1771, Al Virrey de la Nueva España, participándole lo resuelto sobre la extensión de facultades que su antecesor el Marqués de Croix concedió al Juez de la Acordada de México...

<sup>78</sup> AGI, México 1671, Yndice, September 15, 1771, A la Sala del Crimen de la Audiencia de México, participándola lo resuelto sobre la extensión de facultades el Virrey Marqués de Croix concedió al Juez de la Acordada de aquella ciudad...

The following table of expenses is from an account drawn up by Don Francisco Antonio de Aristimuño for Don Jacinto Martínez de Concha when Don Francisco was a lieutenant of the Acordada.\* The executioner received more pesos than the combined costs of the surgeon, doctor and medicine and evidently was considered to be more indispensable. Prisoners were often used to maintain garrisons in troubled areas, and this would necessitate funds to pay for the twenty-two guards assigned to keeping prisoners at their tasks.

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\*AGN, Ramo Acordada, II, 26.

INCOME

|  |                 |
|--|-----------------|
| 1. Salary as Judge   | ps. 2,000.00    |
| 2. For Expenses  | 4,000.00        |
| 3. For Guarda Mayor de Caminos:  |                 |
| From the City (Mexico)   | 3,000.00        |
| From the Consulado   | 5,000.00        |
| 4. Revenue from a bequest of<br>50,000 pesos from Don<br>Pedro de Terán for the<br>prisoners | <u>2,300.00</u> |
| TOTAL  | ps.16,300.00    |

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EXPENSES

|   |                 |
|---|-----------------|
| 1. Maintenance and clothes for the<br>prisoners   | 4,800.00        |
| 2. Surgeon  | 100.00          |
| 3. Doctor   | 200.00          |
| 4. Medicine   | 300.00          |
| 5. The mass celebrated daily in<br>the prison   | 365.00          |
| 6. Jailor   | 600.00          |
| 7. Gate Keeper  | 150.00          |
| 8. 22 guards and maintenance of<br>garrisons in Rio Frio,<br>Perote, Pozuelos Aculzingo,<br>Maltrata, Acahualcingo,<br>Lope Serrano, and Las Crusas | 3,500.00        |
| 9. Executioners   | 1,000.00        |
| 10. Office supplies, horses, arms,<br>and other expenses  | 1,000.00        |
| 11. Asesor  | 600.00          |
| 12. Escribano   | 6 600.00        |
| 13. Escribiente   | 200.00          |
| 14. Applied to Judge's salary*  | <u>2,885.00</u> |
| TOTAL   | ps.16,300.00    |

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\*After expenses had been met, the amount remaining was added to the salary of the judge, although from the documentation, this is not too clear.

The graph on the following page indicates the number of cases processed by the Tribunal of the Acordada during the term of Don Jacinto Martínez de Concha, 1756-1774. The viceregal edicts from 1759 to 1775 showed increasing concern over control of firearms, prohibited beverages, and dissertations from the army.<sup>1</sup> Viceroy Ahumada y Villalón blamed the manufacture, sale and use of arms for the escalation of crime and ordered a blanket prohibition which applied to all classes.<sup>2</sup> The Marqués de Cruillas ordered Concha to strictly enforce it.<sup>3</sup> And, once again, the concern about the problem of vagrancy is expressed by the Marqués de Croix who prohibited vagrancy in Mexico City.<sup>4</sup> The deserters from the army, which had been increased because of the war with Great Britain, probably added to the problem of crime in the rural areas.

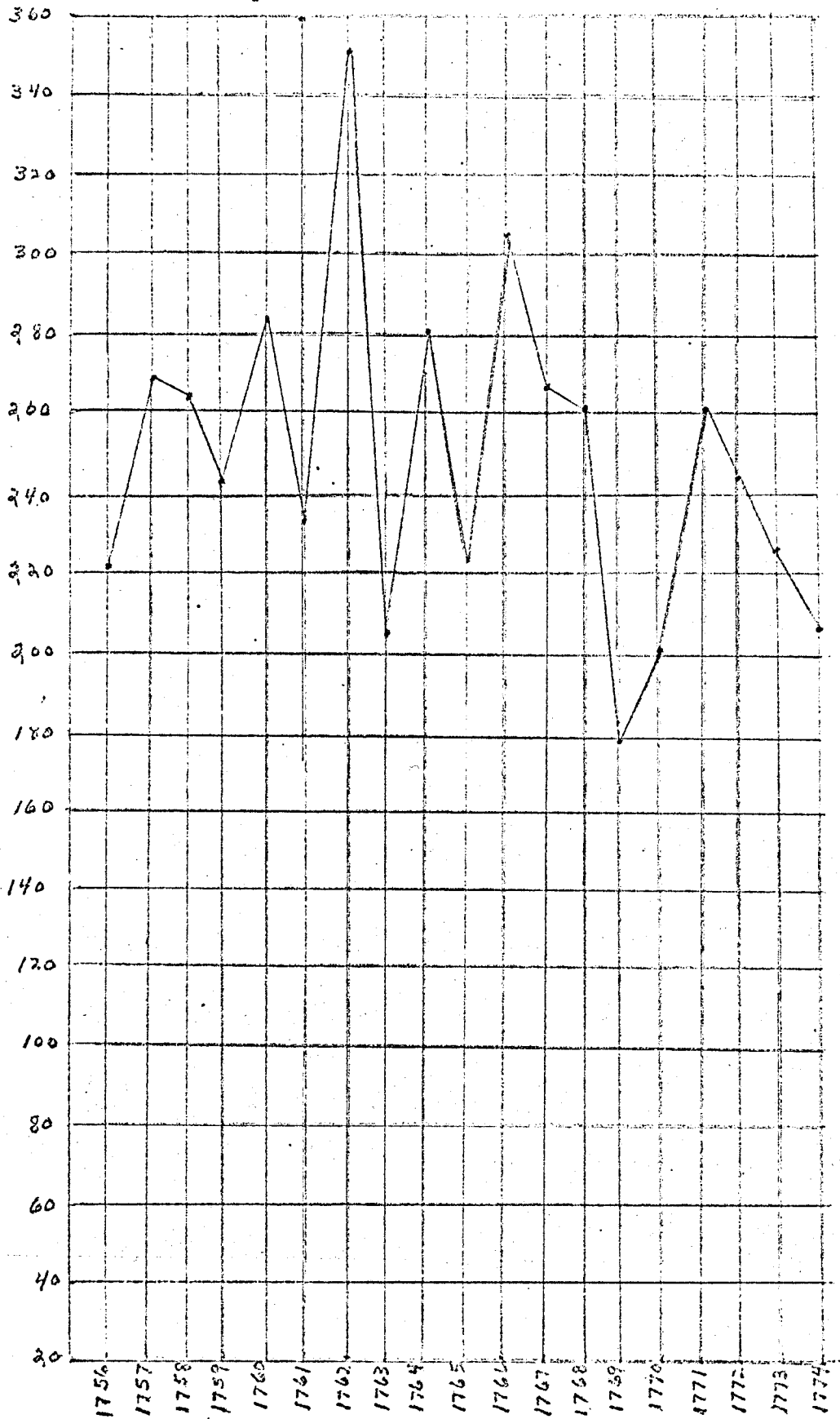
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<sup>1</sup>Calendar of Edicts, documents dating from 1735 to 1823.

<sup>2</sup>Ibid., Ahumada y Villalón, México, August 7, 1756, No. 5.

<sup>3</sup>Ibid., Monserrat, Marqués de Cruillas, Mexico, June 8, 1763, No. 30.

<sup>4</sup>Ibid., Marqués de Croix, México, February 26, 1767, No. 72.



The graph on the following page indicates the punishments meted out to criminals under the jurisdiction of the Tribunal of the Acordada during Concha's term.\* Although the data is not included on the chart, eleven criminals were sent to China. A decree by Viceroy Croix in 1767 forbade the sale of criminals to bakeries and tanneries, and for four years there were no sales by the Acordada. However, in 1772 there is evidence that the law was circumvented, because in three cases, criminals were sold, in 1773 one was sold, and in 1774 two were sold. (See page 71F) The increase in the number of criminals sentenced to hard labor was probably due to the efforts the Crown to strengthen the presidios and fortifications of New Spain to prevent English incursions.

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\*AGN, Ramo Acordada, I, Inventory of Cases.

|      | FLOGGED | SOLD | HARD LABOR | EXECUTED | EXILED | ACQUITTED | DIED |
|------|---------|------|------------|----------|--------|-----------|------|
| 1756 |         |      | 51         | 8        |        | 4         | 7    |
| 1757 |         |      | 98         | 4        |        | 2         | 4    |
| 1758 |         |      | 109        | 2        |        | 1         | 3    |
| 1759 |         |      | 31         |          |        | 2         | 2    |
| 1760 |         |      | 47         |          |        | 23        | 33   |
| 1761 |         | 1    | 137        | 7        |        | 24        | 21   |
| 1762 |         | 8    | 232        |          |        | 57        | 48   |
| 1763 |         |      | 102        |          |        | 14        | 17   |
| 1764 |         | 7    | 172        | 6        |        | 12        | 16   |
| 1765 |         | 5    | 154        |          |        | 47        | 25   |
| 1766 |         |      | 214        |          |        | 28        | 8    |
| 1767 |         | 4    | 216        | 8        |        | 31        | 11   |
| 1768 |         |      | 247        |          |        | 34        | 12   |
| 1769 |         |      | 205        |          |        | 7         | 7    |
| 1770 |         |      | 211        | 1        |        | 8         | 5    |
| 1771 |         |      | 280        |          |        | 10        | 9    |
| 1772 |         | 3    | 228        |          |        | 15        | 19   |
| 1773 |         | 1    | 212        |          |        | 14        | 23   |
| 1774 |         | 2    | 249        |          |        | 8         | 9    |
| T.   |         | 31   | 3195       | 36       |        | 341       | 28   |

The graph on the following page indicates that the great majority of crimes during Concha's term were committed by whites.\* The chief criminal act was robbery, and between 1756-1774 robbery included horse thievery and cattle rustling, crimes for which Indians could be prosecuted by the Acordada. It is possible that fewer criminals considered themselves to be of a particular caste and the designation was becoming less important as New Spain moved toward the nineteenth century.

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\*AGN, Ramo Acordada, I, Inventory of Cases.



-71H-

|      | W.   | I. | N. | MES<br>TIZOS | MULA<br>TOES | C. | L. |
|------|------|----|----|--------------|--------------|----|----|
| 1756 | 218  | 2  |    |              |              | 1  | 1  |
| 1757 | 267  |    |    |              |              | 1  |    |
| 1758 | 263  | 1  |    |              |              |    |    |
| 1759 | 244  |    |    |              |              |    |    |
| 1760 | 284  |    |    |              |              |    |    |
| 1761 | 232  | 2  |    |              |              |    |    |
| 1762 | 351  |    |    |              |              | 1  |    |
| 1763 | 205  | 1  |    |              |              |    |    |
| 1764 | 280  | 1  |    |              |              |    |    |
| 1765 | 220  | 3  | 1  |              |              |    |    |
| 1766 | 305  | 1  |    |              |              |    |    |
| 1767 | 267  |    |    |              |              |    |    |
| 1768 | 262  |    |    |              |              |    |    |
| 1769 | 179  |    |    |              |              |    |    |
| 1770 | 200  | 2  |    |              |              |    |    |
| 1771 | 262  |    |    |              |              |    |    |
| 1772 | 245  |    |    |              |              |    |    |
| 1773 | 226  | 1  |    |              |              |    |    |
| 1774 | 207  |    |    |              |              |    |    |
| T.   | 4717 | 14 | 1  |              |              | 3  | 1  |

The concern of the king and the Council of the Indies in the three cédulas and in the controversy over the extension of the judge's powers seems to have been maintaining judicial balance and keeping the laws of the kingdom in line with those of Spain. The reality of the situation in Mexico City was not a factor in their decisions as the new Viceroy soon discovered. Faced with similar conditions as Croix, Bucareli would promulgate the same kind of decree, ordering the judge of the Acordada to take over the apprehension, trial and punishment of criminals in the Capitol, a problem that the Sala del Crimen was unable to control. However, after hundreds of pages of testimony on extending the powers of the Acordada, he was faced with a similar intervention by the king: a refusal to extend the powers of the Acordada in spite of existing circumstances.

