

## Elected Magistracy: Political and judicial administration in Brazil (1826-1841)

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### Abstract

This paper discusses the creation of the justice-of-the-peace system in Brazil, ruled by lay and local judges, during the nineteenth century. The analysis is carried out between the years of 1826, when the Brazilian legislative power was reinstated, and 1841, when the transference of the local judges' attributions to police authorities designated by the Imperial government took place. The interpretation is based on the reading of the National Assembly proceedings, the Ministry of Justice reports, judicial documents and contemporary newspapers. The examination of primary sources helped in identifying the justice-of-the-peace system as an artifact of the constitutional culture prevailing over the first years of independent Brazil.

### Key words

Imperial Brazil; Justice of the peace; Justice management; History of Law

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## Magistratura Eleita: administração política e judicial no Brasil (1826-1841)

### Resumo

Este artigo discute a instituição de justiças de paz no Brasil do Oitocentos, regidas por magistrados leigos e eleitos localmente. A análise delimita-se entre os anos de 1826, data de retomada do funcionamento do legislativo brasileiro, e 1841, quando ocorreu a transferência das atribuições dos juízes eletivos para as autoridades policiais nomeadas pelo governo Imperial. A interpretação partiu da leitura de atas da Assembleia Nacional, relatórios do Ministério da Justiça, periódicos e documentos judiciais. A consulta às fontes colaborou para a identificação do juizado de paz como artefato da cultura constitucional dos primeiros anos do Brasil independente.

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### Palavras-chave

Brasil Império; Juízes de paz; Administração judicial; História do direito.

## Introduction

Scholarly production about justices of the peace in the 1800's is still very limited, in spite of the important PhD thesis by Thomas Holmes Flory. That work was published in Spanish in 1986, under the title *El juez de paz y el jurado en el Brasil imperial, 1808-1871, control social y estabilidad política en el nuevo Estado*<sup>1</sup>, but it was never translated into Portuguese. The justices of the peace came with the new judicial organization implemented by the Constitution of 1824, however the originality of the institution came from its laical and elective character<sup>2</sup>. Through article 162, the justices of the peace were instituted, with competence of deciding about conciliations. In the following years, however, a broadening of the jurisdiction of these magistrates, as well as their conversion into bulwarks of the liberal culture within the Empire took place. There were, nonetheless, varied conceptions regarding the role of these judges, as the moderate liberal elite was consolidated in the country between 1826 and 1841. Once in a while, legislative experimentation around the justices of the peace presented unpredictable and undesirable results to the very elite that created it, provoking fast changes within the institution in the space of a little over two decades. In this article, the various meanings given to the institution during its functioning and the accommodation of its role in 1841 are explored.

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### 1. The Constitution and the juiz dos povos (judge of the peoples)

The justices of the peace are characterized in Historiography<sup>3</sup> as elementary in the process of the decentralization of power within the First Reign (Primeiro Reinado – 1822-1831). Besides that, the broadening of their assignments over social discipline awakened great interest

<sup>1</sup> FLORY, Thomas. *El juez de paz y el jurado en el Brasil imperial, 1808-1871, control social y estabilidad política en el nuevo Estado*. México: Fondo de Cultura Económica, 1986.

<sup>2</sup> The expression “laical” refers to the necessity of juridical university formation. Lettered or robed judges were the expressions to designate magistrates with a diploma of Baccalaureate in Law.

<sup>3</sup> FLORY, Thomas. Op. Cit. COSER, Ivo. *Visconde do Uruguai: centralização e federalismo no Brasil, 1823-1866*. Belo Horizonte: Editora UFMG, 2008.

of scholars that called them “police judges”. Octávio Tarquínio de Sousa<sup>4</sup>, for example, called the effectiveness of justices of the peace as highest authorities in local social control policialjudiciarism, because police duties were turned over to lay magistrates. This model of administration was overcome by the legislative reformation of 1841, when such duties were given to delegados (sheriff) and subdelegados (vice-sheriff) chosen by the chefes de polícias (Provincial Department of Public Security chiefs)<sup>5</sup>, nominated named by the Ministry of Justice. This new organization of social control was on it turned named by Tarquínio de Souza judiciary policialism<sup>6</sup>.

Criticism towards the dilated powers of the justices of the peace came up almost at the same time as the creation of the institution. In part, disagreements ran towards the electoral character of those authorities that handed the role of construction of order and fought against crime to citizens chosen directly by primary assemblies. The experience, indeed, was figured as an institution reserved to the direct participation of political agents elected locally for the administration of the State<sup>7</sup>. The implementation of the justices of the peace within the First Reign was associated to the context of development of liberal cultures<sup>8</sup> in the 1820's and 1830's in Brazil.

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<sup>4</sup> SOUSA, Octávio Tarquínio de. *História dos fundadores do Império do Brasil*: Bernardo Pereira de Vasconcelos e Evaristo da Veiga. Rio de Janeiro: José Olympio, 1972. v. V, p. 213.

<sup>5</sup> Chefe de Polícia was a judge with university training to direct the Public Security Department of the provinces. The Minister of Justice of the Empire was responsible for choosing that authority.

<sup>6</sup> SOUSA, Octávio Tarquínio de. *Loc. Cit.*

<sup>7</sup> CARVALHO, José Murilo de. *Cidadania: tipos e percursos*. Estudos Históricos, Rio de Janeiro, v. 9, n. 18, 1996. p. 341.

<sup>8</sup> As political cultures, one understands certain perceptions that guide behaviors in society. We use the concept in the plural due to the multiplicity of orientations and assimilations that differentiated some political groups. In these liberal cultures, it is mainly important to distinguish the proposals based on ideas of self-government and centralization in the shaping of administration of the Brazilian State in the period following the Independence. See: ALMOND, Gabriel; VERBA, Sidney. *The civic culture. Political attitudes and democracy in five nations*. Princeton: Princeton University Press, 1963. Recently, in Brazil, a collection of studies on the concept of political culture was published: MOTTA, Rodrigo Patto Sá. *Culturas políticas na história: novos estudos*. 2. ed. Belo Horizonte: Fino Traço, 2014.



Liberalism blew its principles over America, but its characteristics gave birth to different experiences. In Brazil, the formatting of the State happened under diverse influences, among which two had great repercussion. From the independence of the United States and the old Spanish colonies in America, a federalist strand was formed. The revolts in Pernambuco in 1817 and 1823, located “[...] in the wider picture of the political struggles that marked the emergence of the Brazilian national State [...]”<sup>9</sup>, joined liberalism and ideals of self-government. The severance with the metropolis was associated with the aspiration for sovereignty, configuring another independence<sup>10</sup>, which outline privileged provincial freedom. Another strand came from the developments of the Portuguese vintista movement.<sup>11</sup> The revolution of 1820 resulted from the initiatives of a small masonic lodge, the Sinédrio, composed by military and civilian members, whose success breathed the strong desire for political participation in the population<sup>12</sup>. The call for “supremacy of the European homeland”<sup>13</sup> was surprisingly converted into a struggle for popular sovereignty in the form of elections in Cádiz<sup>14</sup>. Even though the revolt in Europe took place due to certain anti-Brazilian feelings fomented by the long absence of the king and the loss of fiscal privileges of Portugal, the preaching for political autonomy gained followers in Brazil. Facing the unavoidable situation of Brazil as a kingdom united to Portugal, the American provinces were called

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<sup>9</sup> BERNARDES, Denis Antônio de Mendonça. Pernambuco e o Império (1822-1824). In: JANCSÓ, István (Org.). Brasil: formação do Estado e da nação. São Paulo: Hucitec; Ijuí: Editora Unijuí, 2003. p. 219-250. p. 244.

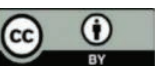
<sup>10</sup> Ver: MELLO, Evaldo Cabral de. A outra Independência: o federalismo pernambucano de 1817 a 1824. São Paulo: Editora 34, 2004.

<sup>11</sup> Vintista - Word used to designate the Portuguese revolution of 1820's.

<sup>12</sup> PEREIRA, Miriam Halpern. Crown, empire, and nation (1807-1834). e-Journal of Portuguese History, v. 11, n. 1, p. 64-84, 2013. p. 15.

<sup>13</sup> BONIFÁCIO, Maria de Fátima. A monarquia constitucional, 1807-1910. Córdoba: Texto, 2010. p. 5.

<sup>14</sup> SUANZES-CARPEGNA, Joaquín Varela. El constitucionalismo español y portugués durante la primera mitad del siglo XIX (un estudio comparado). Estudios Ibero-Americanos, Porto Alegre, v. XXXIII, n. 1, p. 38-85, 2007. p. 54.



to take part in the Constitutional Assembly in Lisbon. Brazil would thus take part in the movement of the “regeneration” of monarchy.

The development of debates in the Vintista Constituent Courts ended up in a deadlock between the Brazilian and Portuguese representatives. The intended unity of the kingdom of Portugal, Brazil and Algarves, that would guarantee some autonomy to some provinces, crumbled facing Portuguese intransigence. The deadlock was born from the insistency of the Portuguese representatives on removing the privileges conceded by King João VI to Brazil and demanding the return of Pedro (heir to the throne) to Europe<sup>15</sup>. Around the then prince regent, a monarchic and constitutional solution was organized, which counted with the support of a relevant part of the provinces.<sup>16</sup>

With the separation of ties between Brazil and Portugal, the governing elite was divided in two groups – Democrats and Liberals. The former based sovereignty exclusively on the people, while the latter, on the nation and the monarch. According to Lúcia Neves<sup>17</sup>, the “drama of Independence” definitely dispelled the democratic option<sup>18</sup> due to the judicial persecution of its leaders. The “reduced breath of liberalism” in Brazil did not prevent, however, “the definitive change of politics into a public thing”, summarized by Lúcia Neves<sup>19</sup> in two keywords: “Constitution and Freedom”.

Before the final clash, the constituent programmed the regeneration of monarchy in the new country. Besides a project of Constitution, the representatives approved laws to give Brazil the necessary political

<sup>15</sup> SERRÃO, Joel. Brasil. In: \_\_\_\_\_ (Dir.). Pequeno dicionário de história de Portugal. Porto: Figueirinhas, 2004. p. 136.

