

## Huarpe Archives in the Argentine Desert: Indigenous Claims and State Construction in Nineteenth-Century Mendoza

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A few months before he died in a working-class neighborhood of Mendoza, Argentina, Sixto Waldino Jofré ceremoniously gave me photocopies of a document he called “The Memoir.” It was a family heirloom that according to Jofré told “how the land has always belonged to the Huarpes.” It was a handwritten litany of a century of judicial battles fought by the Laguneros, people of the arid plains of Guanacache, in the north of the present province of Mendoza and the southern part of San Juan province. The key documents gave details of a lawsuit pursued in the 1830s by a *protector de indios* (a legal official appointed to guard the rights of indigenous people in the colonial era) to defend the lands of the Laguneros.

For more than a decade I had been doing research on how, in this region supposedly with no Indians, the identification of indigenous people and their discourses persisted and reappeared. I had seen some of the documents previously in the family collections of other Laguneros, who had commented in

Translated from the Spanish by Thomas Holloway.—eds.

The completion of this article would not have been possible without the trust of the Laguneros of Guanacache, particularly Sixto Jofré, Juan and Paulino Nievas, and Juan Nylo Reynoso, who not only received me in their homeland for more than a decade but also provided access to shared memories and writings about their history. An earlier version of this work was presented at the UC Berkeley Latin American History Working Group. I want to thank Tulio Halperin Donghi for his erudite comments and especially Mark Alan Healey for his informed discussion of my work, as well as his professionalism and friendship. I also want to express my profound gratitude to the two excellent outside readers whose close readings made it possible to improve this work substantially—one of whom, Ariel de la Fuente, chose to identify himself. Financial support for this project was provided by CONICET, the Agencia Nacional de Promoción Científica y Tecnológica, and the Fulbright Commission. I also thank Professor Thomas Holloway for his faithful translation of the original Spanish manuscript and *HAHR* managing editor Sean Mannion for his equally careful editing.

passing that “many people had died” to protect them. I had also seen comments by visitors to the area such as the archaeologist Salvador Debenedetti and the writer Alberto Castellanos, who claimed to have seen or heard about the documents in the 1920s. But contemplating this extensive collection of manuscripts copied by hand over many decades was a moving experience. It was impressive that the texts had been distributed and kept by different families, painstakingly reproduced by people who were nearly illiterate, scattered in an area of some 1,000,000 hectares, separated from one another by 5 to 20 kilometers of bad roads, where tiny hamlets began to be formed only in the past 20 years. Also remarkable was the clarity with which the documents revealed not only the discourses but also the concrete, sustained, and recognized claims by which the people of this arid expanse identified themselves as indigenous. The level of detail in the documents, the continuity of their claims for nearly two centuries, and their safekeeping in family archives in precarious outposts in the desert or poor urban neighborhoods all contrasted with the confidence with which the historical and anthropological literature had decreed the absence of indigenous identities in the area since the early colonial period. The silence of the academic discourse was deafening when compared to the information preserved by the efforts of native copyists.

The most complete collection of documents found to date is a sheaf of yellowed papers, some torn in half with parts of pages missing, which Juan Nieves kept in his house.<sup>1</sup> It had been given to him by relatives who had lived in Asunción, one of the three historical settlements of the Laguneros of the eighteenth century. It contains the following documents: first, the 1752 will of Jacinto Sayanca, a local cacique, bequeathing to his people a royal land grant that included nearly all the area of Las Lagunas; second, a lawsuit filed by the Protector de los Naturales de Las Lagunas from 1833 to 1835 to confirm the rights of the Laguneros to the land; and finally, a decree of 1838 by the government of Mendoza province recognizing the Laguneros’ possession since time immemorial of approximately 1,000,000 hectares of their land.

Later, in the Historical Archive of Mendoza, I found a petition submitted in 1879 by which the Laguneros again requested recognition of their rights to the land they occupied, adding as proof a complete copy of the lawsuit by the protector de indios of Las Lagunas from almost half a century earlier, the 1838 decree of recognition of possession, and the will and testament of the cacique

1. “Copia del Esped[ . . . ] de D. Juan Escalante en [ . . . ] los naturales de las Lagunas [ . . . ] de un decreto del Gobierno [ . . . ]do gracia de terrenos en favor de[ . . . ] rales i del Testamento del Casique [ . . . ] Don Jacinto Sayanca en 1752,” Mendoza, 3 May 1875, Archivo de Juan Nieves, Departamento de Lavalle.

Sayanca from the mid-eighteenth century.<sup>2</sup> In the same archive I also found other documents related to the case, including a history of claims made by the Laguneros in the same period, land surveys made by absentee landlords in the 1830s, and a request made by a new *protector* in the 1840s.

Finding copies in the Historical Archive of Mendoza of the same documents held by villagers in Las Lagunas made it possible to confirm that several copies had circulated since the nineteenth century. “The Memoir” of Sixto Jofré had been copied in 1928 by his father from another version held by a neighbor. Juan Nievas’s papers had been copied twice: there was a version dated 1874, based on another bearing a date from 1865. There is also evidence gathered by visitors to Guanacache referring to family archives held by people in the area in the early twentieth century. In 1925, three years before Sixto Jofré’s father had copied “The Memoir,” José Pozzi, an assistant of the Argentine archaeologist Salvador Debenedetti, wrote that Esteban González, whom he described as looking “very Indian,” claimed to have a copy of a document written by the cacique Sayanca in 1713 that granted to the local people 400 square leagues surrounding the present chapel of Rosario.<sup>3</sup> A year later a local man showed another visitor the will and testament of the cacique Sayanca, owner of the countryside extending ten leagues “in all directions” from the Rosario chapel.<sup>4</sup>

The emergence of these documents in the early years of the twenty-first century coincided with an environment in Argentina favorable to the recognition of indigenous identities and rights and specifically for the reemergence of Huarpe identity in Cuyo. Since the late 1990s, in a rapid process set off by the social crisis in Argentina and the experience of the “retreat of the state” during the high point of neoliberal reforms, groups of people in the countryside and the urban middle class articulated claims for land and recognition of Huarpe identities.<sup>5</sup> In 1999, 11 Huarpe communities were created in the Guanacache region. These new legal entities were based on a provision of the 1994 constitution that for the first time recognized the prior existence of indigenous peoples

2. “Defensa realizada por el Defensor de pobres y ausentes a los indios Laguneros,” Mendoza, 10 May 1879, Archivo Histórico de Mendoza (hereafter AHM), carpeta 575 bis, doc. 17.

3. Salvador Debenedetti, “XXIª Expedición del Museo Etnográfico de la Universidad de Buenos Aires a las Lagunas de Huanacache,” Buenos Aires, 1925, Archivo del Museo Etnográfico de la Universidad de Buenos Aires.

4. Alberto Castellanos, *Un viaje por las lagunas de Huanacache y el Desaguadero* (Buenos Aires: Sociedad Luz, 1926).

5. Diego Escolar, *Los dones étnicos de la nación: Identidades huarpe y modos de producción de soberanía en Argentina* (Buenos Aires: Prometeo, 2007), 213.

in the Argentine nation. These communities demanded community property amounting to some 750,000 hectares from the government of Mendoza province, which recognized the legitimacy of their demand. After a contentious legal process and political disagreements among the communities and the main institutions allied with them, in 2011 the government issued title to 70,000 hectares to one of the communities, Lagunas del Rosario, in a disputed process of demarcation that left the land claims of ten other communities unresolved.

The significance of this research, aside from any modest contribution to traditional historiography, is to bring to light a historical record that is very important for the debates and discussions of present-day Huarpe communities. It demonstrates the historical continuity of the land claims by local indigenous communities in addition to the territorial extent of those claims, since at least the late colonial era.

#### **From the Establishment of the Indian Communities to the First Liberal Reforms**

For most historians, the main indigenous groups of the region, called Huarpes, had been extinguished in the seventeenth century by invading Spaniards, who took the Indians to work in the Central Valley or adjacent Norte Chico of Chile, or by the processes of race mixture and the “acculturation” of any survivors.<sup>6</sup> The Cuyo region was colonized from Chile in the second half of the sixteenth century, beginning with the founding of the cities of Mendoza in 1561 and San Juan in 1562. The area that initially was called the Province of Guarpes extended from the Jáchal River in the north to the Diamante River in the south, a vast territory inhabited by several indigenous groups calculated at the time to number between 20,000 and 100,000 people. Cuyo was at first a *corregimiento*, or province, of the General Captaincy of Chile, and in 1776 it was included in the newly created Viceroyalty of the Río de la Plata. The Guanacache area, almost equidistant between Mendoza and San Juan, was made up of many lakes and floodplains along the Mendoza and San Juan Rivers on the eastern slopes of the Andes. When the conquistadores arrived it was one of the most important concentrations of indigenous groups called Guarpes or Huarpes. During the

6. Salvador Canals Frau, “Etnología de los huarpes: Una síntesis,” *Anales del Instituto de Etnología Americana* 7 (1946): 9–147; Catalina Teresa Michieli, *Los huarpes protobstóricos* (San Juan, Argentina: Instituto de Investigaciones Arqueológicas y Museo, 1983); María del Rosario Prieto, “El proceso de aculturación de los huarpes de Mendoza,” *Anales de Arqueología y Etnología* 29–31 (1976): 237–72.

sixteenth and seventeenth centuries encomiendas granted to Spaniards living in Chile led to the massive and brutal removal of many Huarpes to Chile, which gave rise to numerous complaints by priests<sup>7</sup> and in turn fed the narrative of the extinction of the Huarpes. But Las Lagunas also became a refuge for those Huarpes who managed to evade colonial control. According to the folk traditions of Cuyo, an unknown number of mestizos, Spaniards, other indigenous peoples, and escaped African slaves also took refuge in the region.<sup>8</sup> The hardships the Spaniards faced in making incursions into the area's shifting riverbeds, sand dunes, thorny forests, and clouds of insects all contributed to this process, as did the abundance of resources, including fish, game, salt, timber, and fruit, which made the local inhabitants relatively self-sufficient. By the early nineteenth century the area was known as the *partido* (territorial constituency) of Las Lagunas. Its main districts were San Miguel, Asunción, and Rosario, which had their origins in Indian towns established in the mid-eighteenth century.