Despite the continuing antagonism of the Sala, Concha and the Acordada received some welcome praise in 1771 from Visitador Gálvez who had been given a new title of Marqués de Sonora from the king for his service in New Spain. In an Informe General to Bucareli, he recommended the establishment of the Acordada in Guadalajara "as it is in Mexico."<sup>79</sup> He called it a "modern and useful Tribunal" which had suffered because of "persistent

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<sup>79</sup>Informe General que en virtud de Real Orden instruyó y entregó El Excmo. Sr. Marqués de Sonora siendo visitador general de este reyno al Excmo. Sr. Virrey Frey D. Antonio Bucareli y Ursua con fecha de 34 de diciembre de 1771... (México: Imprenta de Santiago White, 1867), p. 11.

controversies" and which "ought to be vigorously supported" and extended to all provinces.<sup>80</sup> Gálvez stated that there were more criminals in America than in any other part of the world, so there was "an absolute necessity" for a Tribunal which would prosecute them. He continued that it would be difficult to find a man to fill the important position of judge of the Acordada but it had to be done because of Concha's illness and advancing age.<sup>81</sup>

The concern of Gálvez was justified, because the pressure of increased responsibilities and a serious illness which seemed to affect his eyes brought about a decline in Concha's health. On October 14, 1774, Don Jacinto Concha died and was buried in the cemetery of the convent of San Fernando.<sup>82</sup>

Several days after Don Jacinto's death, Viceroy Bucareli named Don Francisco Antonio de Aristimuño y Gorospe as interim Alcalde Provincial of the Santa Hermandad, Judge of the Acordada, Guarda Mayor of the Roads and Judge of the Special Tribunal of Prohibited Beverages with the same powers as his predecessors. Don Francisco had had experience in the affairs of the Acordada as assistant to the judge with more responsibility after Concha

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<sup>80</sup>Ibid.

<sup>81</sup>Ibid.

<sup>82</sup>Ibid., p. 12.

became ill. He had also served as Alcalde Mayor of Teotitlán and of Tancítaro, and as Oficial Mayor-Interino of the Secretary of Court and Viceroyalty.<sup>83</sup>

In the months just prior to Concha's death, when his illness prevented him from acting decisively in apprehending criminals, there was an upswing in the crime rate in Mexico City. Viceroy Bucareli believed that the situation was due, in part, to the restrictions placed upon the Acordada by the cédula of 1771, and the fact that the Juez of the Acordada could apprehend but could not punish criminals who were found in the city.<sup>84</sup> Taking matters into his own hands the Viceroy wrote to the king on July 27, 1775, explaining that the alarming recurrence of crime obliged him to order Lieutenant General of the Acordada not only to apprehend all criminals but, contrary to the cédula of 1771, to punish them also. This action, he stated, seemed to have restored a great measure of tranquility.<sup>85</sup> In the same letter Bucareli also mentioned that owing to

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<sup>83</sup>AGN, Ramo Acordada, II, 250-51.

<sup>84</sup>AGI, México 1671, Mexico, July 25, 1775, No. 256. El Virrey de Nueva España. Da cuenta á V. M. con testimonio del Expediente formado sobre la Jurisdicción del Juzgado de la Acordada, y la providencia que tomó interin V. M. se digna de declarar lo que sea de su Rl. agrado...

<sup>85</sup>Ibid.

Aristimuño's excellent record, he had named him Lieutenant General and Judge of the Acordada upon Concha's death, contingent upon royal approval, with the same powers as his predecessors. Bucareli carefully pointed out that it was not his intention at any time to extend the powers of the Tribunal, but only to see that it always acted within the limits of its proper jurisdiction and subordinate to the Viceroy.<sup>86</sup> He had furthered secured, he wrote, the opinion of the fiscal mas antiguo for his action. The latter reviewed the royal letters and explained to the Viceroy that there was sufficient precedent.<sup>87</sup>

Once again the whole problem of criminal justice and jurisdiction brought about a flood of correspondence to the king from the Viceroy, the Sala, the fiscal antiguo and the fiscal menor. A letter from the Sala del Crimen to the Viceroy was forwarded to the king. The fiscal menor, siding with the Sala, gave a different account of the original jurisdiction of the Acordada, one that would limit its powers to only the cases of the Hermandad.<sup>88</sup>

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<sup>86</sup>Ibid.

<sup>87</sup>Ibid.

<sup>88</sup>AGI, México 1671, México, October 27, 1775, No. 272, Alvirrey de Nueva España. Da cuenta con testimonio del nuevo ocurso hecho por la Real Sala del Crimen sobre jurisdicción del Juzgado de la Acordada, y limitación de sus facultades...

One of the most interesting letters indicates a subtle change in the attitude of the Sala concerning the usefulness of the Acordada. Although the members of the Sala had no intention of relinquishing any of their authority and strongly repudiated the "illegal methods," which "oppose the laws of humanity," they stated that they could use "the assistance" of the Acordada. Nor did the Sala want to discharge the judge from the patrols of the city, for the very name of the Tribunal struck terror into the hearts of the common people as well as criminals. However, it wanted him to take offenders to the *justicia ordinaria* or to the city jail for sentencing. If the king would "moderate" the terms of the judge's commission, this would prevent future controversies and the "useless waste of time."<sup>89</sup>

After the testimony was reviewed by the king and the Council of the Indies, a royal order was sent to the Viceroy in 1776 with a notation by José de Gálvez, now minister of the Indies. A notation must have seemed necessary because the royal order was vague as to what was expected of Bucareli, other than that he take additional statements on the jurisdiction of the

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<sup>89</sup>AGI, México 1671, México, October 27, 1775, La Real Sala del Crimen de México expone a V. M. lo nuevamente ocurrido sobre ampliación de facultades, que sin necesidad, y motivo provable ha concedido el actual Virrey, al Juez de la Acordada...

Acordada from members of the Sala and include all royal directives since 1722 in his next memorandum. No decision on the powers of the judge of the Acordada was given, but the Viceroy was told to communicate with the judge and come to some decision.<sup>90</sup> The decision was still pending in 1787, eleven years and five viceroys later.<sup>91</sup> The Acordada was evidently doing the job that the Crown and Viceroy expected of it, because no change was made in the Tribunal until 1790.

While the debate on the Acordada's powers continued, Bucareli assigned Judge Aristimuño still another commission in 1776, that of launching an investigation of contraband brought to New Spain by foreigners and deposited on the coast near Tampico, thus avoiding the custom's house which Gálvez had built in Vera Cruz. Following orders, Aristimuño left Mexico City on October 4, 1776, accompanied by his lieutenant and a clerk. By the time he reached Panuco he was seriously ill with a fever. A week later, on November 8, he died. His body was returned to Mexico City where he was buried in the Convent of San Fernando where his predecessor was interred.<sup>92</sup>

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<sup>90</sup>AGI, Mexico 1671, La adjunta carta del Virrey de Nueva España...March 8, 1776, Joseph de Gálvez.

<sup>91</sup>AGI, Mexico 1671, Don Manuel Santa María y Escobedo... October 9, 1787.

<sup>92</sup>AGN, Correspondencia de Virreyes, LXXXV, 53, Exp. 2625.

Bucareli immediately wrote to the king on November 26, 1776, about the unexpected death of Aristimuño and the new assignment that he had been given. He further pointed out in his letter that the work of the Acordada was too important to be halted and so, he continued, he had appointed in the interim Licenciado Don Juan Jose Barberí, Asesor and Lieutenant of the Acordada, to take over the position of judge until someone could be formally appointed. Then, he told the king that he "knew all the particulars and delicate circumstances of the Judgeship of the Acordada," and assured His Majesty of the great care that he would take in selecting someone who would discharge the office fully.<sup>93</sup>

Barbarí probably assumed that if he did an effective job, Viceroy Bucareli would name him judge and request the king's approval. But this time Viceroy Bucareli departed from the usual procedure of naming a permanent judge of the Acordada, and sent the king a list of fourteen candidates for the position, placing Barbarí's name in third place. The leading candidate was Don Pedro Valiente, at the time administrator of the lands and missions in California, who had not sought the job, but who

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<sup>93</sup>Ibid. The smuggling has also been discussed in Bernard E. Bobb, The Viceregency of Antonio María Bucareli in New Spain, 1771-1779, (Austin: University of Texas, 1962), p. 261. The smuggling ring, bringing English goods from Pensacola, Florida, was broken up and the Spanish officials in connivance with the English were imprisoned.



was recommended by the Viceroy because of his "fidelity and zeal." In second place was Don Joaquín Moreno, former Alcalde Mayor of Huejotzingo and Tulancingo--then Barberí. The king approved the choice of Don Pedro Valiente.<sup>94</sup>

He served the king for eighteen months, then became ill in November, 1780. He left instructions during this time for Barberí to take charge of the work of the Tribunal until he recovered his health. Unfortunately, this did not happen, and he died the night of January 13, 1781.<sup>95</sup> Once again Barberí became interim judge of the Acordada. However, on October 31, a new judge was named in an order dispatched by José de Gálvez. Barberí had been passed over again, and Don Manuel de Santa María y Escobedo, Alcalde Mayor of Taxco, the candidate of incoming Viceroy Matías de Gálvez (1783), brother of José de Gálvez, was appointed over fifteen other applicants.<sup>96</sup>

The rapid turnover in judges presaged modifications in the Acordada. Attitudes toward the Tribunal itself were changing over the years as it acquired more cases, more duties and more

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<sup>94</sup>AGN, Correspondencia de Virreyes, VC, 1-3, No. 3222.

<sup>95</sup>AGN, Ramo Acordada, XXIX, 4-5.

<sup>96</sup>AGI, Mexico 1671, Yndice, December 31, 1782, Dirigió con el del Título de Juez de la Acordada expedido por la via reservada a Dn. Manuel de Sta. María y Escovedo...

officials. From a simple, primitive institution, given unqualified admiration, it had evolved into a powerful, virtually independent agency which came under attack from other judicial agencies, and whose far reaching authority was finally questioned by the Crown as it tried to bring it into line with other institutions of empire.

In writing about the Acordada in 1788, Don Francisco Guillen and Licenciado Hipolito Villaroel, asesores assigned to the Acordada, divided its history into three periods:<sup>97</sup> the first period from 1719 to 1774 which they described as the "most glorious epoch of the Acordada;"<sup>98</sup> the second period from 1774 to 1782, whose comisarios were "despoticos," whose jails were full, and whose judge ruled like a small king in his power to absolve or punish; the third period from 1782 was one in which orders were sent to contain the Acordada.<sup>99</sup>

Thus, the second epoch of the Acordada is concluded and the third and last is about to begin.