<sup>16</sup> See especially chapters 11 and 12 in: NEVES, Lúcia Maria Bastos Pereira das. Corcundas e constitucionais: a cultura política da independência (1820-1822). Rio de Janeiro: Revan, 2003. p. 309-374.

<sup>17</sup> Ibidem, p. 366.

<sup>18</sup> The democratic strand, in this context, represented ideas of popular sovereignty as exclusive fundament of political institutions.

<sup>19</sup> NEVES, Lúcia Maria Bastos Pereira das. Op. Cit., p. 413-415, author's italics.

institutions<sup>20</sup>. The opposite liberal principles of self-government and centralization insinuated themselves in the debates in many instances, even when the representatives swore loyalty to the monarch. Especially in the shaping of provincial governments, opposition not only among the representatives, but also within other political segments of the country was observed.

The discussion about the government of provinces, by virtue of this dispute, gave opportunity to many disputes between the constituent representatives. The *juntas de governo*, implemented in Brazil since October 1821<sup>21</sup>, represented the concept of popular sovereignty put into practice by the Portuguese courts in the Luso-Brazilian Empire. Many government boards were elected under the same criteria of choosing constituent members. On the other hand, the *governo de armas* (government of arms) was reserved to leaders designated directly by the Kingdom<sup>22</sup>. In Brazil, that decision contributed to weaken the power around Rio de Janeiro and the prince regent<sup>23</sup>.

In addition, the proposal of the Counsel of Attorneys and the Constituent Assembly of Brazil were introduced. The decisions emitted by the Congress in Lisbon would first need to be approved by those colleges. Cecília de Oliveira explains, “[...] the creation of a Constituent Assembly in Rio de Janeiro guaranteed the equality between the two [kingdoms] and demonstrated the difference between conciliation of interests and non-acceptance of interference of the Courts of Lis-

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<sup>20</sup> See the summary of these decisions: MELLO, Francisco Ignacio Marcondes de. *A constituinte perante a história*. Rio de Janeiro: Actualidade, 1863. p. 8-9.

<sup>21</sup> DECRETO de 1º de outubro de 1821. In: BRASIL. *Coleção das leis do Império do Brasil*. Brasília: Câmara dos Deputados, [s. d.]. Disponível em: <<http://www2.camara.leg.br/atividade-legislativa/legislacao/publicacoes/doimperio>>. Acesso em: 28 jan. 2017.

<sup>22</sup> BERBEL, Márcia; FERREIRA, Paula Botafogo C. Soberanias em questão: apropriações portuguesas sobre um debate iniciado em Cádiz. In: BERBEL, Márcia; OLIVEIRA, Helena de Salles (Orgs.). *A experiência constitucional de Cádiz: Espanha, Portugal e Brasil*. São Paulo: Alameda, 2012. p. 179.

<sup>23</sup> SLEMIAN, Andréa. “Delegados do chefe da nação”: a função dos presidentes de província na formação do Império do Brasil (1823-1834). *Almanack Brasiliense*, São Paulo, n. 6, p. 20-38, novembro de 2007.



bon in the readjustment of market and political relations between the provinces of Brazil”<sup>24</sup>.

Once the separation from Portugal was confirmed, the Constituent was established and as soon as the debates were started, the administration of the provinces became an object of dispute between the representatives. Three bills were presented. The first one, contrived by the representative from São Paulo Souza e Mello, aimed at substituting the *juntas governativas* (government boards)<sup>25</sup> for designated governors by Emperor in each province with power of all other authorities being under them, including the *comandante de armas* (commander in chief). Furthermore, governors and commanders in chief would be designated by the Emperor. However, a “judge of the peoples” was provided, “for the release and freedom of the peoples, chosen by the electors of the parishes, assembled at the head of the districts, and by way of election of representatives”. Immediately after the reading of this bill, the opposition manifested itself through the voice of the São Paulo representative Andrada Machado e Silva, and the Minas representative, Antonio Gonçalves Gomide, who expressed the intention of presenting an alternative bill in the following session<sup>26</sup>. The suggestions offered by Andrada Machado and Antonio Gomide kept the designation of the general administrator of the provinces in the hands of the Emperor<sup>27</sup>. They were in an impasse because they proposed a chamber – the Provincial Council to help the governors – and kept as a prerogative of the electors to appoint the head of the provincial government.

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<sup>24</sup> OLIVEIRA, Cecília Helena L. de Salles. Bragança Paulista: Edusf; Ícone, 1999. p. 200.

<sup>25</sup> The government provisional boards, also called boards of provisional government, were created from 1821 on, substituting captains and governors of captaincies, with competence over all authority and jurisdiction in civil, economic and administrative matters, as well as of police. See: CAMARGO, Angélica Ricci. *Juntas provisórias de governo*. In: BRASIL. Mapa – Memória da Administração Pública Brasileira. Dicionário da administração colonial. Rio de Janeiro: Mapa/Coged/Arquivo Nacional, 28 de junho de 2011. Available at <<http://linux.an.gov.br/mapa/?p=4660>>. Accessed on: 25 apr. 2017.

<sup>26</sup> ANNAES do Parlamento Brasileiro. Assembleia Nacional Constituinte. Rio de Janeiro: Tipografia do Imperial Instituto Artístico, 1874. Sessão de 10 maio de 1823, v. 1, p. 36-37.

<sup>27</sup> *Ibidem*, p. 39-40.



Representatives such as Moniz Tavares, Carneiro da Cunha and Paula Mello, even with minority positions, insisted in the choosing of the leaders by means of voting. They considered that the subtraction of the electoral character of the provincial governments would throw the Constituent Assembly under the accusation of being despotic. According to those representatives, attention was necessary due to the vivid memory all Brazilians had of the authoritarianism of the old capitães-mores (captaincy governors) directly designated by the Portuguese Empire. Yet the opposition considered that the government boards, of local choice, had caused great instability and anarchy in the country. Such disorders were fed by the Portuguese parties, which were against to Independence, and by Republican parties, which were sympathetic to separatism in American fashion<sup>28</sup>. The objection to this kind of arguments involved serious political tension in which representatives were literally accused of sedition and anarchy<sup>29</sup>.

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The discussion lasted from May to October when, finally, the law about the provisional government of the provinces was approved with 37 articles<sup>30</sup>. The president was considered the administrator of the province and designated by the Emperor. A Council composed by elected citizens was also provided<sup>31</sup>. Curiously, the local judicial au-

<sup>28</sup> Ibidem, sessão de 26 de maio de 1823, v. 1, p. 122.

<sup>29</sup> José Martiniano de Alencar (representative of Ceará) said in a speech that “the situation of a Brazilian representative was a very sad one” under those circumstances, because any opinion against representative Andrada was countered with sentences such as: “[...] disavowed itself; proffered ignorant and seditious ideas; did not understand what was said; are anarchical assertions; and many others with which the illustrious preemptive (sic) is used to favor a few representatives who, in such a small minority, would counter his opinions in this assembly; such attacks are proffered by a representative who, besides oratory strength, is endowed with intimate family relations with various members of the executive power, and who, by consequence, has the moral and physical strength on his side, these attacks (I say) seem to be arranged on purpose to terrify and make collapse these same few representatives who, in minority, are opposed to his opinions. [...]”. Ibidem, sessão de 16 de junho, v. 2, p. 73-74.

<sup>30</sup> Provisional, because there would be clauses about that subject on the Constitution to be approved by the Assembly.

<sup>31</sup> LEI de 20 de outubro de 1823. In: BRASIL. Coleção das leis do Império do Brasil. Brasília: Câmara dos Deputados, [s. d.]. Available at: <<http://www2.camara.leg.br/atividade-legislativa/>

thority chosen by the people – the judge of the peoples – part of Mello e Souza’s proposal, disappeared in the discussion<sup>32</sup>. Even so, the elected judges appeared in the bill of Constitution, in the 212th article, for the local administration of districts<sup>33</sup>. But there were not debates in the Assembly to clarify the institutional outlines of this magistracy<sup>34</sup>.

The monarchic solution was presented, thus, as a division line between the old and the new<sup>35</sup>. The Constitution bill by Andrada Machado, over which the Assembly worked, marked the independent character of magistrates in judicial matters through the 7th article of the decree on the administration of provinces. Besides, the proposition introduced a mixed system of judicial administration with the elective character of local magistrates – the justices of the peace – and the establishment of the jury.

## 2. Justices of the peace: a liberal artifact

Even though they united in relation to the monarchic solution, the Constituents diverged about the foundation of the authority of political sovereignty. Some considered that only the representatives of

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legislacao/publicacoes/doimperio>. Accessed on: 28 jan. 2017.

<sup>32</sup> The judge of the peoples was, in the Portuguese Empire, the representation of workers or artisans of trade corporations in the Senate of the Chamber. The judge of the people should remind the king of the common good and safekeeping of the interests of the people. SERRÃO, Joel. Juiz do povo. In: \_\_\_\_\_ (Dir.). Op. Cit., p. 444.

<sup>33</sup> “Art. 210. In each district there shall be a subpresident and a council of the elective district. Art. 211. In each term there shall be an executive administrator, denominated decurio, who shall be the president of the municipality, or chamber of term, in which all the economic and municipal government shall reside. Art. 212. The decurio shall have no part in the judicial Power, that is reserved to the elective judges of the term”. Ver: MELLO, Francisco Ignacio Marcondes Homem de. Op. Cit., p. 94.

<sup>34</sup> The rejection of the figure of the judge of the peoples might express the reprobation by the constituents of corporative representation in the constitution, as registered in the 17th article: “The corporations of trades, judges, scribes and masters are abolished”. ANNAES do Parlamento Brasileiro – Assembleia Nacional Constituinte. Op. Cit., v. 5, p. 7.

<sup>35</sup> About the experimentalism of the period, see: LOPES, José Reinaldo de Lima. A constituição moderna. In: BERBEL, Márcia; OLIVEIRA, Cecília Helena de Salles (Orgs.). A experiência constitucional de Cádiz: Espanha, Portugal e Brasil. São Paulo: Alameda, 2012.

the nation and the king were legitimate holders of the power<sup>36</sup>. Others saw the people as the only holder of sovereignty<sup>37</sup>. Andrada Machado, in the Constituent Assembly, suggested that the confusion and lack of differentiation between people and nation would give way to anarchy. The nation would mean the monarch and his subjects. The people would be only the subjects. The sovereignty would be formed by the social reason, collection of individual reasons, and the people would be the body obedient to that reason<sup>38</sup>. The closing of the constituent left this debate unfinished. The constitution offered to Brazil by Pedro I, in 1824, clearly adopted the concept of national sovereignty<sup>39</sup>. However, there was the provision of the General Council of the Province and the Chamber of Districts, in which citizens would have the right to interfere with the business of the province<sup>40</sup>.