In fact, despite the assumed disappearance of the Huarpes by the seventeenth century, there are many indications of the indigenous presence in Cuyo much later in time. Contradictory though it may seem, those who constructed or still support the narrative of Huarpe extinction created some of the evidence for confirming this presence.<sup>9</sup> During the first two centuries following the conquest the colonial government created several *reducciones*, or forced concentrations, of the populations of Huarpes and Yacampis in northern Mendoza and San Juan and of Chiquillanes, Puelches, and Pampas Indians in central and

7. Alvaro Jara, "Importación de trabajadores indígenas en el siglo XVII," *Revista Chilena de Historia y Geografía*, no. 124 (1958): 177–212; José Aníbal Verdaguer, *Historia eclesiástica de Cuyo*, vol. 1 (Milan: Premiata Scuola Tipografica Salesiana, 1931).

8. Juan Draghi Lucero, *La cabra de plata* (Buenos Aires: Castañeda, 1978); Juan Bialek Massé, *Informe sobre el estado de las clases obreras argentinas a comienzos de siglo: Selección* (1904; Buenos Aires: CEAL, 1985), 415–18.

9. On the construction of this narrative of extinction since the eighteenth century, despite the paradoxical incorporation and redefinition of information that contradicts it, see Escolar, *Los dones étnicos*. The recent work of Catalina Teresa Michieli reflects some of these contradictions. See Catalina Teresa Michieli, *Realidad socioeconómica de los indígenas de San Juan en el siglo XVII* (San Juan, Argentina: Instituto de Investigaciones Arqueológicas y Museo, 1996); Catalina Teresa Michieli, *La fundación de villas de San Juan (siglo XVIII)* (Buenos Aires: Sociedad Argentina de Antropología, 2004). Although Michieli repeatedly affirms the extinction or assimilation of the Huarpes or Indians in the seventeenth century, her work contains abundant archival evidence of the continuity of group strategies, surnames, land conflicts, and markers of indigenous identity and no evidence to show their disappearance or complete assimilation.

southern Mendoza to the Diamante River, although many were discontinued or disappeared over time.<sup>10</sup> In the eighteenth century, efforts redoubled to resettle the Indians and mestizos of the Cuyo countryside, forcibly if necessary. Beginning in 1748 the *Junta de Poblaciones* of Chile tried to have the Indians of Corcorto, Jáchal, Valle Fértil, and Las Lagunas concentrated into towns, and the diocese of Chile established a parish in Las Lagunas.<sup>11</sup> But to carry out those plans, the colonial government eventually negotiated with the native people, who for their part found the status of *pueblo de indios* advantageous for protecting their lands, because with it the government recognized both the land rights of Indians over specific areas and the legitimacy of native authorities. At the same time, the Indians resisted the creation of a *reducción* if it meant abandoning their custom of living in households scattered across the countryside. In 1751, for example, the indigenous people of Mogna and Ampacama, in northern San Juan, were notified that they were to group together to create the *villa* of Jáchal. The cacique of Mogna refused the order on the grounds that his pastures were in Mogna and that the priest had put him in charge of building a chapel there, which was part of the process of formally creating a *reducción*. The repeated refusal to move eventually resulted in the founding of a *pueblo de indios* in Mogna at the request of the cacique himself, who argued not only that the Indians had pasture and water sources there but also that in Mogna they could avoid mixing with Spaniards and mestizos. The town was duly established at the site the Indians already occupied, not in the location the colonial authorities had previously designated.<sup>12</sup>

The precarious control of the Cuyo countryside in the colonial era is apparent not only in the clear difficulty of forcibly resettling indigenous people in towns but also in the collection of tribute. The last known tribute lists for Cuyo date from the end of the seventeenth century, but then in the first half of the eighteenth century, due to resistance, the Indians had been offered exemption from tribute payment for a period of 20 years, in addition to the right to their

10. Verdaguier, *Historia eclesiástica de Cuyo*; María del Rosario Prieto, "Formación y consolidación de una sociedad en un área marginal del Reino de Chile: La provincia de Cuyo en el siglo XVII," *Anales de Arqueología y Etnología* 52–53 (1997–1998): 17–366.

11. Verdaguier, *Historia eclesiástica de Cuyo*; Romualdo Ardissonne and Mario F. Grondona, *La instalación aborigen en Valle Fértil* (Buenos Aires: Instituto de Geografía, Facultad de Filosofía y Letras, Universidad de Buenos Aires, 1953); Michieli, *La fundación de villas*. The colonial *Junta de Poblaciones* decided on matters related to the creation of towns, including indigenous *reducciones*.

12. Michieli, *La fundación de villas*, 151–66.

lands.<sup>13</sup> They may have managed to continue to avoid payment of tribute; in the middle of the eighteenth century, ecclesiastical inspectors complained of illegal tribute collection by secular authorities.<sup>14</sup> And in 1795 the Marquis of Sobremonte, governor of the Intendancy of Córdoba (of which Cuyo was a part in the early years of the Río de la Plata viceroyalty), recognized that the inhabitants of the towns of Las Lagunas de Guanacache and Mogna, “according to their constitution,” did not pay tribute.<sup>15</sup> That situation notably differed from that of neighboring Córdoba and La Rioja, where many Indian towns paid tribute at the time.

While the settlement of the Indians in *reducciones* was successful in Mogna and Corocorto (located to the southeast of Las Lagunas on the Desaguadero River), in the towns of Asunción, San Miguel, and Rosario in the region of Lagunas de Guanacache the Indians systematically abandoned the lots laid out for them in favor of living dispersed over the countryside.<sup>16</sup> Yet even if such concentrated, sedentary settlements were disregarded, the legal status of *pueblo de indios* and *reducción* enabled the indigenous people to defend their territorial rights from that point forward. In 1795 Sobremonte admitted that he could not permit the efforts by the Spanish citizens of the city of San Juan to appropriate lands in Guanacache and Mogna because the Indians had *real provisión* (royal approval) from the audiencia of Chile securing rights to their lands.<sup>17</sup> Later, in 1807, the protector de indios of Corocorto made the same case against Sobremonte himself.<sup>18</sup>

Despite evidence of the presence and relative importance of the indigenous population in Cuyo in the late colonial period, the ethnohistory of the area had declared the Indian population to have disappeared by that time, based on the small numbers of Indians in *encomiendas* by the end of the seventeenth century and the subsequent lack of tributary lists.<sup>19</sup> Censuses from the late colonial

13. Verdager, *Historia eclesiástica de Cuyo*, 316, 319–20; Ana T. Fanchin, “Integración de áreas periféricas en Cuyo al promediar el siglo XVIII,” *Revista de Estudios Trasandinos* 4 (2000): 285–95.

14. José Torre Revello, *El marqués de Sobre Monte, gobernador intendente de Córdoba y virrey del Río de la Plata: Ensayo histórico* (Buenos Aires: Peuser, 1946).

15. *Ibid.*, 30, xcvi–xcvii.

16. Prieto, “Formación y consolidación”; Fanchin “Integración de áreas periféricas”; Michieli, *La fundación de villas*.

17. Torre Revello, *El marqués de Sobre Monte*, xcvi–xcvii.

18. “Defensa de Crisóstomo Pérez de los indios de Corocorto frente al denuncia de Mateo Delgado,” 1807, AHM, carpeta 30, doc. 50; Adolfo Omar Cueto, “La legislación hispánica sobre tierra y su vigencia en la Mendoza colonial (siglos XVI–XIX),” *Revista de Estudios Regionales* 3 (1989): 65–108.

19. Michieli, *La fundación de villas*; Prieto, “Formación y consolidación.”

era and soon after independence, however, show significant groups of indigenous population in the three provinces of the Cuyo region, even though the censuses did not count those Indians who lived outside government control. A count from 1777 of the administrative unit of Mendoza, which included only the urban areas of Mendoza, San Juan, and San Luis, listed 4,168 Indians in a total population of 23,411. An 1812 census, during the first period of independence, showed 9,261 Indians in a total population of 43,204, although it is not possible to say how many lived in the region of Las Lagunas. Unfortunately, although these surveys show that a significant segment of the people was classified as Indian, the data are not adequate for a reliable enumeration of the population.<sup>20</sup>

As we will see, beyond their controversial existence up to the end of the Spanish colonial era, the reducciones of Guanacache were the basis for claims to land rights in the nineteenth century, after independence. The towns of Asunción, Rosario, and San Miguel continued to be the main districts of what in the eighteenth and nineteenth centuries was called the partido of Las Lagunas. Up to the present day the three chapels in those communities, which have been visited by various religious orders, in particular the Jesuits until their expulsion, have been known as mission territory.

Toward the end of the eighteenth and beginning of the nineteenth centuries, the ability of the Indians to resist encroachment on their lands declined steadily. Large areas passed into the hands of Spaniards in donations or fraudulent grants made by the descendants of the caciques, as happened in Mogna in 1809.<sup>21</sup> This process accelerated in the early independence era. As in colonial Tucumán and throughout the northern and central Andean region, in Cuyo the implementation of liberal reforms in the first years of independence chipped away at the corporate rights over communal lands that Indians had held in the colonial era, legally guaranteed by the state through the protectores de indios.<sup>22</sup>

20. José Torre Revello, "La población de Cuyo a comienzos del Virreinato y a principios de la iniciación del período independiente, 1777 y 1812," *Boletín del Instituto de Investigaciones Históricas* 23, no. 77–80 (1938): 77–84. Documents collected by Torre Revello show that the regional officials responsible for the censuses noted the lack of professionalism of the census takers and the difficulty of gaining access to the countryside. And in contrast to the second census, the first does not specifically refer to the number of women, although it counted children.

21. Michieli, *La fundación de villas*, 162.

22. Cristina López, "Tierras comunales, tierras fiscales: El tránsito del orden colonial a la revolución," in *La propiedad de la tierra pasado y presente: Estudios de arqueología, historia y antropología sobre la propiedad de la tierra en la Argentina*, ed. Enrique Cruz and Rosana Paolini (Córdoba, Argentina: Alción Editora, 2006), 39–67.