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<sup>97</sup>AGI, Mexico 1671, Testimonio formado de Expediente a instancia de los Asesores de la Acordada abusos y excesos de su Juez Acordada.

<sup>98</sup>Ibid., p. 5.

<sup>99</sup>Ibid., pp. 14-15.

### CHAPTER III

#### The Attempt to Introduce the Acordada into Peru

In 1776, during the jurisdictional struggle between the Acordada and the Sala, Don Teodoro de Croix returned to New Spain after a ten years absence. He had been appointed by the king as comandante-general of a new and separate administrative unit, the Comandancia General de las Provincias Internas. On his previous visit in 1766 he had been in the entourage of his uncle Francisco de Croix, the former viceroy, but his present position took him from under even viceregal jurisdiction.<sup>1</sup> He had known Gálvez when the minister had been visitador to New Spain, and he had probably met Judge Concha, because he had great admiration for the Acordada. He had corresponded with Gálvez constantly, and in 1780, probably asked his opinion about the mobile, troubleshooting force similar to the Acordada which he had set up in Sonora to halt the Indians raiding the frontier.<sup>2</sup> He had become involved with the Acordada over the

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<sup>1</sup>John Francis Bannon, The Spanish Borderlands Frontier 1513-1821 (New York: Holt, Rinehart, Winston, 1970), p. 182. Hereinafter referred to as Bannon, Spanish Borderlands.

<sup>2</sup>Ibid., p. 186.

appointment of Governor Barri of Nueva Viscaya to the position of Lieutenant Provincial of the Acordada,<sup>3</sup> his task being one of administration of Nueva Viscaya. As a result of Croix's interference in this appointment, which was a prerogative of the judge of the Acordada, Valiente complained to Gálvez that he had already appointed Don Francisco Mier y Terán to the position, but Croix then wrote to Gálvez that Mier y Terán was no more than a criminal expelled from San Juan del Rio by Barri's predecessor and had used his position to send vagabonds and criminals to work on haciendas and in the mines.<sup>4</sup> The matter was finally settled with Barri acting as lieutenant provincial and overseeing the activities of the comisarios in Nueva Viscaya, but approval for his appointment came from Valiente.<sup>5</sup>

For seven years Croix worked on frontier and defense problems, especially in halting Indian raids. Charles III evidently thought highly of his achievements in the Provincias

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<sup>3</sup>Luis Navarro Garcia, Don José de Gálvez y la comandancia general de las provincias internas del norte de Nueva España (Seville: Publicaciones de la escuela de estudios hispano-americanos de Seville, 1964), p. 361. How Croix became involved in this appointment is not clear. He and Barri, however, were acquainted and deeply interested in frontier defense.

<sup>4</sup>Ibid., p. 362.

<sup>5</sup>Ibid.

Internas, because he appointed him Viceroy of Peru in 1783.<sup>6</sup>

In his new capacity, he faced a situation which would force him to use all of the experience he had gained in dealing with the wild Indians of the Provincias Internas and the advice which Gálvez had imparted over the years.

When he assumed the position of Viceroy of Peru in 1784, the last Inca revolt against Spanish authority had come to a bloody end. Tupac Amaru and his entire family were wiped out, but Inca hatred for the Spaniards seethed in the war-ravaged provinces. The revolt so alarmed Spain that reforms were inaugurated immediately by Croix, who was energetic and determined to improve conditions.<sup>7</sup>

The intendant system was introduced in 1785, with eight intendancies created for Peru, which did away with the corregidores who had abused and mistreated the Indians and corrupted justice. One of the first intendants appointed was Jorge de Escobedo y Alarcón, a former councilor of the Indies.<sup>8</sup> He was also Visitador de los Tribunales de Justicia and in this capacity

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<sup>6</sup>Bannon, Spanish Borderlands, p. 186.

<sup>7</sup>Lillian Estelle Fisher, The Last Inca Revolt 1780-1783 (Oklahoma City: University of Oklahoma Press, 1966), p. 388.

<sup>8</sup>Ibid., p. 387.

was in charge of making a report on the judicial system in Peru, which he did on September 6, 1785.<sup>9</sup> In his report and later at a meeting of the cabildo of Lima in the same year, he proposed the establishment of the Acordada in Peru, whose agents were to prosecute the "numerous highwaymen" in the countryside.<sup>10</sup> His proposal was not acted upon, but a Juzgado de Policía, very similar, it would appear, to the Acordada, was established for Lima in 1786.<sup>11</sup>

In the same year Viceroy Croix wrote to acting-Viceroy of New Spain, Alonso Nuñez de Haro y Peralta, Archbishop of Mexico, requesting his assistance in complying with the royal orders of that year "to try and establish in this viceroyalty a Tribunal of the Acordada."<sup>12</sup> Croix was especially interested in obtaining copies of ordinances and regulations relative to the Acordada, a list of sources of revenue, and how and by whom

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<sup>9</sup>José Toribio Medina, La imprenta en Lima (1584-1824) (4 vols.; Santiago de Chile: 1907), III, 155, No. 1598.

<sup>10</sup>John Preston Moore, The Cabildo in Peru under the Bourbons (Durham: Duke University Press, 1966), p. 157. Hereinafter referred to as Moore, Cabildo in Peru.

<sup>11</sup>La Guía política, eclesiástica y militar, del Virreynato del Peru, 1793. Hereinafter referred to as Guía. Members of the Juzgado were a Superintendente de Policía, un teniente, un maestro mayor de arquitectura, un actuario, two subalternos and four celadores.

<sup>12</sup>"Instrucciones para fundar la Acordada en Lima," Nota, Ernesto Santillán Ortiz, Boletín del Archivo General de la Nación, XVIII (México, 1947), 335. Hereinafter referred to as Instrucciones en Lima.

they were administered. The fifteen pages of correspondence contain no reference to the revolt of Tupac Amaru, although this was of chief concern to royal officials. Another reason for these efforts to establish the Acordada was a representación or petition sent to the Viceroy on November 4, 1786, by citizens of Lima.<sup>13</sup> The vecinos wanted the creation of the Tribunal de la Santa Hermandad "o de la Acordada."<sup>14</sup> Croix put off establishing the Tribunal because he was waiting to hear from Mexico. However, in the meantime, he decided to formulate ordinances for a Tribunal on September 5, 1786, and to give them to Escobedo for revision.<sup>15</sup>

In Mexico Manuel de Santa María y Escobedo, Judge of the Acordada at this time (1782-1808) was notified by the fiscal de lo civil on April 27, 1787, that he should make information available which might help Croix to plan for the Tribunal.<sup>16</sup>

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<sup>13</sup>Ibid.

<sup>14</sup>Ruben Vargas Ugarte, S. J., Historia del Peru Virreinato (Siglo XVIII) 1700-1790. (Lima: Libreria e Imprenta Gil, S. A., 1956), pp. 461-462.

<sup>15</sup>Ibid. Vargas Ugarte writes that the Tribunal de la Acordada then began to function. However, he alone of the Peruvian historians makes this statement, and the author can find no further documentation to prove this point.

<sup>16</sup>Instrucciones en Lima, p. 336.

In answer to this request, Santa María sent Croix a list of cédulas from the years of 1719, 1722, 1760, 1763 and 1781, noting that there was not a complete compilation of the orders to earlier judges of the Tribunal of the Acordada.<sup>17</sup> Then he pointed out the difficulties that might be encountered in setting up an Acordada in Lima, the first of which would be the obvious lack of all the royal orders and resolutions pertaining to the Tribunal. The second problem, he said, was in setting down such things as customs and traditions which influenced the direction of the Acordada.<sup>18</sup> Santa María emphasized his belief that the Acordada was "única en el mundo," because of its good fortune to have as its first judge, "el gran Velázquez," [Miguel] who was of great courage and "ardent in his zeal for justice and the good of the people;" and whose decisions were based on the common law and the laws of the Hermandad.<sup>19</sup>

Continuing his letter, Santa María praised Velazquez's son, José, who had been instructed in the ideas, operations and spirit of the Tribunal and who had assisted his father in directing the work of the Acordada. He also lauded the

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<sup>17</sup>Although there was not, as Santa María states, a complete compilation of documentation in Mexico pertaining to the Acordada, there was such a compilation extant in Seville, as has been seen. (*supra*, p. 40)

<sup>18</sup>Instrucciones en Lima, p. 337.

<sup>19</sup>Ibid., p. 338.



succeeding judges for preserving the spirit of the Acordada and asked Croix if he would be able to obtain this type of leadership in Lima, or if, indeed, it would be difficult to start from the beginning and duplicate the experience of two centuries.<sup>20</sup> He further mentioned that he thought it would be helpful to grant the employees of the Acordada the "fuero pasivo militar" if they themselves should become involved in a criminal case.<sup>21</sup> Although the Acordada was seventy-eight years old, he acknowledged that it was not perfect, but experience of the judge was crucial in working out problems.<sup>22</sup>

To further assist Croix by indicating where the Acordada obtained its funds, Santa María, on June 23, 1787 set down

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<sup>20</sup>Ibid.

<sup>21</sup>Ibid., p. 339. Legal action involving a possessor of the fuero militar in which he was a defendant could be heard only by the tribunal of his jurisdiction, in this case, the Acordada. This Tribunal infrequently clashed with the military jurisdiction in the last decade of the eighteenth century, usually in cases involving prohibited beverages or homicide. Lyle N. McAlister, The "Fuero Militar" in New Spain (Gainesville: University of Florida Press, 1957), pp. 79-81, p. 195, cites only two instances in which the Judge of the Acordada appealed to the Viceroy to uphold his judgments in cases involving the military. Research into the relationship between the Acordada and the military tribunal revealed nothing further than the data contained here, and this is the only time the fuero militar is mentioned in the correspondence.

<sup>22</sup>Ibid., p. 340.

the annual income of the Acordada and the salaries of the employees, asesores, escribanos and comisarios:<sup>23</sup>

Primeramente dos mil pesos del salario que  
paga el rey al juez..... 2,000.

Itt. nueve mil pesos que page el Consulado:  
los cuatro mil por salario del juez con  
respecto al empleo de guarda mayor de  
camino; y los cinco mil restantes para  
paga de los guardas a beneficio de la  
quietud pública; cuya cantidad consiguió  
S. M. en el ramo de avería, que está a  
cargo de dicho Consulado..... 9,000.

Itt. tres mil pesos que para los propios  
destinos que en la partida antecedente  
paga anualmente esta nobilísima ciudad..... 3,000.

Itt. trece mil pesos que pagan del ramo de  
pulque los oficiales reales, cuya canti-  
dad se expende en satisfacer los sala-  
rios de asesores, defensor, escribanos,  
oficiales, procuradores, cabos y  
comisarios.....13,000.

Itt. catorce mil pesos que paga el tesorero  
del ramo de bebidas prohibidas que se  
distribuyen en esta forma: cuatro mil  
de salario al juez por esta comisión:  
dos mil que le asigna la ordenanza para  
ayuda de gastos: y los ocho restantes  
para pagas de comisarios.....14,000.

Suma total.....41,000.