<sup>36</sup> In 1791, the French Constitution thus defined sovereignty: "Title III. On the public powers. Article 1. Sovereignty is one, indivisible, inalienable and indefeasible. It belongs to the Nation and no part of the people and no individual can give itself its exercise. Article 2. The Nation is the only one from which all powers emanate, but cannot exercise them unless by delegation. The French Constitution is representative: the representatives are the Legislative Bodies and the King". See: SOBOUL, Albert. *Dictionnaire historique de la Révolution Française*. Paris: PUF, 2006.

<sup>37</sup> In 1793, the French made alterations in the Declaration of the Rights of Man and Citizen, adding articles. The subject of sovereignty was treated in the 25th article of the Declaration of 1793: "Art. 25. Sovereignty resides in the people; it is one and indivisible, indefeasible and inalienable". Constitutional Act of 1793: "Art. 2º. The French people are distributed, by the exercise of its sovereignty, in primary assemblies of the cantons. [...] Art. 25. Each Assembly is constituted by the union of the votes and it elects a representative for the organ designated as the most central". See: SOBOUL, Albert. *Loc. Cit.*

<sup>38</sup> ANNAES do Parlamento Brasileiro. *Op. Cit.*, v. 1, p. 55.

<sup>39</sup> "Art. 1. The Empire of Brazil is the political association of all Brazilian Citizens. They form a free and independent Nation, that does not admit any other tie of union or federation opposed to its Independence." *CONSTITUIÇÃO Política do Império do Brasil*. Rio de Janeiro: Império do Brasil, 1824.

<sup>40</sup> "Art. 71. The Constitution recognizes and guarantees the right of every citizen to interfere in the business of his province and that are immediately relative to his particular interests. Art. 72. This right will be exercised by the Chambers of Districts and by the Councils that, with the title of General Council of the Province, shall be established in each province which is not the Capital of the Empire.". *CONSTITUIÇÃO Política do Império do Brasil*. *Loc. Cit.*

In 1826, the Emperor found himself forced to call the General Assembly, whose representatives had been elected in 1824. With the establishment of the Parliament, the truly representative times in Brazil started<sup>41</sup>. But, according to John Armitage, “[...] the elected Chamber in Rio de Janeiro [...] was suspicious of the stability of the new order of things; and many representatives considered the call as a step taken to fool the people [...]”<sup>42</sup>. In the Speech of the Throne, on May 6th 1826, Pedro I tried to dissuade the representatives of the bad feelings towards his government, and described his effort so that the Empire would correspond to the “constitutional system”. The Assembly called by the monarch was then busy with the elaboration of new laws and the abolition of those proposals that were against the Constitution.

The representatives, in spite of their suspicions, were engaged in the idea of giving the country a legislation that was adequate to the new political order. According to Tarquínio de Sousa<sup>43</sup>, several subjects marked the debate in the National Assembly: the responsibilities of the ministries of State and of public employees, the providing of offices in the magistracy, the law of naturalization, freedom of the press, freedom of opinion and criticism, abolition of personal forum, navigation companies, creation of law schools, among others. There was room to even bring the problem of the elected local governments to the table.

The Representative Diogo Feijó presented, in the session of July 11th 1826, the bill about the structure and running of provincial and municipal governments<sup>44</sup>. It so happened that the Constitution expres-

<sup>41</sup> PEREIRA, Vantuil. *Ao soberano congresso: direitos do cidadão na formação do Estado imperial brasileiro (1822-1831)*. São Paulo: Alameda, 2010. p. 202.

<sup>42</sup> ARMITAGE, John. *Historia do Brazil, desde a chegada da real familia de Bragança em 1808, até a abdicação do Imperador D. Pedro I, em 1831*. Rio de Janeiro: Typ. Imp. e Const. de J. Villeneuve e Comp., 1837. p. 165.

<sup>43</sup> SOUSA, Octavio Tarquínio de. *História dos fundadores do Império do Brasil: Diogo Antônio Feijó; três golpes de Estado*. Rio de Janeiro: José Olympio, 1972. v. VI.

<sup>44</sup> ANNAES do Parlamento Brasileiro. *Câmara dos Deputados*. Rio de Janeiro: Typografia do Imperial Instituto Artístico, 1874. Sessão de 11 de julho de 1826, v. 3, p. 126 e ss.



slly forbid the election of presidents of the provinces, but approved of the elective character of municipal governments<sup>45</sup>. The bill was discussed for the remain of 1826, and on May 17th 1827, representative Bernardo Vasconcellos requested that only the part about the justices of the peace be brought for discussion, “[...] because these authorities are the ones that for the moment are the most essential. With regards to the presidents, we have a law made by the Constituent Assembly [...]”<sup>46</sup>. With much support, the representative gave to the Assembly, using this pretext, the chance of partially dispersing the powers concentrated by the Imperial government.

The attention of the representatives was immediately turned to the elected magistrates, considered as “[...] great democratic institution that the theoreticians of the Chamber wanted to arm with excessive powers”<sup>47</sup>. In the Americas, the European experience of the judges of the peace spread mainly under the influence of the French model. According to Darío Barriera<sup>48</sup>, the institution was first established within the current borders of Argentina in the old province of Buenos Aires in 1821. The Annals of parliamentary discussions reflected the influence of other nations on the bill, since sometimes the experiences of England, France and even the United States were cited. There was even opportunity<sup>49</sup> for an explanation on the origin of the justices of the peace – a position that, while formally created in 1347, was understood by the representatives as “keeper” of freedom<sup>50</sup>. The liberal political cul-

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<sup>45</sup> Representative Nicolau Vergueiro also presented a bill about the municipal administration, in which the subject of the judges of the peace covered 20 articles. See: ANNAES do Parlamento Brasileiro. Op. Cit. Sessão de 30 de agosto de 1826. Vol. 4, p. 312 e ss.

<sup>46</sup> ANNAES do Parlamento Brasileiro. Câmara dos Deputados. Rio de Janeiro: Hyppolito José Pinto & Ca., 1875. Sessão de 17 de maio de 1827, v. 1, p. 117.

<sup>47</sup> SOUSA, Octavio Tarquínio de. História dos fundadores do Império do Brasil: Diogo Antônio Feijó; três golpes de Estado. Op. Cit., p. 83.

<sup>48</sup> BARRIERA, Darío G. Justicia de proximidad: pasado y presente, entre a historia y el derecho. PolHis, Mar del Plata [Argentina], ano 5, n. 10, jul./dez 2012, p. 50-57.

<sup>49</sup> ANNAES do Parlamento Brasileiro. Op. Cit., sessão de 22 de maio de 1827, v. 1, p. 151.

<sup>50</sup> About justices of the peace, see: PUTNAM, Bertha Haven. The transformation of the keepers of the peace into the justices of the peace 1327-1380. Transactions of the Royal Historical Society, v.

ture treated the institution as the ideal of a local government and pacification of citizens. Therefore, the constitutions of Cádiz, in 1812, and France, in 1791, had stipulations surrounding these justiceships<sup>51</sup>. In fact, since the law of judiciary reformation from 1790, the French gave conciliations to justices of the peace<sup>52</sup>. In England, these authorities remained designated by the Crown and the French and American constitutionalism<sup>53</sup> assigned to primary assemblies the choice of these judges.

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12, p. 19-48, 1929. LANDAU, Norma. The justices of the peace, 1679-1760. Berkely: University of California Press, 1984.

<sup>51</sup> Constitution of 1791. On the public powers – Chapter V. On the judicial power. Art. 6: “The ordinary Tribunals cannot receive any civil action without confirming the presence of the parties, or that the appellant has cited the contrary party in front of mediators to attempt to arrive at conciliation” (FRANCE. Constitution Française de 1791. Paris: Conseil Constitutionnel, [1791?]. Available at: <<http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/la-constitution/les-constitutions-de-la-france/constitution-de-1791.5082.html>>. Access on: 20 jan. 2017). Constitution of 1812. Art. 284: “With no proof that one has attempted conciliation, no litigation will be started (SPAIN. Constitucion política de la Monarquía Española : promulgada en Cádiz á 19 de Marzo de 1812 grabada y dedicada a las Cortes por José María de Santiago [...]. [s.l]: [s.n], 1822. p. 100. Available at: <<https://www.wdl.org/pt/item/15287/view/1/110/>>. Accessed on: 20 jan. 2017).

<sup>52</sup> Decree of August 16 1790. Title X. Article first: “In all matters that exceed the competence of the judge of the peace, this judge and his assistants will form a board of peace and conciliation”. Article 7: “The requests of hearing of the district tribunals will not be received if the requester does not present a copy of the certificate of the board of peace of the district, in which the case was heard, with proof that the contrary part was vainly called in front of that board for conciliation or that the mediation was fruitless” (LOI du 24 août 1790 sur l’organisation judiciaire. Available at: <<http://mafr.fr/fr/article/lois-des-16-et-24-aout-1790-sur-lorganisation-judi>>. Accessed on: 20 jan. 2017). About that institution in France, see: DISCOURS de remerciement aux citoyens de la section de la Rue-Poissonnière, prononcé le 17 novembre 1790 dans l’assemblée générale, par M. Buob, sur sa nomination à la place de juge de paix. Paris: Tremblay, 1790. CÈRE, Paul. Manuel du juge de paix et du justiciable de la justice de paix. Paris: Cotillon, 1854.

<sup>53</sup> During the Empire, in 1814, the choice of the justices of the peace became a prerogative of the central power. “With the consulate, a lively reaction against the more revolutionary characteristics of the tribunals of the peace in France was felt. Its place outside the judiciary hierarchy stricto sensu, its immediate proximity as pacifier and of the parts, the close collaboration between judges and assistants that helped him, in short, the direct choice of the person of the conciliator by the citizens, all these specific traits were slowly erased, with no respect for the constituent’s work”. METAIRIE, Guillaume. Le monde des juges de paix de Paris. Paris: Loysel, 1994. See also: NAN-DRIN, Jean-Pierre. La justice de paix à l’aube de l’indépendance de la Belgique, 1832-1848: la professionnalisation d’une fonction judiciaire. Bruxelles: Publications des Fac. St. Louis, 1998. p. 33.