Nevertheless, as has also been noted for what is today the Argentine northwest, the application and consolidation of those reforms had varying effects on each Indian town, region, and province. And unlike what happened in Mexico and Peru, the liberal reforms were not brought together in a unified legal structure until the approval of the Civil Code of Argentina in 1869.<sup>23</sup>

Although exact data on the loss of rights to land by the Indian towns of Cuyo are not yet available, all indications are that new liberal-inspired regulations governing land tenure in the 1820s gave rise to renewed attempts at land appropriation by the political and economic elite of the region, particularly in the area of Guanacache. In 1823 Pedro Molina, the governor of Mendoza, issued a decree “regulating the denunciation and sale of public land.”<sup>24</sup> *Denunciación* (*denuncio*) was a formal request to the government for the purchase of a specific parcel of state-owned land that supposedly had not previously been granted or sold. It required the private party to submit a plan for a survey to locate and demarcate the land in question. The state was then required to post the results publicly, and if no one came forth to claim possession, the property could be put up for auction and sold to the highest bidder. This procedure was very similar to colonial provisions going back to the late sixteenth century for the sale of royal land at public auction, which had been restored by Charles III in 1754, the moment when the Indian towns of Guanacache were established.<sup>25</sup> As had happened in the Bourbon era, the denunciation procedure in the early national period facilitated the privatization of lands that Indian towns had long held. Landlords who were members of the government and local elites promoted the public sales. The land auctioned off was occupied by indigenous or peasant communities, who rarely saw the formal declarations of denunciation posted in the cities and only much later found out that their land had been sold. Parallel to these procedures permitting land privatization, however, the same colonial legislation had in 1754 proclaimed and reiterated the right of possession by “just prescription,” which made it possible to confirm ownership of land in the absence of titles by those who could demonstrate that they had occupied and used the land for a certain number of years or, as the people of Las Lagunas

23. Ana A. Teruel and Cecilia Fandos, “Procesos de privatización y desarticulación de tierras indígenas en el norte de Argentina en el siglo XIX,” *Revista Complutense de Historia de América* 35 (2009): 233–55.

24. Adolfo Omar Cueto, “Dos intentos enfiteúticos en la legislación sobre tierras pública en Mendoza, en el siglo XIX,” *Revista de Estudios Regionales* 1 (1988): 73–100.

25. “Real Instrucción del 15 de octubre de 1754,” AHM, carpeta 46, doc. 30; Cueto, “La legislación hispánica,” 72–74.

would declare, “since time immemorial.”<sup>26</sup> During the nineteenth century the Indians of Cuyo used these provisions as the precedent to defend their land rights.

Pedro Molina’s regulations for the sale of public lands remained in effect, with a few ups and downs, until the promulgation of the national constitution of 1853. In 1825, for example, the alienation of public lands was prohibited, in line with the law of emphyteusis that the government of Bernardino Rivadavia decreed in Buenos Aires in 1826. But between 1826 and 1827 there were new denunciations and sales of lands, and in 1827 the provincial government rejected the national constitution promoted by Rivadavia.<sup>27</sup> Tellingly, the claims by the people of Las Lagunas began in 1828, only after these denunciations, and increased in the 1830s when new denunciations took place in the region.

Research on other provinces in the zone of early colonization has shown that the struggle for Indian lands continued during the nineteenth century, including the recognition of the rights of indigenous communities and the recovery of Indian lands in colonial Tucumán, specifically in Jujuy and the Calchaquies Valleys, and in Córdoba.<sup>28</sup> Those cases are similar to the experience of the Laguneros of Guanacache in the prolonged resistance to land expropriation, the struggle for legal recognition of property rights, the attacks on community lands in the mid-1820s during the liberal-inspired reforms (as in Jujuy), the preservation and concealment of colonial land documents (as in Amaicha and Colalao), and the recognition of indigenous land rights in 1838 (the same year as in Humahuaca).

For the case of Cuyo we lack historical research for indigenous identities

26. Cueto, “La legislación hispánica,” 72–74.

27. Cueto, “Dos intentos enfiteúticos,” 83.

28. Teruel and Fandos, “Procesos de privatización”; Gustavo L. Paz, “Resistencia y rebelión campesina en la puna de Jujuy, 1850–1875,” *Boletín del Instituto de Historia Argentina y Americana ‘Dr. Emilio Ravignani’*, 3rd ser., no. 4 (1991): 63–89; Gustavo L. Paz, “Liderazgos étnicos, caudillismo y resistencia campesina en el norte argentino a mediados del siglo XIX,” in *Caudillismos rioplatenses: Nuevas miradas a un viejo problema*, ed. Noemí Goldman and Ricardo Salvatore, 2nd ed. (Buenos Aires: Eudeba, 2005), 310–46; Ian Rutledge, “The Indian Peasant Rebellion in the Highlands of Northern Argentina, 1872–75,” *Journal of Peasant Studies* 4, no. 2 (1977): 227–37; Guillermo B. Madrazo, *Hacienda y encomienda en los Andes: La puna argentina bajo el marquesado de Tojo, siglos XVII y XIX* (Buenos Aires: Fondo Editorial, 1982); Alejandro Isla, *Los usos políticos de la identidad: Indigenismo y Estado* (Buenos Aires: Editorial de las Ciencias, 2002); López, “Tierras comunales, tierras fiscales”; Sonia Tell, “Expansión urbana sobre tierras indígenas: El pueblo de La Toma en la Real Audiencia de Buenos Aires,” *Mundo Agrario* 10, no. 20 (2010): 1–31.

during the period after political independence aside from regional literature and a few historical essays that project an indigenous identity onto the *montoneras*.<sup>29</sup> One might think that this lack stems from the absence of relevant documentation, but the evidence presented in this article belies such an assumption. I believe that for the most part this situation is due to the geographical representation of the presence or absence of a population considered to be indigenous in the historical and ethnohistorical literature, which seem to take as a given an almost ontological division between indigenous and nonindigenous societies. This classification, like the typological divisions between tribal societies, indigenous chiefdoms, and the state, or between Indians and gauchos, dominates current studies of Argentina's indigenous history, including those that have provided a more complex view of the relations between both groups by analyzing interaction along ethnic frontiers. The analysis and theorization of indigenous subjects, identities, or political practices in the countryside of the interior provinces during the nineteenth century continue to be a relatively blank spot in historical scholarship. It is only beginning to be filled by scholars such as Ariel de la Fuente, whose work explicitly connects ethnic identities with the general political contentiousness of the era, especially the partisan struggles between Unitarians and Federalists.<sup>30</sup>

If we analyze the spatial distribution of indigenous and creole peoples in Argentine historiography, we see that the population of provincial territories of the old colonial zone in the central geographical belt of present-day Argentina (i.e., the center and north of the province of Buenos Aires, the center of Santa Fe, Córdoba, Santiago del Estero, La Rioja, and Cuyo) was traditionally thought of as resulting from whitening race mixture, through which the earlier indig-

29. These include Domingo Faustino Sarmiento, *Vidas de fray Félix Aldao y El Chacho* (Buenos Aires: Argos, 1947); Marcos Estrada, *Martina Chapanay: Realidad y mito* (Buenos Aires: Imprenta Varese, 1962); Hugo Chumbita and Alicia Martínez, "Martina Chapanay, bandida y montonera," *Todo es historia*, no. 325 (1994): 36–42. David Rock also mentions that the main political contention in San Juan during the 1860s and 1870s came from the social division between the white urban population, associated with the liberal party, and gauchos and mestizos in the rural areas, who were linked to Federalist politicians, but this distinction is not demonstrated by evidence. David Rock, "Civil War in Nineteenth Century Argentina: San Juan 1860–1861," in *El impacto de guerras civiles e invasiones sobre la sociedad y la política local, 1800–1870*, ed. Anthony MacFarlane and Marianne L. Wiesebron, Cuadernos de historia latinoamericana 6 (Leiden, The Netherlands: Asociación de Historiadores Latinoamericanistas Europeos, 1998), 4, electronic publication.

30. Ariel de la Fuente, *Children of Facundo: Caudillo and Gaucho Insurgency during the Argentine State-Formation Process (La Rioja, 1853–1870)* (Durham, NC: Duke Univ. Press, 2000).

enous populations supposedly transformed themselves into creoles without the mediation of demographic and cultural changes that might serve to explain such a process. The continuity of indigenous identification or political practices in those areas was, if not denied, basically neglected by historical analysis. I think that in reality, in the historiography as well as in the vision of the elites of the era, the labeling of a group as indigenous or creole depended more on an implicit assessment of their autonomy or political sovereignty with respect to governmental institutions during the process of national state formation. The population of the territory considered to be under effective state control is almost always thought of as non-Indian, exactly the opposite of those groups still living beyond such control. In view of these distinctions I call groups such as the Laguneros of Cuyo *intramural Indians* or *indigeno-creole* to emphasize that those labels can be more shifting and polyvalent than is suggested by much of the historical literature.

With an analysis centered on the documents in the Lagunero family records (the “Huarpe archives”) together with official archival sources, I will focus on the continuity of legal claims and indigenous identification in northern Mendoza and their connection to political mobilization and the formation of the modern state in the region in the first half of the nineteenth century. I will endeavor to show that in the judicial struggle for their lands, the Laguneros of Guanacache succeeded in reinstating legislation related to Indian status well into the independence period and even achieved something unheard of in this regard, in view of the existing historical understanding of Argentina: they caused the provincial republican government to reestablish the office of protector de indios two decades after it had been abolished and to maintain it well into the 1840s.

### **A Lawsuit by the Protector de Indios of Mendoza in the 1830s**

It is widely known that in other contexts, such as the northern and central Andes, Mexico, and colonial Tucumán, indigenous groups that kept possession of their lands were directly affected by the process of the privatization of communal property, which gave rise to broader conflicts, strategies of resistance, or negotiation that in some cases continued up to the present day. The case at hand shows the existence of these conflicts in Cuyo along with the continuity of collective strategies and forms of resistance centered on indigenous identity in the region over the course of the nineteenth century. And it is not a question of groups that lacked power and the ability to apply political pressure. In Mendoza the Laguneros not only denounced encroachment on common lands by pri-

vate individuals, but they succeeded in a novel achievement (the only such case known) in Argentina: the reinstatement of a colonial office eliminated decades earlier, the protector de indios or naturales, and the restoration of colonial legislation governing indigenous land rights.