Croix received this letter from Mexico in late 1787 about  
the same time that the Council of the Indies ordered additional

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<sup>23</sup>Ibid., p. 341.

information sent to him on the antecedents of the Acordada.<sup>24</sup> The already cited Yndice de los documentos relativos al establecimiento del Juzgado de la Acordada de México, y otros incidentes ocurridos sobre sus facultades, y Jurisdicción, que se pasan a la Secretaría del Peru was sent from Seville on October 9, 1787.<sup>25</sup> The documents in the Yndice date from August 19, 1719, to October, 1787, and include copies of royal orders, as well as testimony, extracts, replies to particular questions, that pertain to the Acordada.

Although Croix had more than two years remaining in his term of office, there is no record that he was successful in establishing the Acordada according to the king's wishes. When he left office in 1790, his Memorias contain no mention of the Tribunal.<sup>26</sup>

There is some evidence to indicate that the cabildo of Lima was not particularly pleased with the already-mentioned Juzgado de Policía organized by Croix, because it remonstrated

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<sup>24</sup>AGI, México 1671, Carta, Madrid, October 9, 1787.

<sup>25</sup>AGI, México 1671, Yndice. (supra, p. 40)

<sup>26</sup>Memorias de los virreyes que han gobernado el Peru, durante el tiempo del coloniaje suprema (Lima: F. Baily, 1859), Don Teodoro de Croix, Libro V.

against the teniente in charge of the force and accused him of becoming a "juez de la hermandad."<sup>27</sup>

The Tribunal of the Acordada was not discussed again for a quarter of a century. Then, after revolutions broke out in Upper Peru, Quito and Cuzco, Viceroy Joaquín de la Pezuela, (1816-1821) strong supporter of Spanish absolutism, by bando created a tribunal called the Consejo de Guerra permanente on September 6, 1816. This tribunal, like Mexico's Acordada, was to judge highwaymen and bandits operating in rural areas.<sup>28</sup>

Although Vargas Ugarte refers to it as the Acordada once again operating in Peru, Viceroy Pezuela calls it the Consejo de Guerra. In his diary he makes note of four highwaymen, punished by whipping and paraded to the presidio, who had been

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<sup>27</sup>Moore, Cabildo en Peru, p. 160. There is evidence to indicate that the Crown did not favor instituting the Acordada unless it was necessary for maintaining order in rural areas. For example, in 1787 Don Andres de Saavedra y Alfaro, administrator of royal taxes in the town of Bayamo, Cuba, petitioned the king for a commission granting him the powers that were given to the judge of the Acordada of Mexico. The Crown replied that the office of Regidor Alcalde mayor provincial de la Santa Hermandad was sufficient to take care of disorders like those mentioned in de Saavedra's petition, which was denied. Catálogo de los Fondos Cubanos del Archivo General de Indias, Expedientes Diarios 1642-1799, (Seville: Imprenta de la Gavidia, 1935), II, 337, No. 1718. (Supra, pp. 81-82)

<sup>28</sup>Ruben Vargas Ugarte, S. J., Biblioteca Peruana (12 vols.; Lima; Impresos peruanos, 1935-1957), XI, 270, No. 4336.

thus judged by the Consejo.<sup>29</sup> The duties, judgments and punishments of the Consejo were the same as the Acordada, but the names of the two tribunals were different.

Although attempts to introduce the Acordada into colonial Peru failed until the very end of the colonial period, the Crown viewed it as a useful institution to be extended within the empire if this were possible. The tradition of its effectiveness even carried over into the period of independence. While the wars of liberation continued and anarchy ruled in the rural areas, the revolutionary Junta Gubernativa, hoping to gain control of the countryside and eliminate pockets of royal resistance while assuring the rural areas that order would prevail, organized the Tribunal of the Acordada on November 14, 1822.<sup>30</sup> The law was signed by José de la Mar, and Felipe Antonio Alvarado, Conde de Vista-Florida, members of the Junta. The "comisión de Acordada" was granted by the junta in 1823 to D. Miguel Vargas and assisting him were two vocales, (members of the Assembly), José María Galdiano and Francisco Colmenares,

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<sup>29</sup>Joaquín de la Pezuela, Memoria de Gobierno (Seville: Talleres Tipográficos de Católica Español, S. A., 1947), p. 96.

<sup>30</sup>D. Juan Oviedo, Colección de leyes, decretos y órdenes publicados en el Perú, desde el año de 1821 hasta el 31 de diciembre de 1854 (12 vols.; Lima, 1864), XII, 231-232. Hereinafter referred to as Oviedo, Colección.

an asesor and the fiscal advisors of the high chamber.<sup>31</sup> The appointees were to take charge of "cases of murder, assault and robbery, within and without the city" of Lima as long as circumstances required.<sup>32</sup>

The following year the appointees changed, and Francisco Xavier Manríque de Lara became teniente coronel. An escribano was added to the offices to keep better records.<sup>33</sup>

The Acordada, an instrument of the Crown in New Spain, now proved to be a weapon of the Peruvian republic as is indicated by an article in the January 28, 1824 edition of Gaceta del Gobierno, written about the capture and trial of Matias Huaynato for sedition by the Tribunal de la Acordada. He was originally charged with highway robbery in time of war, however he was not executed with his associates because it was felt that more information about his activities and other accomplices might be discovered in a confession. A co-conspirator, Mauricio Coeto, had escaped from the fortress at Callao and all agencies were searching for him, but there is no record of his apprehension.<sup>34</sup>

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<sup>31</sup>Guía, 1823, p. 39.

<sup>32</sup>Ibid., p. 40.

<sup>33</sup>Guía, 1824, p. 43.

<sup>34</sup>BNP, Gaceta de Gobierno, No. 8, January 28, 1824, p. 1.

The next reference to the Acordada is made on October 9, 1827, when at the request of President José de la Mar,<sup>35</sup> the Tribunal was reestablished for eight more years to give protection to the citizens of Lima and those using the roads to and from the city.

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<sup>35</sup>Oviedo, Colección, p. 369.

# GACETA DEL GOBIERNO



Nº 8 MIÉRCOLES—28—ENERO—1824—5.º—3.º TOM. 6.º

## TRIBUNAL DE ACORDADA.

*Copia de la sentencia pronunciada contra el  
solicador Matias Huaynato.*

Los ciudadanos d. Francisco Javier Manrique de Lara teniente coronel de ejército, d. Francisco José Colmenares, d. d. José Pando abogado de la alta cámara de justicia y del ilustre colegio, presidente y vocales del tribunal de acordada con fecha del día pronunciaron auto con dictamen de su asesor d. d. Antonio Padilla, y es del tenor siguiente.—Confesion de acordada de Lima y Enero 21 de 1824.—Vistos nuevamente estos autos, y con respecto á que en la sentencia definitiva que pronuncio esta comisión á foja 190 cuaderno número 1.º y se confirmó por la alta cámara de justicia á fojas 194 buelta fue condenado en rebeldía Matias Huaynato á la pena ordinaria de muerte, entre los demás reos que diéron mérito á la prosecucion de esta causa, y que, aprehendido en seguida no fue ejecutado con sus socios, por el interesante objeto de descubrir en su confesion al resto de cómplices y crimenes, que desde luego puntualizo en la que hizo á foja 8 cuaderno 2.º contestando los robos de camino que habia perpetrado, y en que se fundó la condena insinuada; llevese á puro y debido efecto, sin necesidad de mas substanciacion ni audiencia al predicho Huaynato, en atención á que según el tenor espreso de la ley 1.º título 17 libro 12 de la novísima recopilacion de Castilla no debe franquearsele por su calidad de salteador de caminos especialmente cuando las circunstancias de haber cometido los enunciados robos en el actual tiempo de guerra reagravan sobre manera sus delitos; y que la frecuencia que se advierte de tales malesicios en los despoblados y esta capital, clama imperiosamente por ejemplares de esta clase; lo cual se verifique en la forma acostumbrada, elevandose á la nota oportuna con copia certificada de este auto á la misma cámara de justicia para su superior inteligencia; y otra al supremo gobierno, para que se sirva prevenirse inserto en

la gaceta, ejecutada que sea la sentencia. Y hecho todo activese la sumaria respectiva acerca de la fuga del co-reo Mauricio Cocio de la fortaleza del Callao encargandose estrechamente su aprension á los ministros de justicia, patrullas del campo, policia; y demas á quienes convenga de que se pondrá constancia en estos autos—cuatro rubricas de los señores Presidente, Vocales, y Asesor—Antemi—Julian de Cubillas escribano publico.

## LONDRES.

Por los papeles de Nueva York hasta 9 de agosto que hemos recibido esta mañana sabemos que D. Francisco Vives capitán jeneral de la isla de Cuba ha publicado una vigorosa proclama cuyo extracto es el siguiente:

“Mientras la Peninsula padece la mas injusta, y atroz opresion que ha sostenido el abuso de la fuerza; mientras las lúesdes de la superstición, y del despotismo se presentan con la espada en una mano para destruir los simbolos de la libertad, y con cadenas en la otra para ahorrojarla en la mas humillante esclavitud—los fieles y jenerosos habitantes de esta provincia seran pasivos espectadores de esta sangrienta, y degradante invasion? ¿Veran con indiferencia á los franceses tomar posesion de ella, y dominar sobre las ruinas del gobierno? ¿Permaneceran tranquilos, ó indiferentes mientras el Rey y el gobierno constitucional andan errantes fuera de la Capital.—Mientras un tirano extranjero pretende entumecer y profanar la obra inmortal de la sabiduria, ¿volver á unir á los espanoles al mismo yugo que sacudieron con tanto denuedo y fortaleza? Ignominia y desgracia eterna acompañarian inseparablemente á los habitantes de esta Ysla. Autoridades constitucionales, moradores de la provincia poned en guarda contra tan terrible catastrofe. Los mas sagrados deberes de la justicia es: en que vuestros nombres sean escritos en el registro que os presenta el amor á la libertad.



## CHAPTER IV

### The Rejection of the Tribunal in New Spain and in Peru

While Santa María was writing to Viceroy Croix of the "good effects" of the Acordada in Mexico," drastic changes were being considered for the Tribunal by the king. The continuous flow of criticism, combined with the great amount of money that passed through the judges' hands and the hundreds of men now employed by the Acordada, brought it into the limelight for royal inspection. Some of the more serious criticisms were carefully outlined in a letter to the king from the Audiencia of New Spain on January 26, 1785.<sup>1</sup> After explaining that the Audiencia had usually, in the past, supported the Tribunal of the Acordada and its judge, the letter listed the most frequent charges made against it in various remonstrances which the Audiencia felt bound by duty to send to the King. The first complaint dealt with the "astonishing multitude of employees, most of them unsalaried, more than 2000," who seemed to have become necessary for the administration

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<sup>1</sup>AGI, Mexico 1671, Testimonio del Quaderno segundo, que contiene, la Real Orden de doce de Junio de mil setecientos ochenta y cinco, pidiendo informe, acerca de lo Representado por la Real Sala del Crimen, para poner en orden el Tribunal de la Acordada.

of the Tribunal.<sup>2</sup> The second concerned the extraordinary procedures exercised by the judge. Not even the Viceroy with "all his powers of Vice-Regent was able to send a single criminal into exile...but the judge of the Acordada has destined many criminals" for exile.<sup>3</sup>

A related concern, expressed by the Audiencia, was that there were no appeals from decisions of the judge, not even from the death penalty. And the judge was virtually supreme in the area of criminal justice. With all this power, he was not even subject to a residencia. Although the Audiencia was not certain that this method served the best interests of judicial administration because of the prejudices of those involved, it went on to state that "only the divine was able to be infallible in his judgments and impeccable in his public actions."<sup>4</sup>

To remedy the situation, the Audiencia suggested that all of the sentences of prisoners be reviewed by two oidores, a

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<sup>2</sup>Ibid., p. 1.