Few representatives in the General Assembly considered inappropriate to augment political and judicial powers of the justices of peace. Even so, the lawmaker Luiz Cavalcanti claimed that the constitution “mentioned” judges of law and jury “[...] when it was dealing with judicial power and the power of compelling the parts in contentious or criminal matters”<sup>54</sup>. Therefore, he argued against handing out the social control to elected magistrates. Even then, like a liberal experimentalism, the institution was changed under the rule of the General Assembly. Furthermore, this idea attracted strong criticism to the Imperial decree that authorized court judges to conciliate parts while justices of the peace were not chosen in the different parts of the country<sup>55</sup>. The legislator Couto Ferraz<sup>56</sup>, exaggerating in his criticism, accused that initiative of contradicting at the same time “the letter and the spirit of the constitution”, since it turned conciliation into one more rite in the judicial processes.

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It is necessary to consider that in Representative Nicolau Vergueiro’s bill already presented in the session of August 30<sup>th</sup> 1826, there was a significant increase in the power of judges in controlling social discipline. The magistrates would then be able to prevent and investigate misdemeanors and judges small disputes, being also responsible for the arresting of criminals or suspects<sup>57</sup>. The extent of these powers called the attention of the parliamentarians, even those who were fierce in defending the magistracy. In 1827, Feijó himself became cautious, because he considered the changes to be incompatible with “[...] the state of our public instruction [...]”. And he asked: “[...] how can we leave in the hands of our justices of the peace certain judicial matters when they should merely conciliate parts, as demanded by the Cons-

<sup>54</sup> ANNAES do Parlamento Brasileiro. Op. Cit., sessão de 22 de maio de 1827, v. 1, p. 152.

<sup>55</sup> DECRETO de 17 de novembro de 1824. In: BRASIL. Coleção das leis do Império do Brasil. Brasília: Câmara dos Deputados, [s. d.]. Available at: <<http://www2.camara.leg.br/atividade-legislativa/legislacao/publicacoes/doimperio>> . Accessed on: 28 jan. 2017.

<sup>56</sup> Pai de Luís Pedreira do Couto Ferraz, Visconde do Bom Retiro.

<sup>57</sup> ANNAES do Parlamento Brasileiro. Op. Cit., sessão 30 de agosto de 1826, v. 4, p. 315 e ss.

titution?"<sup>58</sup>. Representative Bernardo Pereira de Vasconcellos also expressed worry with the possible emergence of arbitrariness due to the generality of these powers<sup>59</sup>. However, others displayed full conviction of the benefits of the popular magistracy and stated that the justice of the peace "[...] has nothing to do with executive power, because he is a magistrate of the Nation, not a magistrate of the executive power"<sup>60</sup>.

In October 1827, a regiment containing fifteen articles about the justices of the peace in Brazil was voted on, which increased their jurisdictional powers. Besides conciliations, the elective magistrates accumulated functions of political, judicial (in minor cases), administrative (such as the division of blocks and designation of inspectors) and electoral nature (such as the qualification of voters and electors of each district and the acceptance of justifications of absence)<sup>61</sup>. The organic law of the justices of the peace also extended their powers over civil causes up to the amount of 16 mil réis (16\$000), examinations of corpus delicti (criminal investigation), stipulation of bail, maintenance of order, arrest of drunkards and offenders and over interrogation of misdemeanors. In the end, it became a magistracy with formidable powers.

In the Senate, the members of parliament recognized, on one hand, the extreme usefulness of the bill proposed by the representatives but they accused it of imperfection. During many sessions, they discussed each article and paragraph. From a general point of view, they were concerned with arguing possible collisions between the functions of the justices of the peace and other instances of authority, such as court judges, *almotacés*, *juiz-de-fora* and ordinary judges. Due to the fact that the bill about municipalities was still pending in the Senate, the bill about justices of the peace would anticipate certain decisions.

<sup>58</sup> ANNAES do Parlamento Brasileiro. Op. Cit., sessão de 21 de maio de 1827, v. 1, p. 142.

<sup>59</sup> *Ibidem*, p. 139 e 143.

<sup>60</sup> *Ibidem*, p. 141.

<sup>61</sup> MOTTA, Kátia Sausen. Juiz de paz e cultura política no início do Oitocentos (Província do Espírito Santo, 1827-1842). 2013. 210f. Dissertação (Mestrado em História). Programa de Pós-Graduação em História, Universidade Federal do Espírito Santo, Vitória, 2013. p. 64-65.



The debate was concluded in the session of August 8, 1827, when the Senate decided to send article 13 of the bill and amendments to the Committee of Legislation. They considered it was barbaric to give the justice of the peace the power of passing judgment on causes of up to thirty thousand réis or imprisonment for up to three months without the right to interlocutory appeal<sup>62</sup>. The article was amended in the Senate, giving it new wording: "When the justice of the peace imposes any sentence, the defendant, if he is arrested, will be conducted with the process to the respective Court Judge; if he is free, he will be notified"<sup>63</sup>. On the same subject, article 14 was modified, adding that the appeals to decisions of criminal nature under competence of the justices of the peace would be evaluated by the court judge and two other neighboring justices of the peace. This board was then responsible for confirming or revoking the proffered sentence with no right to appeal<sup>64</sup>. Vasconcellos convinced his peers of the usefulness of the Senate amendments, even though he clearly considered that the Chamber's bill was far superior: "[...] but I will approve it, because I know of the state of the administration of police in the provinces"<sup>65</sup>.

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The Parliamentary year of 1828 started with a protest by the representatives, especially Bernardo Vasconcellos, Paula e Souza, Lino Coutinho, Custódio Dias and Hollanda Cavalcanti, against the absence of justices of the peace in several places in the country. They considered a most severe omission by the government not to provide for the enforcement of the law about justices of the peace approved the previous year. In the session of June 3rd of that year, the minister of the Empire, Araújo Lima, recognized problems in the elections for the new magistracy. He also declared that "[...] the election of justices

<sup>62</sup> ANNAES do Senado do Império do Brazil: segunda sessão da primeira legislatura. Rio de Janeiro: [s. l.], 1911. Sessão de 9 de agosto de 1827, v. 2, p. 163.

<sup>63</sup> Ibidem, p. 214.

<sup>64</sup> See: ANNAES do Parlamento Brasileiro. Op. Cit., sessão de 22 de agosto de 1827, v. 4, p. 191.

<sup>65</sup> Ibidem, p. 259.

of the peace demands a law that is in harmony with the one for their creation and with the Constitution”<sup>66</sup>.

Curiously, the elective character of the local governments came back to the representatives’ agenda. On the session of July 9, 1828, the minister of Justice, Clemente Pereira, presented to the representatives, a bill to “take away all arbitrariness of intelligence from the authorities to whom the execution of the aforementioned articles of the quoted law falls”<sup>67</sup>. The bill consisted of the election of the magistrates by assemblies composed of good men<sup>68</sup>, responsible for nominating six electors, who would choose the justices of the peace<sup>69</sup>. The lawmakers, even the ones in the opposition such as Bernardo Vasconcellos and Souza França, agreed that the discussion of the bill was well-timed, but objected to the terms used by the minister. Representative Custódio Dias criticized: “[...] what would be good men; the constitution determines that, to be a voter, one has to be in full use of his political rights; that is enough and no quibble”<sup>70</sup>. During the discussion, some representatives called out the constitutionality of the matter, since the election of the justices of the peace should happen the same way the city councilors were chosen.

Therefore, the government bill put the election of the new magistrates under the scrutiny of the electors, adopting the rules of indirect elections for the representatives. For representative Bernardo Vasconcellos, the constitutional definition of indirect elections was intended only for the choosing of General Council of provinces, general re-

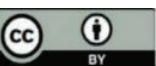
<sup>66</sup> ANNAES do Parlamento Brasileiro. Câmara dos Deputados. Rio de Janeiro: Tipografia Parlamentar. 1876. Sessão de 3 de junho de 1828, v. 2, p. 16.

<sup>67</sup> Ibidem, sessão de 8 de julho de 1828, v. 3, p. 73.

<sup>68</sup> This expression was more common in the Old Regime. See: BICALHO, Maria Fernanda. As câmaras ultramarinas e o governo do Império. In: FRAGOSO, João; BICALHO, Maria Fernanda; GOUVÊA, Maria de Fátima. O antigo regime nos trópicos: a dinâmica imperial portuguesa (séculos XVI-XVIII). Rio de Janeiro: Civilização Brasileira, 2001.

<sup>69</sup> Articles 2nd to 5th. See: ANNAES do Parlamento Brasileiro. Op. Cit., sessão de 8 de julho de 1828, v. 3, p. 77.

<sup>70</sup> Ibidem, sessão de 23 de julho de 1828, v. 3, p. 174.



representatives and senators<sup>71</sup>. He also argued that the procedure for the election of city councilors was not in the text of the Constitution, leaving it for the city council to decide whatever was convenient to the members of the parliament. Bernardo Vasconcellos guaranteed, with this interpretation of the Constitution, the opportunity to turn the political table, since the omission would give the possibility to directly elect the justices of the peace and city counselors. Lino Coutinho<sup>72</sup> considered the bill as an efficient method to constitutionalize direct elections to justices of the peace. In his opinion, all they needed was to obey the constitutional rule through which the election of the justices of the peace should follow the method of choosing city councilors<sup>73</sup>. If the MPs decided that the members of City Councils should be chosen by primary assemblies, the justices of the peace would be selected in the same manner.

Another point of argument consisted in the authority responsible for judging the justices of the peace in case of a misdemeanor or crime of responsibility<sup>74</sup>. The question was directly connected with the elective character of these judges. On one side, Minister Clemente Pereira reported complaints because unqualified individuals were chosen to be magistrates<sup>75</sup>. Besides, it should be in the hands of the Emperor to suspend justices of the peace<sup>76</sup>. Otherwise, a good number of the representatives considered the bill would be converted into a weapon of control of the sovereign decisions of the people. "Such

<sup>71</sup> Ibidem, p. 175.

<sup>72</sup> Ibidem, p. 174.