In 1828 the judge of El Rosario (one of the old Indian reducciones of the Lagunas de Guanacache) vehemently called for the restoration of the office of protector de indios to oversee the collective defense of the Laguneros against the “wealthy persons” who were usurping the lands of the community in the following terms:

Don Miguel González, judge of Rosario, in his own name and in the name of the reducción, with utmost respect, hereby declares: Because the reducción is without a *protector*, we do not have the institution that the laws have granted us, and by which they wished to remedy our ignorance and poverty, promoting our welfare and defending us against the aggression, power, and intrusion of wealthy people who, because of their superior knowledge and connections, suppress our voice and worsen our miserable condition, advancing their fortune over our ruin, increasing our ignorance and poverty. And because now more than ever we need another *protector* to defend us against those who have entered the lands set aside for the reducción, someone who would promote the establishment of a *villa* or more organized town, laying it out in the most appropriate location, we have agreed to request that Your Excellency see fit to provide us with such a *protector* by appointing don Juan Escalante, who we believe is motivated by an appropriate concern for our welfare. Your Excellency, who shows himself well disposed in favor of the prosperity of the province, will no doubt grant a request that, since it is based on the laws, should therefore contribute much to the improvement and advancement of the population.<sup>31</sup>

No sooner was he appointed than Escalante had to leave for Buenos Aires, abandoning his position for two years, for unclear reasons.<sup>32</sup> However, this absence coincided with a period of intense political instability and the persecution of Unitarians by Federalist governments such as those that effectively controlled the province at the time. In 1832 the judges of Asunción and Rosario

31. “Nonato Salazar y Domingo Victoriano Villegas al Gobernador elevan informe con el pedido de protector de indios en Lagunas de Guanacache,” Mendoza, 9 Aug. 1832, AHM, carpeta 574, doc. 8.

32. Ibid.

again reaffirmed the request for Escalante's appointment as *protector*. Finally Governor Pedro Nolasco Ortiz confirmed Escalante as protector de naturales of Las Lagunas,<sup>33</sup> which then gave rise to a lawsuit to determine the rights of the Laguneros to the land in question. Neither the substance of the complaint nor the institution requested was new to the Laguneros, who in the colonial era, as did those in other parts of Cuyo, had frequently appealed to the *protector* or *defensor de indios* or *naturales* to act in defense of their property rights. Now, however, well into the independence era, two decades after the revolution of May 1810, with Spanish judicial institutions and even the indigenous communities abolished in theory, the local inhabitants succeeded as Indians in having this official from colonial indigenous law appointed again. Furthermore, the "judges of Las Lagunas," Miguel González in 1828 and Nonato Salazar and Domingo Villegas in 1832, invoked their own identity and that of the local population as Indian, defining their jurisdictions as reducciones and the lands in question as the "designated lands" of the *reducción*.<sup>34</sup>

It is also relevant to note that although the titles typically used by the rest of the provincial administration were local judge (*juez pedáneo*), justice of the peace (*juez de paz*), or appellate judge (*juez de alzada*), those titles were never used for the judges of Las Lagunas between 1819 and 1834. Different terms with locally specific ethnic connotations were used instead. In the correspondence itself we find letters signed as "judge of this *reducción*," "judge of the *reducción* of El Rosario," or "judge of the *reducción* of Asunción, judge of El Rosario."<sup>35</sup> And in testimony recorded by the protector de indios and in governmental decrees they are mentioned only as "Lagunero judges."<sup>36</sup>

In 1820 subdelegate judges were appointed in each *villa* with wide-ranging duties combining police and judicial powers, in addition to military functions

33. Ibid.; Edberto Oscar Acevedo, *Orígenes de la organización judicial de la provincia de Mendoza* (Buenos Aires: Fundación para la Educación, la Ciencia y la Cultura, 1979), 142–43.

34. "Salazar y Villegas al Gobernador," Mendoza, 9 Aug. 1832, AHM, carpeta. 574, doc. 8.

35. Ibid.; Juan Isidro Maza, *Ensayo sobre la historia del Departamento de Lavalle* (Mendoza, Argentina: Editorial Estudio Alfa, 1981), 42, 109.

36. "Defensa realizada por el Defensor de pobres y ausentes a los indios Laguneros," Mendoza, 10 May 1879, AHM, carpeta 575 bis, doc. 17 (hereafter this entire document will be referred to as "Defensa realizada por el Defensor"); José Videla Castillo, "Decreto gubernativo, sobre los animales desconocidos del territorio de las Lagunas, y reglamentando el modo de recojer, señalar y marcar," in *Código de las Leyes, Decretos y Acuerdos que sobre administración de justicia se ha dictado la Provincia de Mendoza*. . . , ed. Manuel de Ahumada (Mendoza, Argentina: Imprenta de El Constitucional, 1860), 68–70.

in some cases.<sup>37</sup> Beginning in 1830 with the creation of the Military Command and Subdelegacy of Las Lagunas, the judges were replaced by the office of subdelegate, which continued the colonial tradition of overlapping functions in a single individual.<sup>38</sup> Some subdelegates had considerable autonomy and often acted on the claims of their community members, including submitting formal legal petitions.<sup>39</sup> But after the defeat of the Federalists at the national level and in Las Lagunas in 1862, the subdelegates' mission was to suppress any political opposition, whether by Federalists or dissident liberals.<sup>40</sup> I believe that the special duties of the Lagunero judges, which were unique in the province, might correspond to official positions that replaced the indigenous *alcaldes* in the reducciones or Indian towns after the colonial era, which persisted at least until 1789.<sup>41</sup> Thus Guanacache is the only place where such *sui generis* positions of local judges are observed. It is also the only jurisdiction in the countryside where we find an *alcalde de las Lagunas* in 1816, while in the following year the first ephemeral subdelegate appears, a position that reemerges in the 1830s.<sup>42</sup>

The claims made by Juan Escalante, the protector de los naturales of Las Lagunas between 1833 and 1835, were based on the legal provisions of *derecho indiano* (Spanish colonial law) and used arguments similar to those of the defensores de indios of the colonial period. Escalante appealed to two principles that, as we have seen, disregarded formal title as the basis for rights to land: one was possession by "just prescription," and the other was the occupation of community land from "time immemorial." Those principles were set forth in the royal decree of Charles III in 1754, which Escalante explicitly cited.<sup>43</sup> In making his argument, Escalante declared that during the colonial era the Laguneros had been given possession of their lands by a royal grant,<sup>44</sup> but that he had not been

37. Inés Sanjurjo de Driollet, *La organización político-administrativa de la campaña mendocina en el tránsito del antiguo régimen al orden liberal* (Buenos Aires: Instituto de Investigaciones de Historia del Derecho, 2004), 35.

38. *Ibid.*, 49.

39. *Ibid.*, 287–88.

40. *Ibid.*, 275.

41. Milcíades Alejo Vignati, "Aportes al conocimiento antropológico de la provincia de Mendoza III: Un diario de viaje por las Lagunas de Guanacache en el año de 1789," *Notas del Museo Eva Perón* 16, no. 58–61 (1953): 51–103.

42. Sanjurjo, *La organización político-administrativa*, 30.

43. "Defensa realizada por el Defensor," ff. 12–13.

44. *Ibid.*, f. 4. These were almost certainly established by the junta de poblaciones (board of towns) of Chile in the mid-eighteenth century, and their existence was defended by the protectores de indios until the end of the Spanish colonial regime. AHM, carpeta 27, doc. 50, and carpeta 30, doc. 50.

able to find the resulting titles. He therefore sent a letter to the general minister of government asserting that as soon as he had assumed his post,

I requested of my predecessors the titles by which the lands that in the time of His Majesty the King of Spain in the Indies were granted in possession and property to the first inhabitants of the reducciones in the three districts of Las Lagunas, which are Asunción, Rosario, and San Miguel. But my diligent inquiry has been to no avail regarding the whereabouts of such documents, without which I cannot proceed with the complaints of those natives against the incursions into several parts of their property. Nor can I prevent some private individuals, abusively and with false titles, from raiding the property of people under my protection, branding or taking their animals.<sup>45</sup>

Faced with the loss of the land titles, the *protector* conducted a summary inquiry to determine how long the Laguneros had been in possession of the land and the possible existence of titles, as well as the extent of the lands that had been granted to the communities. This consisted of taking testimony from a group of people who, by their familiarity with the area and its inhabitants, common knowledge, or advanced age, might have authoritative knowledge of the matter.

The witnesses unanimously affirmed that the Laguneros had always occupied the land in question. They also stated that for some time previous neighboring landowners had “intruded on these lands” causing damage and that the Lagunero judges had erred in granting the intruders some of their livestock, which had led the Laguneros to enter into litigation.<sup>46</sup> A complaint by the inhabitants of Lagunillas, in the eastern part of the disputed territory, stated that another neighboring property owner tried to take over the lands in Las Chacritas, near El Gigante. The plaintiff requested that the local official Jofré, whom he referred to as “my esteemed friend,” should “as the father of this region” report that the usurper, “claiming to be a renter, wants to deprive us of the use of property that has been ours since the time we opened our eyes.”<sup>47</sup>

Based on this testimony, Juan Escalante considered the possession of the disputed lands from time immemorial to be proven, arguing that according to legislation applying to Indians this brief was sufficient to give the Laguneros the

45. “Defensa realizada por el Defensor,” f. 5.

46. *Ibid.*, ff. 5–10.