<sup>3</sup>Ibid., p. 122.

<sup>4</sup>Ibid., pp. 2-3.

fiscal of the Sala and by the Audiencia, or others named by the Viceroy, or the Viceroy and his asesor.<sup>5</sup>

Once the complaints of the Audiencia had been sent to the king and considered to be valid by his ministers, a process of governmental review was set in motion. The letter of the Audiencia was returned to New Spain and the Viceroy was ordered to obtain testimony (in this case from the fiscal and the judge of the Acordada) pertaining to the complaint and then give an account of the results.<sup>6</sup>

On October 28, 1786, the Viceroy dispatched the testimony of judge and fiscal with his report which stated that both men were in favor "not only in maintaining the authority" of the Acordada, but also in increasing its powers. The judge also asked for more assistants and conceded that another asesor and escribano would help in the dispatch of business.<sup>7</sup>

At this point the interim viceroy, Alonso Nuñez de Haro y Peralta, Archbishop of Mexico, (1786-1787) died and Manuel Antonio Flores (1787-1789) was appointed Viceroy, so the whole process was repeated.<sup>8</sup> Even the king, tired of delay, ordered

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<sup>5</sup>Ibid., pp. 4-5.

<sup>6</sup>Ibid., pp. 5-6.

<sup>7</sup>Ibid., p. 79.

<sup>8</sup>Ibid., p. 81.

on December 14, 1789 that he wished to have the business concluded as soon as possible.<sup>9</sup> However, a new incident prompted quick action by Flores and because of it the Junta de Revisión was formed to review cases of the Acordada. On December 27, 1788, the case of four criminals sentenced to be executed by the Acordada for a homicide and several robberies was appealed to the Viceroy, who suspended their sentences until he could investigate the matter.<sup>10</sup> The Viceroy asked the Real Acuerdo to advise him, while Matías Camarillo, José Silverio, (alias Gallardo) José Antonio Guerrero, (alias Cacalo) and Manuel Yglesias were prepared for torture. Were the sentences justified, asked Flores, and the ministers decided that they were not. Instead of death, Camarillo received eight years at hard labor in the presidio at Havana and the other three received six years at hard labor there.<sup>11</sup>

The king approved the decision of the Viceroy and the Real Acuerdo, but taking note of all of the previous criticisms of the Acordada, further resolved that all cases should be sent

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<sup>9</sup>Ibid., p. 86.

<sup>10</sup>AGI, México 1671, Testimonio del Expediente formado, consulta del Señor Juez de la Acordada que la Junta de Revisión contrahiga su dictamen en causa...p. 64.

<sup>11</sup>Ibid., p. 65.

from the latter Tribunal to a Junta de Revisión, and in cases of capital punishment, torture or public whipping the sentences should be suspended until the Junta could review the cases. The Junta de Revisión was to consist of a minister of the Sala del Crimen, an asesor of the viceroyalty and a lawyer of highest confidence who, within fifteen days, was to confirm, change or revoke the decision of the Acordada.<sup>12</sup> The cédula was dated September 19, 1790, but before it arrived in New Spain, Flores had resigned his position and a new viceroy arrived.

Juan Vicente de Guêmes Pacheco de Padillo, second Count of Revillagigedo, (1789-1794) now received the voluminous correspondence which contained decrees, royal orders and testimony, and he was told to repeat the procedure of requesting new testimony in complying with the royal order.<sup>13</sup>

Revillagigedo, one of the few American born viceroys, and one of the most "eccentric, energetic and able" men to hold the position, took immediate action on the king's order for dealing with the Acordada. New representaciones were written and sent to the king and council, while the Junta de Revisión,

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<sup>12</sup>Ibid., p. 66. This testimonio contains a complete copy of the cédula of September 19, 1790, giving a background of the case involving the four criminals and the order for a Junta de Revisión.

<sup>13</sup>Ibid.

strictly limited the power of the Judge of the Acordada in handing down sentences. This was the first limiting of the power of the judge since 1719.

However, this did not conclude the matter, and for the next nine years, representaciones or remonstrances were sent to the Viceroy for transmission to Spain concerning the effectiveness of the Junta, praise from the Sala and complaints from the judge of the Acordada. Santa María was especially bitter about the "inexpressible, serious and persistent injuries, difficulties and scorn, disregard and contempt" that the cédula of revision caused the Acordada.<sup>14</sup> The immediate effects of the curtailed power of the Tribunal were criminals escaping justice and a slow dispatch of cases which continued to get worse, not better, wrote the judge who said that he had suffered silently but now felt compelled to say more, which he did.<sup>15</sup>

The fiscal de lo civil (attorney acting for the people) responded to these complaints of Santa María by reiterating the original charges against the Acordada, and adding some related facts. What concerned him most, he wrote, were the great numbers

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<sup>14</sup>Ibid., p. 100.

<sup>15</sup>Ibid., p. 101.

of employees of the Acordada who were permitted to carry arms while performing their duties. He listed 116 tenientes provinciales, 585 tenientes particulares, 1080 comisarios and 376 cuadrilleros, (and one alcalde provincial and judge), all of whom were allowed to carry arms. He asked if better use of manpower could not be made so other jurisdictions could benefit from experienced, armed men. He implied that perhaps the judge was unable to keep pace with all of the men supposedly under his control.<sup>16</sup>

The "cruel punishments" of the Acordada, the "inhuman murders conducted in the Plaza," and the miserable condition of the prison were also attacked by the fiscal de lo civil.<sup>17</sup>

A description of the execution scene in the Plaza was given by Rafael Lucero, Chief Clerk of the Sala del Crimen during the viceregency of the second Conde de Revillagigedo, who wrote

that when the gallows were put up in the square and there were executions taking place, it was awful to see the huge number of vagabonds and prostitutes waiting around for the spectacle, having been drunk all day; that to this there must be added the cooking

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<sup>16</sup>Ibid., pp. 106-107.

<sup>17</sup>Ibid., pp. 119, 125, 134. In Bancroft, History of Mexico, III, 548, he describes "dragging with horses," and a "coup de grace with lances before quartering" as punishments of the Acordada as late as 1790.

that was going on all the time near the gallows, and the dogs roaming all over...<sup>18</sup>

Viceroy Revillagigedo acted quickly in the interest of public health and sanitation to clean up the city and the plaza. He appreciated this decisiveness in others, and when the brutal robbery-murder of a wealthy merchant, Joaquín Dongo and his family, was reported to the Viceroy, he encouraged the Judge of the Acordada to make all haste in finding the murderers.<sup>19</sup> It took Santa María thirteen days to apprehend, try, convict and decapitate the criminals.<sup>20</sup> This action was criticized by the fiscal in a testimonio, but Revillagigedo approved the action.<sup>21</sup>

Santa María's relationships with the Viceroy were good, and the Viceroy expressed his admiration for the Tribunal in the Instrucción Reservada that he gave to his successor Marqués

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<sup>18</sup>James Manfred Manfredini, "The Political Role of the Count of Revillagigedo, Viceroy of New Spain, 1789-1794, (Ph.D. dissertation, University of Texas, 1949), p. 69.

<sup>19</sup>Bancroft, Mexico, III, 479.

<sup>20</sup>James A. Magner, Men of Mexico, (Milwaukee: Bruce Publishing Company, 1943), p. 173.

<sup>21</sup>AGI, México 1671, Testimonio del Quaderno segundo, p. 124. There is no evidence to indicate that his particular case was sent to the Junta de Revisión. It seems to have been of particular interest to Revillagigedo who took the responsibility for its termination.



de Branciforte (1794-1798).<sup>22</sup> He wrote of the extensive jurisdiction of the Acordada which covered three kingdoms and employed 2,500 persons, many of whom served without salary due to the title and honor accorded to them in their towns because of their association with the Tribunal.<sup>23</sup> He explained the necessity, however, of retaining the recently-established Junta de Revisión as a check on the Acordada which exercised such tremendous authority in the imposing of sentences, even capital punishment.<sup>24</sup>

The Viceroy further related that upon his arrival in New Spain, the Acordada handled four times the number of cases as did the Sala del Crimen, but that in the course of his term the Sala had been handling more cases than formerly, even though the Acordada still had twice as many as the Sala. He did not mean to negate the usefulness of the Tribunal of the Acordada in punishing criminals and in administering justice promptly and without the fees, but, he insisted that if the

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<sup>22</sup>Instrucción Reservada, que el Conde de Revilla Gigedo dió a su sucesor en el mando, Marqués de Branciforte, sobre el gobierno de este continente en el tiempo que fué su virrey.. (México: Guiol, 1831).

<sup>23</sup>Ibid., Section 108.

<sup>24</sup>Ibid., Section 109.

regular magistrates of the Sala were doing the job that they should be doing, the Acordada would be idle.<sup>25</sup>

Although the Acordada seemed to have reached a high point in its effectiveness during Santa María's term, as is evident from Revillagigedo's Instrucciones, the number of cases it tried, and the number of employees it had, the limitation placed upon the Tribunal by the Junta de Revisión marked a decline that would become even more apparent before Santa María's administration was over.

The limitations placed upon the Acordada seems to have been shared with other governmental institutions at this time. The corregimientos were suppressed in 1786 in New Spain and replaced with twelve intendencias, headed by professional administrators in charge of tightening control of government, finance, defense and public order. Under the twelve intendants were subdelegados who supervised action at the local level including the alcaldes ordinarios, still operating as courts

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<sup>25</sup>Ibid., Section 110 and 128. The Sala del Crimen still heard appeals from special jurisdictions, such as those of the miners' guild, the mesta and all cases in which the Crown had a special interest. However, crimes committed in the countryside, crimes committed while members of the Acordada patrolled the streets of Mexico City, smuggling of arms or tobacco, the manufacture and sale of prohibited beverages--all these were within the jurisdiction of the Acordada.

of the first instance, and the court to which comisarios of the Acordada took prisoners accused of crimes not within the jurisdiction of the Santa Hermandad.<sup>26</sup> (supra 5, 25)

The death in 1788 of Charles III, who brought many of the Bourbon reforms to fruition and who had permitted the judges of the Acordada wide use of their powers, seems to have encouraged the enemies of the Acordada to press for even more changes in the Tribunal. Viceroy Revillagigedo had pushed the regular courts to do their share, so the Acordada would not have to take over their responsibilities. He admired the Tribunal and its judge. However, when he was recalled to Spain and the Marqués de Branciforte, (1794-1798) personal friend of the new king's favorite, Godoy, arrived, Santa María y Escobedo went on the defensive to maintain the remaining powers of the Acordada, and, if possible, rid the Tribunal of the Junta de Revisión. The judges of the Acordada had usually been successful in the past in presenting their cases to the king. In one of the memorandums to the Viceroy, the secretary of the Real Acuerdo pointed out on the first page that although there had been complaints and continuing disputes concerning the Acordada, the decisions were "always decided in its favor."<sup>27</sup> However, no

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<sup>26</sup>Parry, Seaborne Empire, pp. 322-324.

<sup>27</sup>AGI, México 1671, Testimonio del cuaderno instruido que comprende el voto consultivo del Real Acuerdo, p. 1.

longer would this be the case. In fact between 1800 and 1808 very little testimony from Judge Santa María made its way into the cuadernos (memoranda) delving into the jurisdictional history of the Acordada, and most of the witnesses were hostile to the Tribunal.