<sup>73</sup> CONSTITUIÇÃO Política do Império do Brasil. Rio de Janeiro: Império do Brasil, 1824. Art. 162: "To this end, there will be justices of the peace, who will be elected for the same time and manner by which city councilors are elected. Their attributions and districts will be regulated by law."

<sup>74</sup> ANNAES do Parlamento Brasileiro. Op. Cit., sessão de 4 de agosto de 1828, v. 4, p. 20.

<sup>75</sup> Ibidem, p. 21.

<sup>76</sup> Ibidem, p. 22.



questions should never belong to the government” and the loss of the office should only happen “by sentence”<sup>77</sup>.

Both questions were decided in favor of the liberal political culture that was predominant in the House. The direct election of the magistrates by voters in primary assemblies was selected, but a clause of threshold was added, so that the candidates to the office should have the attributes of electors<sup>78</sup>. About the magistracy, the press circulated various concepts in regards to its elective character and its functions. While confirming the constitutionalism as the system to be followed in the choosing of the candidates to the office, it was a frequently repeated opinion that it was necessary to choose “well established” men, “free of needs” and, above all “of right mind”. In the general opinion, the condition of being a voter was not enough to prevent the accession of “cunning and evil men”, whose “tricks would discredit the institutions”<sup>79</sup>.

In spite of the legislations of 1827 and 1828, due the doubts raised by the institutions some manuals for the justices of the peace came to light, aiming at guiding the fulfilling of the new duties. The French editor Pedro Plancher wrote a small volume, duplicating what existed in France, for the learning of the legal recommendations of the office. According to a piece of news in the *Diário do Rio de Janeiro*, the booklet came with several laws and decrees. In a similar effort, in 1829, two books regarding the elected magistracy were republished – the *Comentário à lei de juiz de paz*, by Bernardo Pereira Vasconcellos, and the *Guia do juiz de paz nodesempenhodeseusdeveres*, by Diogo Antonio Feijó<sup>80</sup>. The two works intended to promote certain knowledge of the new institution and its practice in Brazil. Both Vasconcellos and Feijó offered forms to be followed by the justices of the peace in formalizing their decisions.

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<sup>77</sup> Ibidem, p. 21.

<sup>78</sup> LEI de 1º de outubro de 1828. In: BRASIL. Coleção das leis do Império do Brasil. Brasília: Câmara dos Deputados, [s. d.]. Available at: <<http://www2.camara.leg.br/atividade-legislativa/legislacao/publicacoes/doimperio>>. Accessed on: 28 jan. 2017.

<sup>79</sup> A AURORA FLUMINENSE. Rio de Janeiro, n. 135, 1828. p. 560.

<sup>80</sup> See: CAMPOS, Adriana P.; SLEMIAN, Andréa; MOTTA, Kátia S. Juizes de Paz: um projeto de justiça cidadã nos primórdios do Brasil Império. Curitiba: Juruá, 2017.

The concern of connecting the justice of the peace to the law was paramount, as textually recommended by Feijó: "The Justice of the Peace should read his law many times, so he does nothing above or below what it determines. For more clarity, however, we explain his various duties, be it in the Civil or in the Criminal, according to the same law"<sup>81</sup>. Thus, deputies turned into authors of works that publicized the legislation and promoted guidance to the juridical practice of the new elected magistracy.

### 3. The citizen in control of social discipline

The other two marks of the deepening of the powers of the justices of the peace as local authorities are the promulgation of the Code of Criminal Procedure and the Additional Act to the Constitution. It is necessary, however, to consider the hastiness of the events in Brazil from the reopening of the Parliament to the abdication. If in the first years of parliament the opposition seemed timid, in 1829 the representatives felt safe to promote a war of opinions. Boldness was not lacking in the interpretation of the decrees of February 27 for the repression of rebellions taking place in Recife and Santo Antão (Pernambuco). The government suspended the constitutional guarantees of individual freedom in that province. The revolt reflected the jurisdictional dispute between the capitães mores (master captains) and the justices of the peace in that region. The prestige of the former participants in the Confederation of the Equator, elected even though in prison, was questioned<sup>82</sup>.

Many representatives spoke in the session of May 29, 1829 condemning the acts of the Emperor, considered unconstitutional, and recommended the dismissal of the ministers of War and Justice<sup>83</sup>. As

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<sup>81</sup> FEIJÓ, Diogo Antônio. Guia do juiz de paz do Brasil no desempenho de seus deveres por um deputado, amigo da instituição. Rio de Janeiro: Typographia de Torres, 1829. p. 4.

<sup>82</sup> CARVALHO, Marcus J. M. de. *Aí vem o capitão-mor: as eleições de 1828-30 e a questão do poder local no Brasil imperial*. Tempo, Rio de Janeiro, v. 7, n. 13, p. 157-187, 2002. p. 175 e 177.

<sup>83</sup> ANNAES do Parlamento Brasileiro. Câmara dos Deputados. Rio de Janeiro: Typografia de H. J. Pinto, 1877. Sessão de 29 de maio de 1829, v. 2, p. 167-168.

the Viscount of Uruguay<sup>84</sup> explained, the parliamentary opposition understood that the “[...] most adequate way of making the government walk the constitutional line was by accusing the ministers[...].” The Emperor, on his turn, showed his impatience presenting himself every day at the window of the palace facing the House of Representatives and “unleashing his anger in personalities against the heads of the opposition”<sup>85</sup>. In short, the king got weaker with the constant struggle against his ministers, debilitating his image in the public eye<sup>86</sup>.

Shaken by these events, the General Assembly carried out a long debate about the budget of the year 1830. Because of the previous happenings, in the words of Otávio Tarquínio<sup>87</sup>, the Emperor was forced to call an extraordinary parliament<sup>88</sup>. Acting his part, Pedro I congratulated the representatives for the work carried out in the “consolidation of the constitutional monarchic system”<sup>89</sup>. Therefore, he considered that the Constitution was his rearguard in this rough struggle. Nonetheless, that was not what took place in the development of the works. House of Representatives and Senate working together, the representatives discussed the urgency of approving the Criminal Code. They defended that the experience would be “perfect” the legislation,

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<sup>84</sup> URUGUAI, Visconde do. Ensaio sobre o direito administrativo. São Paulo: Editora 34, 2002. p. 452.

<sup>85</sup> ARMITAGE, John. Op. Cit., p. 253.

<sup>86</sup> PANDOLFI, Fernanda Cláudia. Política, imprensa e a participação dos militares na abdicação de Dom Pedro I. História Unisinos, v. 16, p. 283-293, 2012. p. 286.

<sup>87</sup> SOUSA, Octavio Tarquínio de. História dos fundadores do Império do Brasil: Bernardo Pereira de Vasconcellos; Evaristo da Veiga. Op. Cit., p. 101.

<sup>88</sup> The Emperor brought forth the following subjects: a) conclusion of the budget law; b) organization of a national bank; c) discussion of the penal code and the criminal procedure; d) collection of the tenth; e) regiment of the General Council of the provinces; f) subjects not concluded in the previous session. ANNAES do Parlamento Brasileiro. Sessão imperial de abertura da Assembleia Geral Legislativa. Rio de Janeiro: Câmara dos Deputados, 8 de setembro de 1830.

<sup>89</sup> ANNAES do Parlamento Brasileiro. Câmara dos Deputados. Rio de Janeiro: Typografia de H. J. Pinto, 1878. Sessão imperial de encerramento da Assembleia Geral Legislativa em 30 de novembro de 1830, v. 2, p. [s. n.].

because what was important at that time was the defense of the citizens against cruel sentences<sup>90</sup>.

Parallel to this intense parliamentary war, rumors were the hallmark of the period right before the abdication of Pedro I, as highlighted by Fernanda Pandolfi<sup>91</sup>. Towards the end of 1830, an important push to the aspirations of the liberals came from abroad. News of the revolution responsible for the fall of the restored French monarchy arrived to the different provinces<sup>92</sup>. The triumph of the liberals in France stimulated even more criticism against the government, who tried to react to it with the visit of the Emperor to the province of Minas Gerais. With his presence, he expected to inspire the more moderate liberals, with the intention to change the political scene and public opinion. On the contrary of what he expected, Pedro I managed to further his unpopularity and show how scarce his support was<sup>93</sup>. On his way back, his entourage almost ended up being witness to the popular revolt that took place for three days in March 1831, an episode well known as *noite das garrafadas*<sup>94</sup>.

Even isolated and unpopular, the Emperor severed the connection with the few liberals in his government by dismissing them from his ministries<sup>95</sup>. In the first days of April, popular agitation increased and a

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<sup>90</sup> About that topic, see: CAMPOS, Adriana Pereira. Nas barras dos tribunais. 2003. 277 f. Tese (Doutorado em História Social). Programa de Pós-Graduação em História Social. Universidade Federal do Rio de Janeiro, Rio de Janeiro, 2003. p. 111-115.

<sup>91</sup> PANDOLFI, Fernanda Cláudia. Rumores e política no Rio de Janeiro e em Minas Gerais no final do Primeiro Reinado. História, São Paulo, v. 33, n. 2, p. 307-329, jul./dez., 2014.

<sup>92</sup> See: ARMITAGE, John. Op. Cit., p. 253. A AURORA FLUMINENSE, Rio de Janeiro, n. 39, 22 de setembro de 1830. p. 1-2. ASTRO DE MINAS, São João del-Rei, n. 447, 30 de setembro de 1830. p. 4. O POPULAR, Recife, n. 42, 23 de outubro de 1830. p. 168.

<sup>93</sup> PANDOLFI, Fernanda Cláudia. A viagem de D. Pedro I a Minas Gerais em 1831: embates políticos na formação da monarquia constitucional no Brasil. Revista Brasileira de História, São Paulo, v. 36, n. 71, p. 35-55, jan./abr. 2016.

<sup>94</sup> About that topic, see: RIBEIRO, Gladys Sabina. A liberdade em construção: identidade nacional e conflitos antilusitanos no Primeiro Reinado. Rio de Janeiro: Relume-Dumará, 2002.

<sup>95</sup> Roderick Barman and Jean Barman propose the curious thesis that the exclusion of young men with diplomas from Coimbra (graduated after 1816) from ministries was the main cause of the growing opposition to the Emperor. For the authors, this factor and certain liberal wave resulted

crowd gathered in Campo do Santana, in the Palace of the Municipal Council of Rio de Janeiro, with the goal of demanding the reintegration of the old ministry. Following these events, the abdication took place, which did not mean the rupture with the monarchic solution, because the children of Pedro were in the minds of the opposition to succeed him. The Emperor himself carried on his renunciation and left his son Pedro as his constitutional successor.