47. “Justo Lencinas a Juan Jofré 9 de nov. de 1833,” in “Defensa realizada por el Defensor,” f. 12.



title to the property by “just prescription.”<sup>48</sup> He noted that “the community I represent is privileged under the law, and not only should any land that has been taken away be restored to them, but it should be increased to the extent necessary for raising their livestock.”<sup>49</sup> In March 1834 the *fiscal de gobierno* approved the decision, declaring the possession and use rights of the Laguneros over the land in question to be proven. Even more significantly, he agreed that the brief as presented served to replace the lost land titles, under the “protection that the Laws of the Indies [derecho indiano] granted especially to the natives as fair compensation for the usurpations they have suffered.”<sup>50</sup> The *fiscal* did, however, raise one objection to Escalante’s request with regard to the lands in question, saying that it included an excessive area for a small number of people. He added that this might have been of little importance in colonial times, but it was significant in the current era of “free government,” which should now work to increase the number of inhabitants because “from that increase public welfare is improved, because it is undeniable that when landed property becomes concentrated in a few hands there is direct harm to the population and . . . it begins to resemble that feudal state that we must always seek to prevent among us.”<sup>51</sup>

In response to this assertion, which is reminiscent of the arguments of officials in the late colonial era and the early independence period,<sup>52</sup> Escalante made an impassioned plea to the *fiscal* seeking to refute the idea that the territory involved was excessive for the number of people who lived there, invoking cultural, ecological, and demographic arguments. The criticism that the area was too large, he said, could only be applied to cultivated lands. But since the lands in this dispute were barren, without water, and used only for grazing, they had to be distributed in large areas in proportion to their sterility. He then continued with a description of grazing practices and their relationship to environmental conditions. The lands

are made up of immense sand barrens, immense reaches, high hills of sand, with no more water than what might eventually fall from the sky. . . . In the dry years . . . the only feed for the cattle is what might appear on the winding banks of the rivers. Thus the need to take them

48. Escalante cites the *Real Instrucción* of October 15, 1754, and book 7, article 18 of the *Código de Independientes*. “Defensa realizada por el Defensor,” ff. 13–14.

49. “Defensa realizada por el Defensor,” f. 13.

50. *Ibid.*, f. 15.

51. *Ibid.*, f. 13.

52. Pedro Andrés García, *Un funcionario en busca del Estado: Pedro Andrés García y la cuestión agraria bonaerense, 1810–1822*, ed. Jorge Gelman (Buenos Aires: Universidad Nacional de Quilmes, 1997).

great distances for feed, with the double labor of having to dig wells or systems to provide water, which must be abandoned as soon as the pasture is used up in the area, to be built again elsewhere. That is the wandering life of the herders and the miserable and temporary huts they live in.<sup>53</sup>

Some of the central points of the *protector's* case, together with information available for periods not long after, permit an understanding of the social situation of the Laguneros of Guanacache, and perhaps of the population of the greater part of the inhospitable reaches of Cuyo, in a period for which we have very few sources.

In the first place, the report brings a new demographic perspective. The *protector* is said to have attached a census showing 1,181 people in an area of 200 square leagues, mentioning five principal districts: Asunción, Rosario, Punta de Lagunas, San Miguel, and Alto Grande. That number might suggest that the total population was considerably larger, because there were many people who "were absent and others hide in fear when a census is taken."<sup>54</sup> Based on this census Escalante calculated an average area of 280 *cuadras* of land for each head of household, which refuted the argument that there was too much land for the number of inhabitants and the suggestion that if the case was decided in favor of the communities the population would double in a few years.

The population size suggested by Escalante is greater than those in official sources. Detailed information on the population of the region in this period is not available, but the national census closest in time, carried out by Martin de Moussy in 1857, states that the district of Mendoza called Rosario had 1,086 people out of a provincial total of 47,478. Other sources give double that number, such as the provincial statistical report of 1864, which lists 2,197 people for Las Lagunas of a provincial total of 57,576, and the national census of 1869, which lists 2,060 for the Department of Rosario out of a provincial total of 65,413.<sup>55</sup> On the other hand, a statistical report from San Juan in 1873 stated that thousands of Laguneros were occupied in fishing in Mendoza, San Juan, and San Luis.<sup>56</sup> I think that, in addition to the difficulty census takers had in

53. "Defensa realizada por el Defensor," f. 19.

54. *Ibid.*, f. 18.

55. José Luis Masini Calderón, *Mendoza hace cien años: Historia de la provincia durante la presidencia de Mitre* (Buenos Aires: Ediciones Theoría, 1967), 12; República Argentina, *Primer Censo de la República Argentina, verificado en los días 15, 16 y 17 de Setiembre de 1869* (Buenos Aires: Imprenta del Porvenir, 1872).

56. Rafael S. Igarzábal, *La Provincia de San Juan en la Exposición de Córdoba: Geografía y Estadística* (Buenos Aires: Imprenta, Litografía y Fundición de Tipos á Vapor de la Sociedad Anónima, 1873), 189.

covering the area and the flight of Laguneros to escape military conscription, the discrepancies of the counts might be due to the fact that the total area inhabited by Laguneros extended into three provinces. Only Mendoza historically contained a jurisdiction, alternately called Rosario or Lagunas, which might make it possible to trace the demography of the area. The Laguneros of the provinces of San Luis and San Juan were located in various jurisdictions such as Caucete, mentioned in the statistical report on San Juan. The censuses do not distinguish which parts of the administrative subdivisions contained parts of the larger geographical territory of Las Lagunas.<sup>57</sup>

Secondly, Escalante provided a brief but compelling description of the pastoral practices that were the main economic activity of the region, a seminomadic tradition that took advantage of sparse pasturage in an arid environment with periodic droughts. The need to make use of dispersed and limited renewable resources also explains the scattered settlement pattern, which had been a constant since colonial times, despite efforts to push people into concentrated settlements, and which remains in effect to the present day. It is interesting to note that in 1828, when Judge González of the *reducción* of Rosario requested that a *protector* be appointed, he again offered the government the same thing that the Indians of Mogna, Las Lagunas, and other places had promised to the colonial authorities in the mid-eighteenth century in order to acquire the status of *pueblo de indios* and receive political protection: They would establish “a *villa* or more organized town, laying it out in the most appropriate location.”<sup>58</sup> The migratory life of the Laguneros also was an impediment to making substantial improvements on the land. Those improvements mentioned, such as houses and wells to provide water for livestock, were ephemeral and disposable. Escalante also hinted at the extreme poverty of the Laguneros, which was explained in the comments of other observers as the result of a lack of interest in economic accumulation. A report by Rafael Igarzábal in 1873 summed up the economic situation as follows:

The Laguneros do not try to accumulate wealth. When the rains are scarce, and the countryside is poor, they go fishing and come into the capital with enough fish to satisfy their most urgent needs for clothing, *yerba mate*, tobacco, etc. But if they don't need such things they care little for the business they could conduct, preferring the independent life far from the provincial population centers.<sup>59</sup>

57. República Argentina, *Primer Censo*, 371–78.

58. “Salazar y Villegas al Gobernador,” Mendoza, 9 Aug. 1832, AHM, carpeta 574, doc. 8.

59. Igarzábal, *La Provincia de San Juan*, 190.

Despite this apparently generalized poverty, regional society was more diversified than Escalante described when he emphasized the sterility of the natural environment in order to lower the value of the lands to support his request to the government. Although later sources, an economic census in 1866 and the national demographic census of 1869 reported a number of ranchers (estancieros) and some property owners, along with a larger proportion of peons and laborers (*gañanes*).<sup>60</sup> The landed properties and the richest individuals were concentrated in the southern part of the region, nearer the city of Mendoza and far from Las Lagunas proper. As reported in the 1866 census, agricultural land, both under cultivation (planted mainly with alfalfa) and fallow, was reportedly less than 0.5 percent of the total area of the region. The estancias in the area, although they did not approach the great territories and investments found in the humid Pampas, consisted of relatively large herds for the region and time, grazing on open range. The largest estancia had as many as five resident peons, and the smallest were worked with only family labor. According to the 1869 census there were 17 estancieros and 8 property owners in the department. The 1866 count, in contrast, shows 128 individuals owning livestock or agricultural lands. Just as it is impossible to know the true number of people who owned livestock, it is extremely difficult to calculate the actual number of cattle they owned, given both the problems of counting cattle on the open range and, especially, the purpose of the census, which was to assess property for taxation at a moment when the area was in open rebellion against any kind of formal state control (i.e., between the repression of the Chacho's montoneras in 1862 and the so-called Revolution of the Colorados in 1866–67). Taking the number of cattle enumerated for the 128 individuals in the census and applying estimates from the period that would at least double the official number of cattle,<sup>61</sup> we arrive at a rough average of 66 head of adult cattle and 100 younger animals per property.

More specific examples can be found in the 1866 census, which shows that Domingo Villegas had 214 head of adult cattle, 185 young animals, and 2 oxen. A medium-sized estanciero like Villegas had capital officially valued at 792 pesos, while the largest property owner in the southern part of the province, Víctor Alvino, had capital of 5,964 pesos. The poorest half of the property owners included in the census, the majority of whom were in the districts of Las Lagunas, had capital valued between 20 and 148 pesos.<sup>62</sup> The concentration of

60. "Padrón de Propietarios del Departamento del Rosario (1866)," AHM, carpeta 574, doc. 142; República Argentina, *Primer Censo*.

61. Igarzábal, *La provincia de San Juan*, 197.

62. Calculated from "Padrón de Propietarios del Departamento del Rosario (1866)," AHM, carpeta 574, doc. 142.

larger property owners in the south is related to their ethnic origin—in general they were considered to be descendants of Spaniards or Portuguese prisoners of war transferred to the area in the late eighteenth century—and their political connections to the elites who controlled the provincial government. This process of land concentration accelerated around the 1860s, three decades after Escalante's lawsuit and coinciding with the displacement of Laguneros like Domingo Villegas from public office. This nucleus of settlement in the south became the base from where the modern irrigation system in the department developed and where a large number of European immigrants settled in the 1880s. With the desert conditions overcome, by the middle of the twentieth century the irrigated zone of Guanacache, 3 percent of the territory, had more than 90 percent of the population.<sup>63</sup>

With this long digression to help reconstruct the local society of the period, we can return to the case the *protector* made to the *fiscal* regarding community land claims. At the conclusion of the information gathered from the witnesses regarding the land rights of the Laguneros, Escalante implicitly alluded to the difficult political situation as the cause of increased usurpation of the lands of Laguneros who were “disturbed by the calamity of the times, which has produced a series of insuperable obstacles . . . and makes it necessary to wait for more favorable and tranquil conditions to overcome them.”<sup>64</sup> Concluding his reply to the objections raised by the *fiscal*, Escalante added that he had “made only passing reference to the political arguments in favor of the Laguneros’ claims.”<sup>65</sup> Those arguments, however, appear to have been more important than might be assumed from this brief note. The request for a *protector* and the beginnings of the lawsuit in 1828 coincided with the activities of Juan Facundo Quiroga and militias of Cuyo and La Rioja in the open warfare pitting Federalists against the Unitarians commanded by Generals José María Paz and Gregorio Aráoz de Lamadrid. The interval between the first request and the second of 1832 was a brief period of restoration of Unitarian control of the region: in 1830, with the defeat of Oncativo in Córdoba, Quiroga lost control of the governments of Cuyo. Between late 1830 and early 1831 Federalist guerrillas supported by Quiroga harassed the Unitarian governments of Mendoza and San Juan. One of the centers of conflict was precisely in the area of Las Lagunas, where

63. Diego Escolar and Leticia Saldi, “Canales fantasmas en el ‘desierto huarpe’: Riego legal, discursos ecológicos y apropiación del agua en Cuyo, Argentina, siglos XIX–XX,” *Agenda Social* 7, no. 1 (2013): 68–94.