An attempt also was made during Branciforte's administration to establish an independent Tribunal of the Acordada in Guadalajara. The president of the audiencia in Nueva Galicia approved the appointment of Manuel de Rio as the judge on April 17, 1795. However, two royal cédulas dated November 30, 1797 and January 27, 1798 stated emphatically that there was to be no independent tribunal.<sup>28</sup>

In 1799, a proposal was made by the Sala del Crimen to change radically the Acordada, "giving it a new form, correcting its abuses, fulfilling those aims of the institution without failing in the essentials of the administration of justice."<sup>29</sup> Five members of the Audiencia concurred, and the several recommendations the offered for improvement were set forth in

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<sup>28</sup>Ibid., p. 65. This testimonio contains the costs of paper and the copyist's fee for the triplicates of certain testimony including the brief information on the attempt to establish the Acordada in Guadalajara.

<sup>29</sup>AGI, México 1671, Testimonio del Expediente seguido por el Señor Juez de la Acordada...extención de la Junta de Revisión por los atrasos que es causa, creación de un Relator en su Juzgado y otros puntos.

the same testimonio as that of the Sala's proposition, prefaced by their opinion that "the mess (in the Acordada) is intolerable."<sup>30</sup> The first item was a complaint that the salaries of lawyers of the Acordada were twice the amount paid the lawyers of the Sala for a similar case load.<sup>31</sup> The second suggested that the number of employees be drastically reduced, and that the judge make a list of his assistants for the Audiencia, so a residencia could be called for each.<sup>32</sup> The judge's authority to appoint his officers was attacked and it was suggested that the Intendant take over the appointments.<sup>33</sup> The judge's salary of 10,000 pesos, which had increased over the years since the first judge who had received 2,000 pesos, should be cut in half, as well as his duties which should include only cases of the Hermandad. Then, before any sentences were handed down by the judge, they had to be approved by the Junta de Revisión.<sup>34</sup> The jail of the Acordada should be open to inspections by the various judges.<sup>35</sup>

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<sup>30</sup>Ibid., p. 3.

<sup>31</sup>Ibid.

<sup>32</sup>Ibid., p. 4.

<sup>33</sup>Ibid., p. 5.

<sup>34</sup>Ibid.

<sup>35</sup>Ibid., p. 6.

The proper procedures to be followed in a criminal case also were outlined in the testimonio; the examination of testimony, confession, the charge against the accused, ratification of these items, admission of proof, defense, the sentencing. All of these were inviolable procedures which must be observed in a court of law, implying that this was not done by the Acordada.<sup>36</sup>

In answer to the testimonio, the king requested more, but "very brief," information on certain points covering the proposed "extinction of powers" and "matters of procedure."<sup>37</sup> He added that he had explained to Santa María in a letter of August 26, 1796, that he was not to submit his travel expenses nor those of his assistants when on business--these were to come from his salary of 10,000 pesos--and he was again reminding him of this in 1799.<sup>38</sup>

Santa María had a more important problem than his expense account. He accused the Junta de Revisión of sending some of his cases to the justicias ordinarias instead of deciding on the

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<sup>36</sup>Ibid., p. 10.

<sup>37</sup>AGI, México 1671, Testimonio de la Copia de la Real Cédula sobre que se informe a Su Magestad en punto a las facultades conque se gobierna el Real Tribunal de la Acordada, p. 1.

<sup>38</sup>Ibid., p. 2.

sentences of the Acordada, or revoking his sentences, and ordering criminals in the jail of the Acordada set free.<sup>39</sup> However, he evidently was not aware that the Sala had continued to press for the complete subjugation of the Acordada to it. In comparison the problem with the Junta was a relatively minor matter.

Between the years of 1806 and 1808 the Audiencias of Mexico compiled all of the autos, cédulas and cuadernos relating to proposed reforms of the Acordada and sent them to the Viceroy to forward to the king.<sup>40</sup> Three ministers of the Audiencia wrote that times and customs had changed since the establishment of the Tribunal, and that the necessity for unlimited power was over. They stated that a new generation of Spaniards had good communication with authorities and a sense of security.<sup>41</sup> They accused the various judges of bad management of funds and of incurring enormous expenses.<sup>42</sup> More specifically, they asked that the Tribunal be reduced in authority to that of its

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<sup>39</sup>AGI, México 1671, Testimonio de Expediente formado consulta del Señor Juez de la Acordada que la Junta de Revisión contrahigo [sic] su dictamen en cause ... p. 1.

<sup>40</sup>AGI, México 1671, Testimonio del quaderno instruido que comprende el voto consultivo del Real Acuerdo.

<sup>41</sup>Ibid., p. 5.

<sup>42</sup>Ibid., pp. 7-8.

primitive origin, the only extension in its jurisdiction being patrols of the city by the judge and his employees.<sup>43</sup> Furthermore, they recommended that the judge be on patrol all night, and that he be expected to report in the morning to the Audiencia and the Sala about all occurrences. At least once a year, or more if necessary, they continued, he should go to the rural areas on orders of the Viceroy to meet with comisarios and hear cases. In case of trouble, he could ask the Sala for help.<sup>44</sup> In conclusion, they pointed out that these cutbacks would save money and help pay for new garrisons.<sup>45</sup>

The king did not answer the testimonio. The correspondence on the Acordada ends abruptly in 1808, not to be resumed until 1815, because of conditions in Spain itself.

When Napoleon deposed King Ferdinand VII in 1808 and placed his brother Joseph on the throne, the infuriated Spanish people rose against the French and convened a Cortes in 1810 which, for the first time, included delegates from the colonies. This European situation profoundly affected and threw into confusion Spain's overseas kingdoms. The Spanish Cortes of 1810 was greatly influenced by forces of liberalism sweeping Europe and

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<sup>43</sup>Ibid., p. 9.

<sup>44</sup>Ibid., p. 11.

<sup>45</sup>Ibid., pp. 12-13.



the delegates spoke of the ideas of ministerial responsibility, freedom of the press, and a uniform legal code. Meanwhile, in New Spain, the Spaniards of the Old World and the Spaniards of the New World quarrelled over their respective privileges and the control of the government. In Mexico, however, the Acordada does not reflect the tensions that would shortly break out in violence.

A single disquieting note was the announcement on September 22, 1808, of the death of Don Manuel Antonio de Santa María y Escobedo, the eighth Judge of the Acordada, who had served the king since 1782, more than twenty-six years.<sup>46</sup> To succeed him the Viceroy recommended Don Antonio Columna whose appointment was confirmed on October 29, 1810 by the Council of the Spanish Regency, acting for the king who was a French prisoner.<sup>47</sup> When Don Antonio was appointed, large areas of New Spain were in flames because of the Grito de Dolores of September, 1810, but there is little if any reflection of this in Acordada documentation. The only hint that rebellion was taking place was Don Antonio's suggestion that no applicant (for a job with the Acordada) should be hired if he had taken part in the insurrection.<sup>48</sup>

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<sup>46</sup>AGN, Ramo Acordada, XXII, 416.

<sup>47</sup>Ibid.

<sup>48</sup>AGN, Ramo Acordada, XXVIII, 308.

However, events in Spain were bringing an end to the Tribunal of the Acordada before its complete reform could be accomplished. The Cortes in Spain promulgated a new constitution in 1812. And because of its provisions concerning the reform of Spanish laws and courts, the commission under which the judge of the Acordada acted was now challenged. The constitution stated that "no Spaniard can be tried in civil or in criminal cases by a court of commission but by a competent court, determined previously by law; and in public businesses, civil and criminal, there will be no more than one code of law for all classes of people."<sup>49</sup> The only authorized courts were to be the Supreme Court of Justice, the Audiencia with the Sala del Crimen, the Justices in the districts, the Alcaldes of the towns.<sup>50</sup>

When the news of the suppression of the Acordada spread throughout Mexico City, a large mob tore down the gallows in the Plaza and burned the wooden timbers.<sup>51</sup> The judicial duties of the Tribunal were turned over to six elected judges, and in the countryside the military took matters into its own hands.<sup>52</sup>

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<sup>49</sup>J. E. Hernández y Dávalos, Colección de Documentos para la Historia de Guerra de Independencia de México, De 1808 a 1821 (6vols.; México: José Ma. Sandoval, 1877-1882), IV, 50, Arts. 247, 248.

<sup>50</sup>Ibid., Art. 278.

<sup>51</sup>González Obregón, México Viejo, p. 20.

<sup>52</sup>Bancroft, Mexico, IV, 505.

While the audiencia in New Spain was trying to follow the Spanish Constitution of 1812, King Ferdinand returned to Madrid in March of 1814. Before entering Spain, Ferdinand had promised to uphold the Constitution, but he changed his mind after arriving on Spanish soil. His repudiation of the Cortes and the Constitution is reflected in a testimonio on the reestablishment of the Acordada in which Ferdinand tells Viceroy Felix María Calleja del Rey (1812-1816) in 1814 that all of the special tribunals ought to be reestablished, "in particular that of the Acordada."<sup>53</sup> He questioned the state of its funds and the circumstances in New Spain, and further stated that the Acordada would be of "much help in the general pacification" and in terminating the insurrection which was reduced to bands of robbers."<sup>54</sup>

Callejo wrote back that circumstances were "complicated" by the "present" rebellion, and that the funds of the Tribunal, for some years before its suppression, had been inadequate.<sup>55</sup> He pointed out that his economic advisor had informed him that

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<sup>53</sup> AGI, México 1671, Testimonio del expediente sobre restablecimiento del Tribunal de la Acordada, p. 1. The pages of this testimonio are not numbered, so the author has assigned one to each page.

<sup>54</sup> Ibid.

<sup>55</sup> Ibid.

that it was impossible to meet the expenses involved in reestablishing the Acordada.<sup>56</sup>

The chart on the following page is taken from a testimonio sent to the king at his request for information which might lead to reestablishing the Acordada in Mexico in 1814. It shows the location of prisoners and the disposition of cases for the year of 1807, during the term of Santa Maria de Escobedo. The Tribunal processed 2,194 cases and dispatched 2,095. This particular year may have been selected as representative of the business of the Acordada because of the large number of cases and the dispatch with which they were processed. All this would reflect favorably upon the Tribunal. It is interesting to note that in only one case was the death penalty received compared to the early days of the Tribunal when the usual penalty in cases tried by the Acordada was death.

However, there were other considerations. The testimonio stated that "a great number of the people from the towns and rancherias" had joined the insurgent bands and that many of this number had been in government service. Now they had cut communications and controlled the roads. It was suggested that the military was in a better position to take charge of the

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<sup>56</sup>Ibid., pp. 2-3.