Pedro I's exit scene meant the discussion of the organization of a Regency for the length of the minority of the heir to the throne. Roderick Barman and Jean Barman<sup>96</sup> suggest there was a significant generational change with the departure of the first Emperor, confirmed by the analysis of the occupiers of the ministries during the Regency. Out of the 22 ministers who held diplomas of Baccalaureate in Law, eighteen of those ministers had graduated after 1816. Only one of the four remaining had graduated before 1799. According to the authors, men who had graduated in Coimbra were the dominant group, not only in the judiciary system, but in politics. Therefore, the juridical career became the best way to access politics. At the same time, strong ties were created between the judicial apparatus and politics.

The Parliament fulfilled its duty by means of the organization of the Criminal Procedures Code. On November 29<sup>th</sup> 1832, the legal body of rules for processes, the Criminal Procedures Code, came into force. The legislators were concerned about shielding politics against the persecution of governments and protecting the citizens from cruel sentences. Besides, its content was not restricted to criminal matters, since it included provisional dispositions about the administration of Civil Justice. The Criminal Procedure Code tried to simplify appeals,

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in the abdication of Pedro I in 1831. The former ministries of the Emperor were discredited and only nine of the 46 nominated in the government would occupy the same position after his fall. See: BARMAN, Roderick; BARMAN, Jean. The role of the Law Graduate in the political elite of Imperial Brazil. *Journal of Interamerican Studies and World Affairs*, v. 18, n. 4, p. 433, nov. 1976.

<sup>96</sup> BARMAN; BARMAN, Op. Cit., p. 435-438.



eliminating, for example, petition and instrument appeals, in order to make Justice faster in the protection of patrimonial rights<sup>97</sup>. In this Code, the justice of the peace was consolidated as the local authority, with jurisdictional and police duties, besides the constitutionally authorized conciliations.

In each district there should be an elected judge, a scrivener, block inspectors and justice officials. The decisions by these judges related to well living, safety or presentation of passports could only be reviewed by a Board of Justice. The only situation in which one should appeal to a Court Judge about the verdict of a Justice of the Peace was regarding requests for arrest or authorization for bail. The magistrate also took responsibility for the coordination of local electoral processes, being part of a board that also included the parson and the city councilors.

The proposal of extension of the powers of the justices of the peace was anchored in its elective and local character. In the primary assemblies, according to Oliveira Vianna<sup>98</sup>, the “patuleia e a cabrada” (commoners and mixed-race) has been elevated to the condition of sovereign people. José Murilo de Carvalho<sup>99</sup>, on the other hand, considered these electoral rules as fundamental for the political participation of all free men, literate or not, in the quality of people. Evaristo da Veiga, in *A Aurora Fluminense’s* newspaper, happily announced that “There was in all parishes a higher confluence of voters, [...] and the ever growing interest gives to the hearts the flattery of hope”<sup>100</sup>. However, one can imagine that there was bossing in the election, as Francisco Belizário de Souza denounced in 1872<sup>101</sup>. But one should ask what alternative was used by the elites facing this invasion of people enthu-

<sup>97</sup> LOPES, José Reinaldo de Lima. *História da justiça e do processo no Brasil do século XIX*. Curitiba: Juruá, 2017. p. 127.

<sup>98</sup> VIANNA, Oliveira. *Instituições políticas brasileiras*. Belo Horizonte: Itatiaia; São Paulo: USP, 1987. p. 238.

<sup>99</sup> CARVALHO, Marcus J. M. de. *Op. Cit.*, p. 40.

<sup>100</sup> *A AURORA FLUMINENSE*, Rio de Janeiro, n. 140, 1829. p. 2.

<sup>101</sup> SOUZA, Francisco Belizário Soares de. *Sistema eleitoral*. Brasília: Senado Federal, 1979 [1872]. v. 18, p. 33.

siastic about the right to vote. Richard Graham<sup>102</sup> affirms patronage as the spring used by the landlords to gather votes. The occupation of municipal offices would happen, according to his analysis, under the command of these recruiters of clients.

Thomas Flory<sup>103</sup> presents a more complex view of this relation of the elites with the introduction of popular segments to the electoral process in the recently born Empire of Brazil. Without disagreeing that there were bossy expedients carried out by local elites, Flory introduces the picture under a different light. First of all, the historian warns that the elections did not threaten to bring about important social displacements<sup>104</sup>. Secondly, based on empirical data, he suggests that the elected judges were men in ascending mobility, whose electoral performance intimidated individuals in the already established elite. Moreover, the same data indicate that the new leaders, elected in the 1820's and 1830's, formed the social basis of the Brazilian moderate liberalism.

In a similar investigation, Vellasco e Campos<sup>105</sup> ascertained that, in the first election for justices of the peace in the village of São João del-Rei, in 1829, Baptista Caetano de Almeida, a merchant connected to the newly-born group of moderate liberals in the region, was elected. The strategy adopted by Baptista Caetano consisted in mobilizing his political group, having as his surrogate a strong local candidate. The composition, at the same time political and strategic, was successful in displacing an old leader, a slave owner and recipient of the title or the Order of the Knights of Christ. In Minas Gerais the same mechanism used in Bahia and Rio de Janeiro, as described by Thomas Flory, took place. And the political meaning of the justices of the peace engineered in the plan of the national elites was converted into an opportunity

<sup>102</sup> GRAHAM, Richard. Clientelismo e política no Brasil do século XIX. Rio de Janeiro: UFRJ, 1997.

<sup>103</sup> FLORY, Thomas. Op. Cit.

<sup>104</sup> Ibidem, p. 131.

<sup>105</sup> VELLASCO, Ivan; CAMPOS, Adriana Pereira. Juizes de paz, mobilização e interiorização da metrópole. In: CARVALHO, José Murilo de; CAMPOS, Adriana Pereira. Perspectivas da cidadania no Brasil Império. Rio de Janeiro: Civilização Brasileira, 2011.

for the appearance of new leaderships, even though it has not caused social rupture.

Beyond the more electoral aspect, the new magistracy built its authority through great activism when compared to the old *juiz-de-fora*. Historian Ivan Vellasco<sup>106</sup> also observed that the elected magistrates increased threefold the list of indicted in São João del-Rei between 1829 and 1832. Joelma do Nascimento<sup>107</sup> verified the same phenomenon in the city of Mariana, in Minas Gerais, between 1830 and 1839, in which 85% of the judicial resolutions came from acts of the justice of the peace. These magistrates carried out 71% of the indictments, whose forwarding to the competent judgments took a maximum of fifteen days<sup>108</sup>. Indeed, at least in Mariana, it seems that the delays in local justice happened in instances superior to the justice of the peace, and this extraordinary performance is in stark contrast with the complaints of delays due to a lack of juridical culture by laical judges<sup>109</sup>.

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Diogo Antonio Feijó, as Minister of Justice, in 1831, expressed his concern with rebellions in the various provinces and in the capital of the country. He painted a scary picture of public order, due to the disappearance of the line troops in the capital, and the security of the land was made exclusively by the National Guard. And he announced the urgency of the Penal Procedure Code to solve such problems. He proclaimed that the justices of the peace as exclusive managers of the police were inefficient: “[...] the Magistrates were in great part ignorant, weak and absent, letting the demands be eternal; and a Process decreed with the goal of making everything cautious involves in the darkness of cunning even the simplest causes”. He proposed the crea-

<sup>106</sup> VELLASCO, Ivan de Andrade. O juiz de paz e o código do processo: vicissitudes da justiça imperial em uma comarca de Minas Gerais no século XIX. *Justiça e História*, v. 3, n. 6, 2003. p. 7-8.

<sup>107</sup> NASCIMENTO, Joelma Aparecida do. A política eleitoral e judiciária na construção do Estado Imperial. Minas Gerais. (Mariana, 1828-1848). 2015. 225 f. Tese (Doutorado em História). Programa de Pós-Graduação em História, Universidade Federal de Minas Gerais, Belo Horizonte, 2015. p. 123

<sup>108</sup> *Ibidem*, p. 146.

<sup>109</sup> *Ibidem*, p. 147.

tion of magistracies designated by the government with districts cumulative with the elected magistrates. "Otherwise, without unity of faction and without means, the Government will be put outside the responsibility and the Citizens will be subject to the hazards of wrong choices"<sup>110</sup>.

Curiously, Feijó wrote, in his *Guia do juiz de paz*, from 1829, that the Constitution wanted to safeguard the citizens' rights by means of the simplicity of the processes, guided by a justice of the peace. He denounced that, even then, attorneys and lawyers kept his habits of tortuous processes, a source of superfluous expenses for the people. The priest also condemned the juridical culture of men, in his words, used to tricks. In a manual aimed precisely at avoiding the barriers created against the good execution of the law of the justices of the peace that put that office holder as the authority responsible for the block officials and from whom one should expect the maintenance of public order<sup>111</sup>.

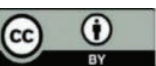
The approval of the Criminal Procedure Code, contrary to what was expected by Feijó, widened and consolidated the duties of that public agent. And precisely when the moderate liberals ascended to the leading offices in the country, during the Regency, criticisms towards the institution became tougher. In 1832, some representatives warned against the "parties" to which some justices of the peace belonged, and that they could persecute citizens outside their own political spectrum<sup>112</sup>. They were the authorities responsible for checking passports and keeping the order of the locality.

In 1833, Honório Carneiro Leão, as Minister of Justice, reported that, since August 1831, Pará was in social convulsion. According to his report, the rebellious men had taken the position of justices of the peace and sent a large number of citizens to prison. Therefore, the most probable result was that men of the rebellious "party" had been

<sup>110</sup> See report: BRASIL. Relatório do ano de 1831 apresentado à Assembleia Geral Legislativa na Sessão Ordinária de 1832. Rio de Janeiro: Ministério da Justiça, 1832. p. 5-6.

<sup>111</sup> FEIJÓ, Diogo Antônio. Op. Cit.