64. “Defensa realizada por el Defensor,” f. 13.

65. *Ibid.*, f. 20.

the Unitarian Mendoza government of José Videla Castillo stationed 100 men, a considerable force for the period and region, but did not succeed in controlling the area.<sup>66</sup> The guerrilla units, commanded by the future caudillo of San Juan, José Nazario Benavides, cut communications between the two provinces, which contributed to Quiroga's defeat of Videla Castillo at Rodeo de Chacón. At that point Quiroga began to prepare a large army that he used to take La Rioja in 1832, thus gaining control of all of Cuyo. This period coincided with a time of serious political persecution in the region, mainly against the Unitarians. This was just when, tellingly, Escalante left the area for Buenos Aires. When he eventually returned he found his earlier appointment canceled.

The legal process seems to have entered an impasse between 1835 and 1838, when the *protector* declared that he was "fearful that his repeated efforts might bring hate upon himself, with serious damage to those he represented, so he resolved to suspend all further actions."<sup>67</sup> But finally on March 12, 1838, the delegate governor-general issued the following decree:

The captain general of the province, considering the situation in which the natives of Las Lagunas find themselves due to lack of recognition of their rights to the property they possess, and taking into account the powerful arguments they themselves have put forth in the presence of the subdelegate and their parish priest, hereby decrees:

1. All the territory in the said department that has not been privatized up to the present will be dedicated to the benefit of the natives of Las Lagunas.
2. To carry out the provisions of the previous paragraph, no denunciations whatsoever will be allowed in the lands within the department in question.<sup>68</sup>

This decree, along with the legal proceeding and the arguments taken into consideration, is certainly a key element of the jurisprudence applying to the lands of the Laguneros. But it also is important for the communal rights of indigenous people in the early independence period in that part of Argentine

66. Instituto de Historia Regional y Argentina "Héctor Domingo Arias," *Archivo del Brigadier General Nazario Benavides*, vol. 1 (San Juan, Argentina: Editorial Fundación Universidad Nacional de San Juan, 1994), 102–16.

67. "Defensa realizada por el Defensor," f. 21.

68. *Ibid.*, ff. 21–22; "Decreto gubernativo, haciendo gracia de terrenos á beneficio de los naturales de las Lagunas," in Ahumada, *Código de las Leyes*, 136.

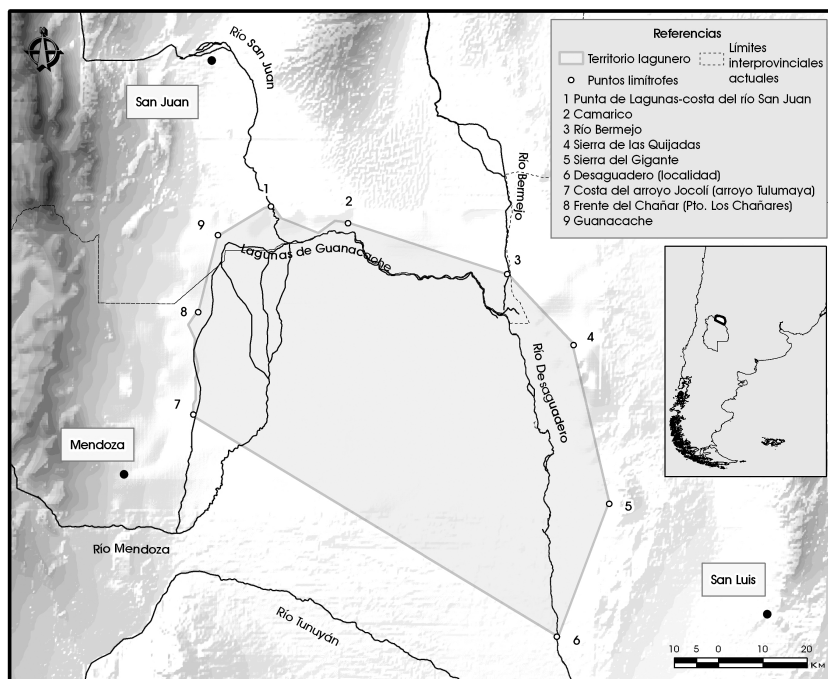


Figure 1. Boundaries of the territory claimed by the Laguneros of Guanacache and recognized by the government of Mendoza in 1838. Reconstructed by the author based on information included in "Defensa realizada por el Defensor de pobres y ausentes a los indios Laguneros," Mendoza, 10 May 1879, Archivo Histórico de Mendoza, carpeta 575 bis, doc. 17.

territory considered under the effective sovereignty of the provincial governments. As indicated at the beginning of this article, in Argentina there is a known history of lawsuits and land claims on the part of indigenous communities in the *puna* of Jujuy and the area of the Calchaquies Valleys, in the provinces of Tucumán, Catamarca, and Salta. There are important differences with the case at hand, however. The result of this process was the explicit recognition of the communal indigenous land rights by a provincial government, well into the independence era. The local authorities of the provincial government, including judges, departmental subdelegates, and commissars, not only presented the claims as representatives of the local people to the government in which they worked. Those officials also identified themselves as Indians or naturales. Finally, the decision and the recognition of rights were reached as a result of

arguments based on colonial Indian law and were carried through by an institution of the colonial era, the defensor or protector de indios.

In this respect, this case is a prime example of the centrality of the “Ancient Constitution,” the corpus of colonial law and the political and judicial institutions pertaining to Indians, as it applied to indigenous property during the development of the independent states in Spanish America and specifically in Argentina.<sup>69</sup> During the period examined here, from the late 1820s to the 1840s, the Lagunero authorities and their *protector* appealed to the principles of the Ancient Constitution to support the rights of lower-class groups paradoxically harmed by liberal principles, which in theory were supposed to broaden popular sovereignty.

As late as 1845 Villegas again requested the governor, who in previous years he called the last *protector*, to appoint a “person” and “citizen” to represent and defend the rights of the natives of Las Lagunas. Since the governor had assumed office to the present day, he wrote,

we have not had anyone to represent us and protect our interests. In view of this situation, I and the people I represent urgently need some *citizen* (as it has been the custom to call you and your predecessors since the end of the Spanish government) to take charge, care for, and favor the rights and privileges of the native population, which has increased considerably under such protection. These people have at the same time supported the provincial government, providing the services required of them, faithfully upholding the laws, and maintaining their religion as faithful Catholics should do, firm in their support for the holy cause of the Federation with their meager resources and their actions, of their own will and by orders of the Most Excellent Government on which they depend.<sup>70</sup>

This appeal to the norms in effect since colonial times was not rhetoric of the kind used by caudillos or intellectuals when debating the legitimacy of the liberal reforms<sup>71</sup> or the extension of state control over the country-

69. José Carlos Chiaramonte, “The ‘Ancient Constitution’ after Independence (1808–1852),” *Hispanic American Historical Review* 90, no. 3 (2010): 455–88; Carlos J. Díaz Rementería, “Supervivencia y disolución de la comunidad de bienes indígena en la Argentina del siglo XIX,” *Revista de Historia del Derecho “Ricardo Levene”*, no. 30 (1995): 11–30.

70. “Don Domingo Villegas al Gobernador le solicita nombre a Don José Gabriel Puebla Protector de los naturales de las Lagunas,” Mendoza, 12 June 1845, AHM, carpeta 24, doc. 251.

71. José Carlos Chiaramonte, *Ciudades, provincias, estados: Orígenes de la Nación Argentina (1800–1846)* (Buenos Aires: Ariel, 1997), 159; Chiaramonte, “‘Ancient Constitution.’”



side.<sup>72</sup> It was, rather, pragmatic language used by peasant and indigenous groups as much to demand their property rights as to highlight the judicial inequality that they thought had been aggravated by principles of citizenship and property rights that in theory were inclusive and egalitarian.

In challenging the prevailing idea of a general disregard for using the judicial process to resolve conflicts during the first decades after independence, some authors writing about other Latin American contexts show strong continuity in the use of courts during the postindependence civil wars, attributing this to the early success of liberal reforms and their spread into social issues.<sup>73</sup> The attitude of the Laguneros shows how social actors considered archetypes of the culture of violence or the militarization of politics nevertheless valued the judicial system and as standard practice used the courts to settle their claims. But we should think twice before assuming a relationship between liberal reforms and judicial culture that somehow fits with the classic notion that the caudillos promoted “barbarism” and the breakdown of institutions. In line with the positions José Carlos Chiaramonte has put forth on these matters, the body of law, institutions, political culture, and principles that the Laguneros called upon demonstrate that their claims were based much more on the Ancient Constitution than on concepts of citizenship and the roles of political actors associated with liberalism. The Lagunero judges and subdelegates themselves, although they were governmental authorities with police and judicial functions, did not present themselves as *citizens* but as *Indians* or *natives* who were legally incapable of defending their rights. They did, however, have the power to press for the reestablishment of the position of *protector* and the appointment of men to fill it, in addition to the power to move forward with legal proceedings that affected the interests of members of the governing elites, all in the context of great political instability and during the most violent periods of war.