Estado que demuestra las operaciones del Real Tribunal de la Audiencia con sus Reos y causas en el año de 1807, siendo Juez el Señor D.<sup>n</sup> Manuel Antonio de Santa Maria y Escobedo, Oydor honorario de la Real Audiencia de esta Nueva España; chanceros el D.<sup>n</sup> Felipe de Castro Salomino, el Licenciado D.<sup>n</sup> Juan José Flores Alatorre y el Licenciado D.<sup>n</sup> Juan José de la Pasqua supernumerario, y Defensor el Licenciado D.<sup>n</sup> Felix Lope de Vergara.

| Destinos de Reos   | Carcel de Mexico | Carcel de Puem | De todas ellas. | Estados de Causas.   |       |
|--|------------------|----------------|-----------------|--|-------|
| Remitidos á presidio.....  | 41               | 15             | 56              | Formadas este año de 1807.....   | 502   |
| Yden á las Obras publicas.....   | 43               | 17             | 60              | Quedaron corrientes en el de 1806.....   | 950   |
| De pena de muerte.....   | 1                |                | 1               | Cargo.....   | 1.452 |
| Sibres compurgados &c.....   | 399              | 389            | 788             | Cotexo   |       |
| Entregados á la Jurisd. <sup>n</sup> Real Ordinaria.....   | 47               | 39             | 116             | Corrientes en fin de 1807  |       |
| Yden á la Militar.....   | 4                | 2              | 6               | En el Virreynato sobre varios puntos.....  | 8     |
| Pasados á Hospital por incurables.....   | 3                | 3              | 6               | En la Junta de Revision.....   | 34    |
| Hospicio de Sobros y oficio.....   | 2                |                | 2               | En la misma sobre Falditos.....  | 1     |
| Recogidos y depositados.....   | 6                | 1              | 7               | En las Jurisdicciones para diligencias.....  | 227   |
| Muertas en prision.....  | 4                |                | 4               | Dentro del Tribunal en giro.....   | 812   |
| Total.....   | 582              | 466            | 1048            | Concluidas en este año de 1807   |       |
| Cotexo   |                  |                |                 | Archivadas.....  | 331   |
| Existian en 31 de Dic. <sup>e</sup> de 1806.....   | 387              | 632            | 1019            | Entregadas á la Jurisd. <sup>n</sup> Real Ordinaria.....   | 38    |
| Aprehendidos en este año de 1807.....  | 658              | 478            | 1136            | Yden á la Militar.....   | 1     |
| Total.....   | 1045             | 1110           | 2155            | Descargo.....  | 1.452 |
| Rebaxame los destinados.....   | 582              | 466            | 1048            | Vota   |       |
| Quedan en prision en 31 de Dic. <sup>e</sup> de 1807.....  | 463              | 644            | 1107            | Que á demas de lo expuesto y de innumerables juicios berzales se han hecho sesientas ochenta y siete informes y consultas al Virreynato y otros Tribunales y Juzgados: se han recibido en mil ciento noventa y quatro cartas, y se han expedido tres mil novecientas cinc. fuerz de varios mandamientos y exortas para diligencias, perseguir Janidas y asegurar los Caminos |       |
| Vota   |                  |                |                 |  |       |
| Que de los cincuenta y seis que se remitieron á Presidio solo uno sufrió la pena de docientos azotes y dos la de verguenza pública en forma de justicia por las Calles acostumbradas de la Ciudad de Oaxaca para exam. |                  |                |                 |  |       |

situation.<sup>57</sup> The testimonio commented repeatedly on the lack of money and further stated that "in this last year, no contributions were made to the Acordada which was presently suppressed."<sup>58</sup> "This last year" is 1814 and seems to indicate that the Acordada was not terminated in 1813, but in 1814 when it received no funds. Thus, in spite of the orders of the liberal Spanish Cortes, the royalists in New Spain were reluctant to abolish the institution until it could be maintained financially no longer.

The information available in the Archivo General of Mexico, limited to reports of the Audiencia and Viceroy, leads one to believe that they thought they lacked the authority to abolish the Acordada. They wanted the Spanish Cortes to do it by legislative action.<sup>59</sup> However, after weighing the evidence, it was the King who decided in 1817 not to reestablish the Tribunal of the Acordada.<sup>60</sup> The military inherited the duties of the Acordada, patrolling the roads and eliminating

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<sup>57</sup> Ibid., pp. 17-18, 20.

<sup>58</sup> Ibid., p. 27.

<sup>59</sup> AGN, Ramo Acordada, XXII, 471.

<sup>60</sup> AGI, México 1671, Informe envita del Expediente sobre superior y restablecimiento del Tribunal de la Acordada en 30 de Abril del 1817...p. 5.

bandits as well as those "guerrillas" who fought the government in power, with little respect for the civil code of law.

A similarity of circumstances may be seen in Peru in the confusion that followed independence. Only here, where the royal government had been unsuccessful in establishing the Acordada until the end of the colonial period under the name of Consejo de Guerra, the central authority, usually a dictatorship, either gefe, supremo, libertador or restaurador de patria, used the Tribunal as a tool to gain control of the countryside. At the request of President José de la Mar, the Peruvian Congress reestablished the Acordada on October 9, 1827, to give citizens within Lima and those people using the roads to the city needed protection.<sup>61</sup> The law stipulated that the Tribunal was to be known as the Comisión de Acordada, and it was to consist of three prominent men who were to judge cases of robbery within and without the city of Lima. The procedures were brief, limited to one day for presentation of evidence, but otherwise the proceedings followed that of the original Acordada. On the second day the superior court could either confirm or change the decision. No fueros were recognized by the Comisión. Executions under the law were to be conducted

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<sup>61</sup>Oviedo, Colección, XI, 369.

specifically in the Plaza de la Independencia, not in the suburbs.<sup>62</sup> Three colonels were appointed to the Comisión, and they began hearing robbery cases that were pending in the courts of the alcaldes ordinarios. However, within six months, the administration decided that jurisdictions, other than those designated by the Constitution, were illegal. On April 23, 1828, the Acordada was abolished by decree of President José de la Mar.<sup>63</sup>

This decree did not end the history of the Acordada in Peru. When Felipe Santiago de Salaverry made himself "gefe supremo del Perú," he decreed the Acordada into existence once again on February 27, 1835. His purpose, he stated was to bring robbers and bandits, who called themselves "guerrillas," to justice.<sup>64</sup> The guerrillas may have been bandits, or merely those who opposed the gefe supremo, but they were to be tried by a tribunal similar to the Comisión de Acordada of 1827. The jurisdiction of the new Acordada included crimes of murder and assault as well as robbery. This may have been due to the

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<sup>62</sup>Ibid., pp. 370-371.

<sup>63</sup>Ibid., p. 372.

<sup>64</sup>Ibid., p. 382.



extreme disorientation of the country in 1835, because the decree further orders the apprehension of fugitives and deserters and their return to the army or navy, vagabonds who were to be assigned to work crews, anyone carrying arms other than authorized personnel, anyone without a pass within the city at night, and all suspicious persons.<sup>65</sup>

These precautions did not save the government of Santiago de Salaverry, because Juan José Salas, restaurador de la patria, ousted the gefe supremo and abolished the Acordada on October 7 of the same year. Its cases were returned to the superior court for distribution among the criminal justices, excepting "crimes of rebellion, sedition and treason," which were to be tried by the military.<sup>66</sup>

Then, after a lapse of almost twenty years "El Libertator" Ramón Castilla issued a decree on June 20, 1855, reestablishing the Acordada for one year, because "on occasions analagous to the present, it had produced the salutary effect of containing criminals and of pacifying the population."<sup>67</sup> But the following year, the National Convention passed a law to create a court of

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<sup>65</sup>Ibid., p. 383.

<sup>66</sup>Ibid., p. 384.

<sup>67</sup>Ibid., BNP, El Peruano, June 27, 1855, No. 16, p. 73.

the first instance in the capital with two judges to handle the criminal cases.<sup>68</sup> The Acordada, as a result, was not needed.

Castillo's words, "On occasions analagous to the present" is the key phrase in assessing the Tribunal of the Acordada in Peru. Whenever unpaid soldiers turned into robbers and ravaged the countryside, when farms and fields were ruined and deserted and cattle roamed unattended because of civil strife, when mines were unworked and the unemployed became vagabonds, and the ordinary means of policing the rural areas were insufficient or nonexistent, Peru was ready for the reestablishment of the Acordada by the de facto government. Necessity prompted its creation, but when a semblance of normality returned, its legality was questioned, because it did not have a place in a constitutional system of government.

In Mexico, the Acordada was not reestablished, and for more than sixty years, until the hated rurales of Porfirio Díaz once again made the roads of Mexico safe for travel by using the practises and punishments of the Tribunal, the problem of crime in the countryside plagued Mexico during intervals of peace as well as longer periods of civil strife when the terms "bandit" and "patriot" became confused. Delayed legal suits, neglect of

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<sup>68</sup> Oviedo, Colección, XI, 406.

court formalities, and an absence of prison regulations were evident. Then, after the downfall of Díaz, when anarchy again prevailed, ranchers of the north banded together in vigilante groups to guard their property. They sometimes called themselves members of the Acordada--a reminder of the days when Don Miguel and his itinerant court rode forth to protect the roads and give New Spain crude justice.

## CONCLUSIONS

The Tribunal of the Acordada was an instrument of the Crown, bringing royal justice to the rural areas of New Spain. As an outgrowth of the Santa Hermandad of Castile, which helped the Catholic Monarchs, Ferdinand and Isabella, establish control over the warring aristocratic factions and bring peace to the countryside of Spain, the Hermandad was transported to the New World by the second Viceroy, Luis de Velasco. Although it had been diminished in size and authority to a rural constabulary, the punishments of the Hermandad, meted out by minor judges, the *alcaldes ordinarios*, produced a salutary effect which seemed to stem the tide of highway robbery, cattle rustling and general lawlessness. Building upon what had been a useful institution in Castile and a satisfactory one in New Spain, the Crown extended the authority of the Hermandad to all of the New World and set up the offices of the Tribunal in Mexico and Lima and in outlying towns and villages. However, there was no overall centralizing authority for rural justice until after the Bourbon rulers came to the throne of Spain. Then, with renewed attempts to curb rural crime in New Spain the king

authorized special commissions to special men who were knowledgeable about the laws of the Hermandad as well as the laws of Castile and who would apprehend, try and punish criminals with appeals and the approval for the death penalty going to the Sala del Crimen in Mexico City. One further step produced a single authority, the Acordada, under one judge, who would be in charge of the Crown's efforts to clean out the bandits in the unpopulated areas. The judge of the Acordada was bound by the previous charge: to maintain and uphold the laws of the Santa Hermandad and the laws of Castile, punishing wrongdoers by the same methods and procedures as those practiced in Spain. Throughout its existence, the Tribunal of the Acordada was subject to the king, who granted its judge his commission, and to his viceroy through whom passed all correspondence concerning the Tribunal. While it may have been subject to the pressures of local problems, all decisions concerning the Acordada or its judge came from Spain.

The Bourbon kings praised and supported the judges of the Tribunal, and through the years increased their duties and authority until, by 1779, the Acordada had jurisdiction in cases involving the manufacture and distribution of prohibited beverages, the manufacture and sale of arms, the

detection and prosecution of smuggling, protection of commerce using the king's roads, and crimes of violence committed in Mexico City, as well as those committed in rural areas, which, in effect, meant that the Acordada had almost a monopoly of criminal justice in New Spain. Its judge could even hand down the death penalty or sentences of banishment without appeals going to the Sala. He was responsible only to the Viceroy for his actions and his judgments.

The Acordada's service to the Crown was considered to be of such value that an attempt was made by Teodoro de la Croix to introduce the Tribunal into Peru. In 1786 the vecinos of Lima, like those of Querétaro, petitioned the Viceroy for a Tribunal de la Hermandad o de la Acordada, similar to that in New Spain. Teodoro de la Croix tried to establish the Tribunal and wrote to Spain and Mexico City for information that would enable him to set up an organization. Although he failed during his viceregency, a tribunal called the Consejo de Guerra, similar to the Acordada, was established by Viceroy Pezuela at the end of the colonial period in Peru. Then, during the wars of liberation, and the confusion that followed independence, the Peruvian Congress, as well as later dictators, used the Acordada, as the royal government had done, to control the countryside.