<sup>112</sup> ANNAES do Parlamento Brasileiro. Câmara dos Deputados. Rio de Janeiro: Typografia de H. J. Pinto, 1879. Sessão de 14 de julho de 1832, v. 2, p. 67.

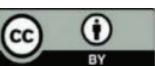


elected in that province and their actions were explained, according to the report by the minister, by their political orientation. Carneiro Leão also complained about the powers give to those justices by the new Criminal Procedure Code. According to him, the justices of the peace were accessory to elements of the National Guard who did not comply with sentences for indiscipline. He criticized the lack of power conceded to the chiefs of police, by reason of the strong limitations regarding the justices of the peace. To impose social discipline, the minister complained “[...] it is indispensable to have a better fitted police. The Justices of the Peace cannot fulfill it satisfactorily; besides, the public force cannot be at the disposal of so many justices, and there cannot be the necessary unity”. And he added: “To many of them there is lack of the intelligence, zeal and action, necessary for that duty [...]”<sup>113</sup>.

In the context of the Regency and the new political factions such as the *caramurus* and the *exaltados*, the elected justices of the peace could disagree with the concept of order imposed by the central government. The regency leaders observed that the police chiefs and the court judges had huge limitations facing local authorities with autonomy guaranteed by the Regiment of the Justices of the Peace, of 1828, and the Procedures Code of 1832. Danielle Moura<sup>114</sup> presents the judgment to the *cabanos* by the justices of the peace. In a report of 1838, the president of the province of Grão-Pará, Soares d’Andréa, accused the magistrates of being unable and of “few lights.” In his letters to the Emperor government, Soares d’Andréa connected the justices of the peace to the *cabanos*, and he denounced the “leniency” of those magistrates with the complaints and deletions of sedition. Furthermore, the

<sup>113</sup> BRASIL. Relatório do ano de 1832 apresentado à Assembleia Geral Legislativa na Sessão Ordinária de 1833. Rio de Janeiro: Ministério da Justiça, 1833. p. 22.

<sup>114</sup> MOURA, Danielle Figuerêdo. Defensores de *cabanos*? A imagem dos juizes de paz em questão. Pará, 1836-1839. In: SEMINÁRIO INTERNACIONAL DA SOCIEDADE BRASILEIRA DE ESTUDOS DO OITOCENTOS, 2., 2017, Rio de Janeiro. Anais do II Seminário Internacional da Sociedade Brasileira de Estudos do Oitocentos. Rio de Janeiro: SEO, 2017. v. 2, p. 7. Available at: <[www.seo.uff.br](http://www.seo.uff.br)>. Accessed on: 28 jan. 2017.



president defended the reviewing of the criminal code as a means to restrict the action of elected judges.

Alexandra Coda<sup>115</sup> observed the same tension between representatives of the Imperial government and justices of the peace in Porto Alegre, Rio Grande do Sul. One elected magistrate, Manoel Vaz Pinto, was sued and denounced for collusion with the rebels, in spite of the warnings and orders sent by the provincial attorney. The historian found documents in which justices of the peace prosecuted suspects of involvement with crimes of rebellion, but also produced many letters of amnesty<sup>116</sup>. Alexandra Coda<sup>117</sup> also shows that the work of the justices of the peace, which once focused on the collection of small debts and arrest of assaulters, with the Farroupilha rebellion happening, became concentrated on investigation and persecution of suspected rebels. The main activity of these men consisted of watching over the defense and protection of the city of Porto Alegre, guaranteeing the supply of provisions for the population and armament for the soldiers. The researcher concludes that the documentation does not allow the indication of the “party” of the justices were farroupilha or imperial, but she managed to determine that the autonomy was at times an element of instability in the struggle against the rebellion in the region.

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Even considering the justices of the peace as “wholesome”, the Minister of Justice Aureliano Coutinho communicated to the Assembly, in 1834, the need to “alleviate” the enormous weigh of the duties of those magistrates, mainly in regard to police affairs<sup>118</sup>. Another Minister of Justice, in 1835, was not so subtle. Alves Branco complained about the nullity of police after the approval of the Procedures Code: “We have never had a Police worthy of this name: the old General

<sup>115</sup> CODA, Alexandra. Os eleitos da justiça: a atuação dos juizes de paz em Porto Alegre (1827-1841). 2012. 171 f. Dissertação (Mestrado em História). Programa de Pós-Graduação em História, Universidade Federal do Rio Grande do Sul, Porto Alegre, 2012. p. 94.

<sup>116</sup> *Ibidem*, p. 99.

<sup>117</sup> *Ibidem*, p. 133.

<sup>118</sup> BRASIL. Relatório do ano de 1833 apresentado à Assembleia Geral Legislativa na Sessão Ordinária de 1834. Rio de Janeiro: Ministério da Justiça, 1834.

Quartermaster, entirely lacking attributions and means, was used only to arrest wrongdoers and runaway slaves [...]. In the meantime, it was still better to the one that is now established among us, formed by Justices of the Peace [...]"<sup>119</sup>.

As observed, the ministers of justice and presidents of provinces ended up concluding that the justices of the peace were many times in competition with the State in building discipline and order. These elected judges, many times, adhered to parties not always aligned with the government of the Empire. This outcome had not been understood as a result of the democratic game, but as stemming from the ignorance and lack of intelligence of the men who occupied the position of justices of the peace.

### 3) Justices of the peace or mayor: election or designation

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Going back to the last years of the First Kingdom, one might measure the force of the institution of the justices of the peace in the arbitration of conflicts. John Armitage, in his *História do Brasil*, considered the justices of the peace "conniving" with the military and the "plebs" rioting in the barracks in Largo do Moura in 1831. In the Palace of the Municipal Council, located in the old Campo do Santana, where the crowd headed for, three justices of the peace<sup>120</sup> acted as mediators between the population and the Emperor<sup>121</sup>. Municipal authorities took the demand of the dismissal of the ministry to the Palace in São Cristóvão and came back with the Emperor's proclamations, in an attempt to soothe the agitation. In view of the resistance of the throng, at the end of the afternoon, again the elected justices came to the Emperor

<sup>119</sup> BRASIL. Relatório do ano de 1834 apresentado à Assembleia Geral Legislativa na Sessão Ordinária de 1835. Rio de Janeiro: Ministério da Justiça, 1835.

<sup>120</sup> The justices of the peace of the parishes of Sant'Ana, Sacramento and São José. See: VEIGA, Luiz Francisco da. A revolução de 7 de abril de 1831 e Evaristo da Veiga, por um fluminense amante da constituição. Rio de Janeiro: Typ. Imp. e Const. de J. Villeneuve e Comp., 1832. p. 29.

<sup>121</sup> See in the "Variedades" column, under the title "Documentos", the names of the justices that took part in the event: A AURORA FLUMINENSE. Rio de Janeiro, n. 478, 25 de abril de 1831. p. 2.013.

with the request of the designation of a Ministry that the people could trust. In the early hours of April 7, the Emperor abdicated the throne, due to the reluctance and exaltation of spirits<sup>122</sup>.

In the “Rezumo istorico da revolussão rejeneradora do dia 7 de abril”, published in the *O Repúblico* newspaper’s, it is stated that the abdication had the “paternal protection of the magistrates”<sup>123</sup>. And the editor added: “Verily, the magistrates did not fail in their duties, nor tricked the trust with which they were endowed”<sup>124</sup>. According to the description, in the previous “disorders”, the elected judges fulfilled their duties with moderation and conciliatory spirit in the outcome of that day: “[...] three among them whose names and service should forever be celebrated went at six in the afternoon to the Imperial Estate, to the Emperor, and exposed to him with proper energy the complaints and requests of the nation [...]”<sup>125</sup>.

After the abdication, the formation of the regency government exclusively by moderates set fire to the city of Rio de Janeiro and the rest of the country. Between the abdication and the year of 1832, the country would get to see new political forces – royal restorationists, moderates, extremists, republicans, federalists. In the bosom of the people, new social, racial and political identities grew. In the city of Rio de Janeiro, the order was built with great difficulty, but police forces were under the orders of the elected judges. It is true that some prominent moderate justices of the peace, such as Saturnino de Souza e Oliveira, in Rio de Janeiro, gave countless proofs of being ready to repress any adversary

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<sup>122</sup> ARMITAGE, John. Op. Cit., p. 305.

<sup>123</sup> See: BREVE narração da revolução regeneradora de 7 de abril de 1831. *Tributo do Povo*, Rio de Janeiro, n. 29, 29 de abril de 1831; n. 30, 5 de maio de 1831; n. 31, 9 de maio de 1831.

<sup>124</sup> *O REPÚBLICO*. Rio de Janeiro, 15 de abril de 1831. p. 255.

<sup>125</sup> *O REPÚBLICO*. Loc. Cit.



to the regency. Associated with the Defense Society<sup>126</sup>, some justices made enemies among the editors of the Exaltados (extremist) papers<sup>127</sup>.

However, the election method did not always guarantee allies to the moderates in constructing the order as required by the group. The “parties” disputed the positions such as justices of the peace, through which they antagonized and hindered the government. With the approval of the Criminal Procedures Code, the justice of the peace “[...] was perhaps the third authority after the Regency and the ministers”<sup>128</sup>. Such power caused such aversion in the government that there were maneuvers to make certain candidates unelectable, such as caramuru Manoel Theodoro D’Araujo Azambuja, in the district of São José (Rio de Janeiro), in 1833<sup>129</sup>. Besides the social discipline, the police judges could also strongly influence the voters in the choice of their representatives for the General Assembly<sup>130</sup>.

During the Regency, a new content for the constitutional order was attempted. The Exaltados (extremists) expressed their dissatisfaction with “[...] a Constitution full of monarchic formulae from old and maggoty Europe, [...] that was offered to us by the force of circumstance [...]”<sup>131</sup>. The House received a bill by Miranda Ribeiro, almost always remembered in historiography by his proposed federative monarchy<sup>132</sup>. The bill brought, in its last paragraph, the position of intendant in the municipalities, with powers similar to those of the president of the province<sup>133</sup>. Even though that item was removed by the Senate,

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<sup>126</sup> BASILE, Marcello Otávio Neri. Ezequiel Corrêa dos Santos: um jacobino na corte imperial. Rio de Janeiro: FGV, 2001, p. 281 e 285.

<sup>127</sup> See A AURORA FLUMINENSE. Rio de Janeiro, n. 514, 3 de agosto de 1831. p. 2.177; n. 619, 21 de abril de 1832. p. 2.635-2.637.