The social and political significance of the Laguneros’ legal strategies would remain poorly understood if we think of them only in the general frameworks of either the Ancient Constitution or liberal reforms. As Laura Gotkowitz shows, the caciques who acquired power in Bolivia in the nineteenth and twentieth centuries, rather than merely continuing with the judicial traditions in place, creatively reappropriated them and actively adapted their own archival records and historical understanding to come up with new legal principles to guarantee their property rights. While some leaders acted as “caciques de

72. Sanjurjo, *La organización político-administrativa*, 46.

73. Reuben Zahler, “Liberal Justice: Judicial Reform in Venezuela’s Courts, 1786–1850,” *Hispanic American Historical Review* 90, no. 3 (2010): 489–522.

sangre” and invoked the “ancient laws of the Spanish Crown” and ancestral indigenous traditions, others appealed to “progress,” “civilization,” and “recent laws” to achieve nearly identical objectives.<sup>74</sup> Similarly, the Lagunero judges not only tried to construct their own judicial practices but also maneuvered with antagonistic political groups, including Federalists and Unitarians, liberals and traditionalists, to build their own power base.

### **Judges, Subdelegates, and Caciques? Lagunero Autonomy and Strategy in the Context of Civil War**

As we have seen, although the 1838 decree recognized the Laguneros’ rights to their property, it did not explicitly recognize the ownership and possession that Escalante had sought. Nor did it restore the lands the Laguneros had lost to takeovers by outsiders. The decree declared that the territory would be “dedicated to the benefit” of the Laguneros, but it did not order that they be given legal title to the property. And while it ordered that no more surveys would be carried out, it left the Laguneros with that part of the land “that has not been privatized up to the present.” In other words, the decree implicitly legitimized the loss of land that had been demarcated and sold from the 1820s to 1838. The expropriations and land takeovers, in fact, had not stopped during the judicial process. In 1837, during the long wait for the court to issue its decision, the now-subdelegate Domingo Villegas (who as judge of the *reducción* in 1832 had requested Escalante’s appointment) complained of large-scale land takeovers carried out by important figures of provincial society in the most desirable parts of Lagunero land.<sup>75</sup> The first was by Luis Molina, son of Pedro Molina, the governor of the province. He had demarcated a strip that ran for eight leagues along the east bank of the Mendoza River, a strategic piece of land where the Laguneros pastured most of their cattle and received their water. When they found out about this action, the Lagunero judges complained that their people “would be boxed into a small plot that in addition to being so small is the worst land there, with sparse pasture and no water. . . . Luis Molina has said that he is going to turn the land over to General Félix Aldao. If that happens the people around here will have no place to put their livestock along the stretch of land that extends to the banks of the San Miguel River.”<sup>76</sup>

74. Laura Gotkowitz, *A Revolution for Our Rights: Indigenous Struggles for Land and Justice in Bolivia, 1880–1952* (Durham, NC: Duke Univ. Press, 2007), 49–56.

75. “Domingo Villegas al gobernador le informa la alarma provocada en la población por problemas en el campo,” Mendoza, 31 July 1837, AHM, carpeta 574, doc. 25.

76. *Ibid.*

José Félix Aldao was the other important figure the Laguneros complained about. He was the representative of Juan Manuel de Rosas in Mendoza, and he largely controlled the Federalist governors in the region until his death in 1845. In stating his own indignation, Villegas reflected the anger and generalized concerns of the local people in language that was unusual for a subordinate official: "Your Excellency, I have not been able to believe that we would be totally deprived of the land. I have tried to convince the people here to calm down, until I receive word of Your Excellency's position on the matter."<sup>77</sup>

Were the Laguneros Federalists? As I have indicated, they made their land claims during a period of intense political conflict in the region, with open warfare between Federalists and Unitarians and control of provincial governments rapidly changing from one party to the other. Most of the court proceedings took place during the Federalist governments of Pedro Molina in Mendoza and Nazario Benavides in San Juan at a time of relative stability under the Federal Pact, by which most provincial governments were controlled by men allied with Juan Manuel de Rosas in Buenos Aires. Also, if we go back to the request for a *protector* made to Pedro Molina in 1845, by which the process analyzed here was brought to a close, we see that Lagunero officials invoked the protection of the governor in view of services rendered "to the holy cause of the Federation." Taking these points into consideration, it would be tempting to advance the hypothesis that the Laguneros were allied with the Federalist Party during this period, supporting arguments such as those made by Ariel de la Fuente regarding the political affiliations of people in the countryside.<sup>78</sup> A brief analysis of the evolution of the Lagunero claims in the context of regional political history, however, suggests that party identification is not sufficient to explain their mobilization.

Beginning in 1832 Escalante resumed the post of *protector* and prepared the lawsuit in a Mendoza province governed by Federalist Pedro Molina, who was under the influence of Félix Aldao and thus indirectly of Rosas. The Laguneros, through local officials of the provincial government, succeeded in having their claims heard and submitted to the courts. The brief interregnum of the Unitarian government of Videla Castillo resulted in the postponement of the judicial process. It is significant, however, that the resumption of the lawsuit, along with the reinstatement of the position of protector de indios, took place shortly after Las Lagunas served as a refuge for the Federalist guerrillas who contributed to the victory of Quiroga and Benavides by successfully resisting Unitarian troop incursions and cutting their communications with San Juan. Many Lagune-

77. Ibid.

78. De la Fuente, *Children of Facundo*.

ros, as local literary traditions insist, joined the Federalist militias organized by Quiroga and Benavides.<sup>79</sup> Given some of the previous actions that Federalist governments took to repay debts owed to soldiers and other clients, the Laguneros might have received, or expected to receive, promises to have their land claims recognized in return for military services. This might have made it possible to obtain official recognition of such claims through “political arguments,” as Escalante suggested. Subdelegate Domingo Villegas apparently tried to make good on such a quid pro quo when in 1845, as we have seen, he asked Federalist governor Pedro Pascual Segura to appoint another *protector* to defend the native people who had “at the same time supported the provincial government, providing the services required of them . . . firm in their support for the holy cause of the Federation with their meager resources and their actions, of their own will and by orders of the Most Excellent Government on which they depend.”<sup>80</sup>

But beyond the Federalist political environment and the public Lagunero claims being coterminous, we should also look at the existence of certain ambiguities in the relationship between the Laguneros and their leaders on one side and the Unitarian and Federalist parties on the other during the period of the lawsuit over land claims.

Juan Escalante, the *protector* expressly requested by the Lagunero judges and appointed during the Federalist government of Pedro Molina, had been part of the first group of *ilustrados* in Mendoza in the 1820s, participating in literary societies and liberal intellectual groups such as the Lancastrian Society, which in general supported the Unitarian opposition. As the owner of the only printing press in the province he edited and published the first newspapers in the area in 1820.<sup>81</sup> The son of the governor himself, Luis Molina, who in 1836 was accused of usurping a huge swath of Lagunero land, had also been part of this early liberal coterie, and in 1862 Bartolomé Mitre and Domingo Faustino Sarmiento placed him as governor of Mendoza with the support of army troops from Buenos Aires. It is also notable that Villegas’s impertinent protests against abuses had not only criticized the governor’s son but also Félix Aldao, the highest representative of the Federalist cause in Mendoza.

These points suggest that Federalists were not always responsive to Lagunero demands, nor were liberals always opposed to them. It also seems evident that the people of Las Lagunas were viewed as a political problem not only by Unitarians but also by Federalists. During the nineteenth century, successive

79. Estrada, *Martina Chapanay*.

80. “Don Domingo Villegas al Gobernador le solicita nombre a Don José Gabriel Puebla,” Mendoza, 12 June 1845, AHM, carpeta 24, doc. 251.

81. They were titled *El Termómetro del Día* and *La Gaceta de Mendoza*.

provincial governments expended considerable effort to discipline and control Las Lagunas. Apart from the partisan struggles at the regional and national levels, the evolution of Lagunero demands seems to have been closely related to the progressive development of state strategies for the political and social control of the countryside and the similarly increasing pressure on Lagunero lands by both Federalist and Unitarian governments.

The 1828 request that a *protector* be appointed coincided with the first *reglamento de policia* in Mendoza. Broader than the exercise of police powers in the modern sense, this decree was intended to centralize state control more generally, especially in the countryside.<sup>82</sup> Two years later, in August 1830, Unitarian governor Videla Castillo issued a decree to the judges of Las Lagunas to put a stop to “the frequent disorders that have been seen in the territory . . . very particularly with respect to private landed properties.”<sup>83</sup> The decree gave the judges important powers. Showing a special interest in controlling the area, the governor created the Military Command and Subdelegacy of Las Lagunas in October of the same year, which functioned until 1833.<sup>84</sup> In 1834, during the Federalist government of Pedro Molina, measures to increase state control of the countryside continued apace, with the *reglamento de estancias* regulating rural property rights and imposing land-use restrictions based on the number of livestock and the labor of nonowners.

Countering the predominant image of Federalist caudillos as the source of the breakdown of state institutions and as obstacles to the political organization of the national and provincial governments, historians have increasingly begun to see the 1830s and 1840s—the period of Juan Manuel de Rosas’s hegemony—as the origin of the early development of the Argentine state.<sup>85</sup> It is clear that many caudillos and provincial governments, as in San Juan and Mendoza, sought to build legitimacy by creating or strengthening institutions of government, administration, and judicial process. The subdelegates and judges, in this regard, were promoted as representatives of the provincial government

82. Sanjurjo, *La organización político-administrativa*.

83. Castillo, “Decreto gubernativo.”

84. Sanjurjo, *La organización político-administrativa*, 46, 49; “Decreto del gobernador provisorio Videla Castillo del 12 de octubre de 1830,” AHM, Registro Ministerial de Mendoza, 1822–1834.

85. See, inter alia, Tulio Halperin Donghi, *Revolución y guerra: Formación de una élite dirigente en la Argentina criolla* (Buenos Aires: Siglo XXI, 1972); Goldman and Salvatore, *Caudillismos rioplatenses*; Noemí Goldman, “Legalidad y legitimidad en el caudillismo: Juan Facundo Quiroga y La Rioja en el interior rioplatense (1810–1835),” *Boletín del Instituto de Historia Argentina y Americana “Dr. Emilio Ravignani”*, 3rd ser., no. 7 (1993): 31–58.

in the countryside, supported as in Mendoza by laws and regulations intended to control the social and economic life of the population. Government officials, especially the subdelegates, who had accumulated multiple functions and reported directly to the minister of government like a chief of police,<sup>86</sup> also became the political extension of the governors or the caudillos who controlled them.<sup>87</sup> In addition to their function as tax collectors, the subdelegates also collected livestock, money, and men for the ongoing war.