José de Gálvez recommended that the Acordada be extended into Nueva Galicia as an institution separate from the Tribunal in Mexico City. They viewed the Acordada as a useful instrument of the Crown to be extended within the empire if this were possible.

There was a surprising lack of corruption connected with the Acordada and its judges which may account for the efficiency and trust placed in it by the Spanish kings. During an age when the sale of public office was considered a standard means of raising crown revenue, it is most unusual that the judgeship of the Acordada was never sold.

At what point does an institution become too powerful and the decisions of its leader arbitrary? What particular incident made it apparent that this particular agency had become so powerful that its judge was almost a law unto himself, controlling too many men and too much money? In judging the Acordada it is difficult to select a particular date on which the ceaseless complaints of the Sala del Crimen coalesced with the wishes of the Crown to curtail the independence of the Tribunal. However, in 1790 a Junta de Revisión was ordered to review cases of the Acordada, and in those involving the death penalty or corporal punishment, the Junta could revoke or revise the

judgments of the Tribunal. Ironically, the reason given for instituting the Junta was to prevent arbitrary law and to insure the king's vassals of their legal rights, now thought to be a more important consideration than law and order in the countryside. Time and the Acordada had eliminated the bandits as New Spain moved toward revolution. When the Grito de Dolores came, the Audiencia was suggesting that the Acordada return to its primitive form of roving court, operating with limited funds and a handful of cuadrilleros led by a judge on horseback.

When the Spanish throne tottered and the Cortes of Cádiz promulgated the Constitution of 1812 prohibiting courts of commission, the King's Tribunal of the Acordada fell to the forces of liberalism, although royal officials were most reluctant to obey the Cortes and abolish the Tribunal, because there was no agency capable of taking its place. With the king's return to power in 1814, he sought to reestablish the Acordada to help him eliminate rebels as well as restore order in New Spain. But the funds had been diverted and the organization was ruined by revolution, so the king reluctantly had to accede to the end of the Acordada.

The Tribunal of the Acordada was a reflection of Spain in the New World. Born of the Reconquest as the Santa Hermandad, shipped overseas to New Spain and adjusted by the Crown to meet



the problems of administering justice in the rural areas, the Acordada was abolished as the Spanish empire was crumbling. It was a tribute to the Spanish institution that the revolutionary government of Peru in 1823 copied and put into effect the Acordada which was in charge of cases involving robbery, assault and murder and was to remain operative as long as circumstances required it. However, it gave way before the judicial system of the republic, although it was used briefly, off and on, when rapid and violent changes of government brought anarchy to the countryside of Peru. It could not be sustained, possibly because it was a relic of the past and owed its raison d'etre to monarchical antecedents which were no longer applicable in the Americas.

# JUDGES OF THE TRIBUNAL OF THE ACORDADA

|                                     |                               |
|-------------------------------------|-------------------------------|
| Miguel Velázquez Lorea              | Nov. 11, 1719 - Sept 7, 1732  |
| José Velázquez Lorea                | Oct. 3, 1732 - Feb. 17, 1756  |
| Jacinto Martínez de Concha          | Apr. 3, 1756 - Oct. 14, 1774  |
| Antonio de Ariztimuño               | Oct. 17, 1774 - Nov. 8, 1776  |
| Juan José Barberí                   | Nov. 16, 1776 - June 11, 1778 |
| Pedro Valiente                      | June 12, 1778 - Jan. 13, 1781 |
| Juan José Barberí                   | Jan. 14, 1781 - Apr. 15, 1782 |
| Manuel de Santa María<br>y Escobedo | Apr. 16, 1782 - Sept 22, 1808 |
| Antonio Columna                     | Oct. 10, 1808 - Feb. 20, 1812 |
| Juan José Flores Alatorre           | Feb. 20, 1812 - May 31, 1813  |

# IMPORTANT DATES RELATING TO THE ACORDADA

- 1476 -- Santa Hermandad organized by the Crown in Castile
- 1498 -- Santa Hermandad dissolved and becomes a local constabulary
- 1543 -- Charles I ordered alcaldes ordinarios in the Spanish towns of the Indies to hear those cases which would in Spain be tried by alcaldes of the Hermandad
- 1559 -- Philip II ordered the same arrangement for Peru
- 1603 -- Philip III formally established the Tribunal of the Santa Hermandad in New Spain
- 1631 -- Philip IV instituted the Santa Hermandad in Spanish America
- 1691 -- Charles II authorized Viceroy to give "comisiones de la Hermandad" to pursue and to apprehend criminals
- 1710 -- Santa Hermandad reorganized in New Spain
- 1715 -- Viceroy authorized to increase powers of the alcalde provincial of the Hermandad
- 1719 -- Viceroy Valero convened junta which recommended by acordada that Miguel Velázquez Lorea receive a special commission to pursue criminals in rural areas.
- 1722 -- Philip V confirmed commission of Don Miguel as first Judge of the Acordada
- 1744 -- Audiencia of Mexico authorized the Acordada to patrol, apprehend and try criminals in Mexico City
- 1747 -- Acordada extended to Nueva Galicia and Nueva Viscaya
- 1763 -- Judge of the Acordada becomes Judge of the Tribunal of Prohibited Beverages

- 1781 -- Prison of the Acordada completed
- 1790 -- Junta de Revisión formed to review decisions of the Acordada, curtailing powers of the Tribunal
- 1813 -- Acordada abolished by the Cortes of Cadiz
- 1814 -- Date recorded in AGI for suppression of Acordada
- 1814 -- King repudiates Constitution of 1812
- 1816 -- Acordada instituted in Peru under the name of Consejo de Guerra
- 1817 -- King Ferdinand accepts recommendations against reestablishment of the Acordada
- 1822 -- Acordada reestablished by revolutionary Junta Gubernativa of Peru

TITLES PERTAINING TO THE PERSONNEL OF THE COURTS  
AND THE ACORDADA

alcalde - judge or magistrate

alcaldes ordinarios - local judges elected by the regidores in the cabildo; judges of the first instance in civil and criminal cases; they acted as alcaldes of the hermandad until 1603

alcalde de la Hermandad - local judge of the Hermandad elected in each Spanish town beginning in 1603

provincial de la Hermandad - officer of the Hermandad first appointed in Mexico in 1609 to set up the tribunal of the hermandad in Mexico

provincial de la Hermandad for the Indies - judge and officer of the Hermandad who purchased his job beginning in 1631, at which time he was called merely provincial; the new office was not to affect that of the alcalde de la Hermandad which continued to be elected

comisión de Hermandad - special grants to justices to pursue and try criminals

judge of the Acordada - he was also an alcalde provincial de la Hermandad; juez, when trying criminals; capitán, while pursuing criminals; sometimes, colonel or teniente colonel, depending on his military status

cuadrilleros - the armed men who rode with the judge in pursuing criminals

tenientes - lieutenants of the Acordada

asesor - legal counselor to advise the judge in procedural matters

fiscal - attorney for the Crown

fiscal de lo civil - attorney acting for the people

oidor - judge of the court of the Audiencia

sala del crimen - criminal chamber of the Audiencia

hermandades - brotherhoods organized by the Spanish municipalities

Santa Hermandad - holy brotherhood organized by Ferdinand and Isabella to help bring peace to the Spanish countryside; after 1498 it took the form of a rural constabulary and in this form was transported to the New World where it operated under town control with appeals going to the Sala del Crimen in Mexico City

relator - counsellor at law who makes briefs of cases to be tried and reads them before the court

letrado - lawyer or professor of law

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A Don Jacinto Martínez de la Concha, Juez de la Acordada de las Provincias de la Nueva España, participándole lo resuelto para el buen gobierno del expresado Juzgado; y previniéndole lo demás que se refiere.

Consejo de las Indias, October 29, 1767, De Orden de V. M. remitió el Baylio Fr. Don Julian de Arriaga, con papeles de 24 de Enero, y 17 de febrero de este año, dos representaciones.

Don Manuel Santa María y Escobedo, October 8, 1787.

Extracto de lo representado por Don Jacinto Martínez de la Concha, Juez de la Acordada de México, sobre el estado de su jurisdicción, y motivos que tiene para pedir se le admiti la renuncia que hace de su empleo.

Informe envita del Expediente sobre superior y reestablecimiento del Tribunal de la Acordada en 30 de Abril del 1817.

La adjunta carta del Virrey de Nueva España, March 8, 1776.

México, October 27, 1775, No. 272. A Virrey de Nueva España. Da cuenta con testimonio del nuevo curso hecho por la Real Sala del Crimen sobre jurisdicción del Juzgado de la Acordada, y limitación de sus facultades.

México, July 25, 1775, No. 256. El Virrey de España. Da cuenta a V. M. con testimonio del Expediente formado sobre la Jurisdicción del Juzgado de la

Acordada, y la providencia que tomó interin V. M. se digna de declarar lo que sea de su Re. agrado...

México, October 27, 1775. La Real Sala de Crimen de México expone á V. M. lo nuevamente ocurrido sobre ampliación de facultadas, que sin necesidad, y motivo provable ha concedido el actual Virrey, al Juez de la Acordada.

Testimonio de la Copia de la Real Cédula sobre que informe a Su Magestad en punto á las facultades conque se gobierna el Real Tribunal de la Acordada.

Testimonio del cuaderno instruido que comprende el voto consultivo del Real Acuerdo.

Testimonio de el Expediente en virtud de Reales Cédulas en que se declara, que el Juez de la Acordada ejerza su Comizion con total independencia de la R. Sala de el Crimen.

Testimonio del Expediente formado, consulta del Señor Juez de la Acordada que la Junta de Revisión contrahiga su dictamen en causa, así está arreglado la sentencia, y no así toca el conocimiento de ella a la Justicia Ordinaria.

Testimonio de Expediente seguida por el Señor Juez de la Acordada, extinción de la Junta de Revisión por los atrasos que es causa, creación de un Relator en su Juzgado y otros puntos.

Testimonio del expediente sobre reestablecimiento de Tribunal de la Acordada.

Testimonio del Quaderno segundo, que contiene, la Real Orden de doce de Junio de mil setecientos ochenta y cinco, pidiendo informe, acerca de lo Representado por la Real Sala de Crimen, para poner en orden el Tribunal de la Acordada.



Testimonio del Quaderno veinte, relativo al atraso de causas; y facultades del Señor Juez de la Acordada.

Testimonio formado de Expediente a instancia de los Asesores de la Acordada abusos y excesos de su Juez Acordada.

Yndice de los documentos relativos al establecimientos del Juzgado de la Acordada de México, y otros incidentes ocurridos sobre sus facultades y jurisdicción.

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APPROVAL SHEET

The dissertation submitted by Barbara Gilbreath Montgomery has been read and approved by members of the Department of History.

The final copies have been examined by the director of the dissertation and the signature which appears below verifies the fact that any necessary changes have been incorporated and that the dissertation is now given final approval with reference to content and form.

The dissertation is therefore accepted in partial fulfillment of the requirements for the degree of Doctor of Philosophy.

May 21, 1973  
Date

Charles E. Roman, Jr.  
Signature of Advisor