<sup>128</sup> URUGUAI, Visconde do. Op. Cit., p. 456.

<sup>129</sup> O CARIJÓ. Jornal Político e Literário. Rio de Janeiro, n. 44, 21 de fevereiro de 1833. p. 190.

<sup>130</sup> A AURORA FLUMINENSE. Rio de Janeiro, n. 834, 28 de outubro de 1833. p. 3.558.

<sup>131</sup> BASILE, Marcello Otavio Neri. Op. Cit., p. 116.

<sup>132</sup> See: BASILE, Marcello Otavio Neri. Op. Cit., p. 115.

<sup>133</sup> URUGUAI, Visconde do. Op. Cit., p. 515-516.

the constitutional reformation gave the creation, alteration or suppression of municipal offices to the provincial legislative assemblies.

The constitutional reformation caused the propagation of the news in the provinces. The paper *O Justiceiro* stamped that “[...] the Police of the Municipalities is one of the objects over which the Provincial Assembly can act, without attacking, however, the Municipal right, being private to the Municipality to propose, through the city councilors, its immediate representatives, its needs in terms of convenience, safety and security”<sup>134</sup>.

In São Paulo, the duties of the justices of the peace were immediately transferred to the new office of mayor, created by law number 18, on April 11<sup>th</sup> 1835. Paragraphs 5<sup>th</sup> and 6<sup>th</sup> of the 4<sup>th</sup> article determined those authorities would have “under their command and order the municipal guard”, as well as should “cumulatively with police authorities have wrongdoers arrested”. In each village there would be a mayor whose designation, suspension and dismissal would be in the hands of the provincial government (art. 3<sup>rd</sup>). Therefore, the Provincial Assembly of São Paulo put in action the centralization of police activities. This decision lasted until 1838, when all the mayoral duties were given back to the justices of the peace (with law number 4 of January 29, 1838).

Many provincial assemblies in the country started creating and changing judiciary offices, whose contents dazed the representatives, who then started passing decrees and warning about the constitutionality of such acts<sup>135</sup>. While in Maranhão, law number 5, of April 23, 1835, consolidated the powers of the justices of the peace<sup>136</sup>, Ceará

<sup>134</sup> O JUSTICEIRO. São Paulo, n. 4, 27 de novembro de 1834. p. 13.

<sup>135</sup> See: VASCONCELLOS, José Marcelino Pereira de. *Collecção completa de leis, decretos, avisos, ordens e consultas que se tem expedido acerca das atribuições e actos de taes corporações [...]*. Rio de Janeiro: Laemmert, 1869. p. 15 e ss.

<sup>136</sup> COLLECÇÃO de leis, decretos e resoluções da Provincia do Maranhão. Lei n. 5 – de 23 de abril de 1835. São Luís: Presidência da Província, 1835. p. 7-11. Available at: <[http://www.cultura.ma.gov.br/portal/sgc/modulos/sgc\\_bpbl/acervo\\_digital/arq\\_ad/201408272225011409189101\\_6781409189101\\_678.pdf](http://www.cultura.ma.gov.br/portal/sgc/modulos/sgc_bpbl/acervo_digital/arq_ad/201408272225011409189101_6781409189101_678.pdf)>. Accessed on: 28 feb. 2017.

and Pernambuco followed the model of provincial centralization with the creation of mayors that became true police authorities. In Ceará, the parish magistrates were chosen by the president of the province from a triple list<sup>137</sup>.

This political movement exemplifies the character of the reformation of 1834, which strengthened the provinces during the Regency. However, the municipal authorities were left devoid of power, because the provincial legislative gained control over the police and the economy of the municipalities<sup>138</sup>. Alongside that, the Assemblies gained the jurisdiction to create provincial and municipal offices. The autonomy of organization of police in the provinces was translated as the new experimentalism of the Empire.

Up until the approval of the Criminal Code, as we have observed, the liberal elite was convinced that the local or municipal autonomy would offer political learning to the citizens. However, in the words of Visconde Uruguai, "[...] the authors of the Additional Act were the ones among us [...] who caused the deepest wounds in the autonomy of the municipalities"<sup>139</sup>. Before the reformation, as we have seen, a part of the public administration was in the hands of elected authorities, such as the justices of the peace, city councilors and jury. From 1828 to 1832, the General Assembly had drawn a largely liberal picture that understood the country, according to Tavares Bastos<sup>140</sup>, with an equal level of civilization, morality, respect to the laws and aversion to crime. The provincial laws, nevertheless, disapproved of this generous convic-

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<sup>137</sup> BASTOS, Aureliano Cândido Tavares. A província: estudo sobre a descentralização no Brasil. Rio Janeiro: B. L. Garnier, 1870.

<sup>138</sup> Artigo 5º do ato adicional à Constituição do Império. Ver: LEI n. 16, de 12 de agosto de 1834. In: BRASIL. Coleção das leis do Império do Brasil. Brasília: Câmara dos Deputados, [s. d.]. Available at: <<http://www2.camara.leg.br/atividade-legislativa/legislacao/publicacoes/doimperio>>. Accessed on: 28 jan. 2017.

<sup>139</sup> URUGUAI, Visconde do. Op. Cit., p. 433.

<sup>140</sup> BASTOS, Aureliano Cândido Tavares. Op. Cit., p. 170.

tion, putting, many times, in place of the justices of the peace, mayors designated by the presidents of the provinces.

## CONCLUSION

In this paper, we have discussed the contradictions of the Brazilian political elite in the 1800's in regard to the implementation of justices of peace in the country. In the beginning of the 1840's, Representative Carneiro Leão considered the Criminal Code inappropriate for the state of civilization, habits and morality of the Brazilian society<sup>141</sup>. The provincial laws, which limited the police powers of the justices of the peace, lit the path for the reformation of the Criminal Code<sup>142</sup>. In less than a decade, the Brazilian political elite changed from wide belief in the elected justices to deep disbelief in the capability of the Brazilian citizens in enjoying self-governing institutions. It became the common opinion that the election made the magistrates weak in fighting against crime due to political commitments and subjection<sup>143</sup>. As Roderick Barman and Jean Barman<sup>144</sup> conclude, for the leading group in the Empire, the preservation of national unity and order came before civil rights and local freedoms.

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There was no unanimity around the solution, though. Limpo de Abreu, for example, did not approve of the bill for the reformation of the Criminal Code sent by the Senate to the congressmen. He did not agree in blaming the law for the disorder in the provinces. In his opinion, the bill of reformation erred in being contrary to the independence of the judiciary and putting too much trust in the government's nominations<sup>145</sup>. Limpo de Abreu presented the dangers with regard to the political disputes taking place in the country, as well as the goals of

<sup>141</sup> See: ANNAES do Parlamento Brasileiro. Câmara dos Deputados. Rio de Janeiro: Typografia da Viuva Pinto & Filho, 1884. Sessão de 19 de junho de 1840, v. 1, p. 796.

<sup>142</sup> ANNAES do Parlamento Brasileiro. Op. Cit., sessão de 28 de outubro de 1841, v. 3, p. 719.

<sup>143</sup> ANNAES do Parlamento Brasileiro. Op. Cit., p. 748.

<sup>144</sup> BARMAN; BARMAN, Op. Cit., p. 435.

<sup>145</sup> ANNAES do Parlamento Brasileiro. Op. Cit., sessão de 30 de outubro de 1841, v. 3, p. 799-800.

the reformation of the judiciary. The representative for Minas Gerais seemed to notice that it was an exaggeration to put all the responsibility for the perturbation of the Regency in the Code of 1832.

From what was exposed in this paper, we observe that the reforming impetus addressed the explosive combination of elective democracy and the control of the privileged minorities over votes and voters. As John Armitage<sup>146</sup> concluded, the central government was hard pressed against the local elective authorities. In the cases in which the justices of the peace were aligned with the central government, all was well, but when they belonged to opposition parties, the "[...] government was little more than nominal"<sup>147</sup>. The reformation of the Criminal Procedures Code, consolidated by the Law number 261, of December 3, 1841, was more than a rationalization of activities of the judiciary and was transformed into a powerful machine able to give the government the dominance over regional elites and guarantee successive electoral victories, according to Victor Nunes Leal<sup>148</sup>. The political duties of the justices of the peace were transferred to the chief of police and his delegates in their respective districts, in order to allow for the intentions of the political elite. These last authorities were nominated by the chief of police, who were in turn picked by the Minister of Justice<sup>149</sup>.

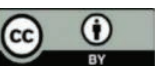
Since the First Kingdom, as we discussed, different political tendencies were concurrent in Brazil. In many occasions, the country was threatened by division into many territories. Monarchy was not always

<sup>146</sup> ARMITAGE, Op. Cit., p. 285.

<sup>147</sup> ARMITAGE, Loc. Cit.

<sup>148</sup> LEAL, Victor Nunes. *Coronelismo, enxada e voto: o município e o regime representativo no Brasil*. 3. ed. Rio de Janeiro: Nova Fronteira, 1997. p. 223.

<sup>149</sup> See article 4 of Law 261/1841: Art. 4 It is of the competence of the chiefs of police in every province and in the court, and to his deputies in their respective districts: § 1 The duties conferred to the justices of the peace in art. 12 §§ 1º, 2º, 3º, 4º, 5º and 7º of the Criminal Procedures Code. LEI n. 261, de 3 de dezembro de 1841. In: BRASIL. *Coleção das leis do Império do Brasil*. Brasília: Câmara dos Deputados, [s. d.]. Available at: <<http://www2.camara.leg.br/atividade-legislativa/legislacao/publicacoes/doimperio>>. Accessed on: 28 jan. 2017.



considered the best alternative for government and sovereignty received different definitions. The abdication counted on the expansion of public opinion and the unexpected unity of troops and people. The moderate institutions of 1824 did not have enough time to mature and they were demanded for the construction of order and its maintenance. Reforms suffered unexpected turns. Within the space of twenty years, the Constitution was twice amended. To maintain order, moderate liberalism moved away from one of its most favorite institutions: the law enforcement justices elected by primary assemblies. These magistrates were kept for electoral and civil jurisdictional duties, but they left the field of social discipline as an area of action exclusive to employees of the Empire.

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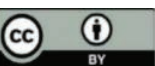
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