But in the case examined here, the local agents of the state authority, since the very beginning of these efforts to develop institutions of government in the countryside, also channeled the demands of the population to the higher levels of the government. They sometimes did this in language that suggests a certain lack of respect or a veiled threat. The Lagunero judges and subdelegates received a reply that was institutional but also political. As Escalante himself and the language of the 1838 decree recognizing the land claims suggested, beyond the legal arguments it was necessary to attend to “political arguments,” as well as “the situation in which the natives of Las Lagunas find themselves” and “the powerful arguments they themselves have put forth in the presence of the subdelegate and their parish priest.” The officials, in turn, were always included as members of the indigenous community making the claims, and they identified themselves, even though sometimes in the rhetorical third person, as *Indians* or *natives*.

An apparent paradox is that the officials who were deployed as instruments of state control were the same people who defended the interests of the community in dealing with provincial elites and the state (whether Federalist or Unitarian). We might then ask what the true role was of the local judges and subdelegates, beyond being simply representatives of central authority. The first thing that stands out is that throughout the period under study both judges and subdelegates, and sometimes local commissars, took legal positions and submitted requests for recognition of Lagunero land rights against outside landholders. Secondly, there was considerable continuity in their positions as officeholders and local leaders, despite the decades of conflict and changes in party control of the government. The case of Domingo Villegas is the most prominent example. In 1819 he appeared for the first time, signing documents as “judge of the reducción of Asunción.”<sup>88</sup> He continued with that title until

86. Sanjurjo, *La organización político-administrativa*, 55.

87. Beatriz Bragoni, “Cuyo después de Pavón: Consenso, rebelión y orden político, 1861–1874,” in *Un nuevo orden político: Provincias y estado nacional, 1852–1880*, ed. Beatriz Bragoni and Eduardo Míguez (Buenos Aires: Editorial Biblos, 2010), 29–60.

88. Isidro Maza, *Ensayo sobre la historia*, 109.

1832, when he requested that Escalante reassign him to the position of defensor. In 1833, in documents relating to the murder of the judge of the *reducción* of Rosario, he appears as “judge of Las Lagunas de Guanacache.”<sup>89</sup> From 1837 to 1851 Villegas was a subdelegate, according to documents sent from the Subdelegacy of the Ninth Department made up of Asunción and Rosario. From 1851 to 1854 the departments of Las Lagunas and La Paz were joined to create the department of Rosario, with the town of La Paz as its seat. In 1855 the department was divided again, with Las Lagunas keeping the name Rosario, and Villegas was again designated as a subdelegate, a position he held until 1862, when Luis Molina became provincial governor. Thus Villegas spent 43 years as a local official, from the time of the government of General José de San Martín to the intervention in Cuyo after the defeat of the Federalists in the battle of Pavón and the beginning of the *montonero* rebellion led by Chacho Peñaloza.

From the fact that local subdelegates and judges continued to be key figures in the provincial government during a long period of considerable political instability, even while their demands challenged the interests of the regional landholding elite and the government itself, several possible conclusions may be drawn. First, it seems that the provincial government could not take control of the local population from outside. Instead, the state needed to negotiate with or recognize the authority of locally prominent figures, even though those local leaders questioned state control and the state’s very sovereignty in the area. Second, it is clear that through such officials, supported by local consensus, the *Laguneros* were brought into regional politics, at least partially. But most importantly, the *Laguneros*, identified as Indians in a society that had begun to deny their existence as indigenous people, had an uncommon degree of political acumen, ability to press for their interests, and autonomy with regard to the provincial governments and elites during the first half of the nineteenth century.

### **Final Words: Indian Judges, Creole Caciques**

As we have seen, the documents from the Historical Archive of Mendoza relating to Juan Escalante’s lawsuit and the 1838 decision on land rights were included in a petition that residents of Las Lagunas de Guanacache submitted to the provincial government in 1879 demanding protection of their lands, which were being taken over at the time by landowners from San Juan. Two weeks ear-

89. “Salazar y Villegas al Gobernador,” Mendoza, 9 Aug. 1832, AHM, carpeta. 574, doc 8.

lier, in the northern part of Las Lagunas, San Juan militias had burned ranches and had gone after their occupants. The complaint implored that “the endless and constant outrages by people from outside our department be stopped.” It was submitted by Rosendo González, the acting commissar of Las Lagunas, and Juan de la Cruz, previous holder of that office, together with several local householders, fishermen, ranchers, and laborers of the northern part of Las Lagunas.<sup>90</sup>

A few months earlier, the caudillo originally from Las Lagunas, José de los Santos Guayama, had been murdered in the San Juan police headquarters, which brought severe reprisals down on the Laguneros, including the killing of some of Guayama’s relatives and anyone with an obviously indigenous surname (such as Guaquinchay, Talquenca, Chapanay, and Allaime). Since the late 1860s, Santos Guayama had kept the government of Cuyo, and at times the national government, on edge. His activities ranged from southern Córdoba to Salta in the north as the right-hand man of Felipe Varela. Las Lagunas de Guanacache was a permanent focus of rebellion beginning with the montonero uprisings of Chacho Peñaloza in 1862 and throughout the entire period of Guayama’s leadership. I will treat Guayama’s career in more depth in another work, but I want now to point out that he emerged just a few years after the most violent period of repression in Las Lagunas, which began in 1862, when governors Domingo F. Sarmiento in San Juan and Luis Molina in Mendoza (one of the landlords the Lagunero judges accused of usurping land in the 1830s) invaded Las Lagunas three times to prevent it from possibly joining Chacho Peñaloza.<sup>91</sup> That was done, according to Molina, to “clean out the back lot of his estate” and depopulate Las Lagunas.<sup>92</sup> Such repression, recalling old practices from colonial times, involved killing a few heads of households, capturing their young children of both sexes and distributing them as slaves, and rounding up all the livestock they could find.

Guayama’s military actions emerged for the first time on the regional stage with Felipe Varela’s rebellion in 1867; along with his famous Lagunero battalion, Varela became one of the key actors in battles such as Pozo de Vargas in Santiago del Estero and in the taking of the city of Salta, during his sad retreat toward Bolivia. But by the late 1860s and early 1870s Guayama was mainly active in San Juan and Mendoza, attacking haciendas, mule trains, and livestock herds or capturing towns and even the customs post at Uspallata Pass, which was

90. “Defensa realizada por el Defensor,” ff. 1–3.

91. Escolar, *Los dones étnicos*, 142–43.

92. Molina, quoted in *ibid.*, 143.



the key to trade between Mendoza and Chile. Las Lagunas was always where Guayama holed up and kept control, persecuting local government authorities such as subdelegates and commissars. With a variable guerrilla band recruited among young Laguneros, old montoneros, and the drovers from captured mule trains, and with the support of important political contacts, he controlled not only Guanacache but most of the countryside of San Juan and northern Mendoza as well from the late 1860s and through the 1870s.

Two questions are left for further research. The first is whether there were conflicts between montonero leaders such as Guayama and political authorities such as Villegas. On this issue, we can say that the ending of Villegas's term in office coincided with liberal control after the battle of Pavón, specifically with the invasion of the interior by the army of Buenos Aires and the repression in Las Lagunas. In contrast to Villegas, who lived in Las Lagunas, the new departmental subdelegates were landholders located in the region of the richest lands in the southern part of the department near the city of Mendoza, which became the department's political center and continues to be so today. During the time Villegas was in charge, when Federalist governments were in power, there was none of the antagonism that occurred after 1862, when commissars and subdelegates were harassed and at times killed by Guayama or his troops. All evidence seems to indicate the breakdown of a tacit political agreement, which coincided not only with the push by the provincial and national governments to control and collect taxes from the region and its population, but also with the emerging political power of the landowners and cattle ranchers of the southern part of the province.

The second question is whether there was a connection between the indigenous claims for lands by Laguneros and the rebellious activities of the caudillo Guayama. This is more difficult to answer, because other than a few ambiguous references in modern Lagunero oral tradition, I have not yet found any conclusive evidence that Guayama continued an explicit strategy of defending indigenous lands in Las Lagunas by military means. It is well known, however, that only after Guayama's death in 1879 did new Lagunero leaders again petition the government as representatives of their community based on the documents in the Lagunero archives used in earlier complaints and judicial appeals. One of the two delegates listed in this petition, Juan Pelaytay (or Peletay), had from the early 1870s until a few months prior to the petition been the commissar of the Lagunas del Rosario zone. His ranches, or those of his workers, were the main ones burned by the militias and landowners of San Juan on the banks of Lagunas del Rosario. It is suggestive that while Pelaytay survived in office during the

period of Guayama's control, he left his official position and was attacked by militias from San Juan not long after the caudillo's assassination.

Although there is a wide gap in the historical record, it is possible to find repeated references in modern oral tradition as well as in regional literature since the second half of the nineteenth century to the image of Lagunero autonomy and its association with indigenous ways and political culture.

Similar to what appears in some literary works from the first half of the twentieth century, old Laguneros commonly refer to Santos Guayama and the local officials of his era as "caciques" or "Huarpe caciques." According to these traditions Guayama was the leader of the Laguneros or Huarpes who put up a bold defense of their lands and controlled Las Lagunas for decades.<sup>93</sup> Lagunero elders also maintain that the heads of local clans had commonly held government positions in the region since colonial times. An example is Juan Manuel Villegas, Domingo Villegas's son, who still in the 1930s was considered the principal landholder and authority, although the only official position he is known to have held was trustee of the chapel of Rosario de Las Lagunas. Juan Manuel Villegas's portrait was the prototype of the Huarpe Vestiges series by the Catalan painter Fidel Roig Matons, painted in the time when Villegas showed up in Mendoza with a hundred Laguneros to once again demand protection of their land and water rights.<sup>94</sup>

Sarmiento, in explaining the emergence of Chacho Peñaloza's montoneras in 1862, repeatedly referred to Guanacache and its particular local autonomy as a Huarpe redoubt, going so far as to invent the term *lagunatos* to refer to their combined ethnic, geographical, and political identity.<sup>95</sup> Pedro Echagüe, in commenting on the story of Martina Chapanay, a rural Huarpe heroine of the nineteenth century, described Las Lagunas as follows:

The people lived there as a family. . . . His neighbors had elected [Juan Chapanay] justice of the peace of the place, as the Laguneros in those days were a sort of tiny independent republic that elected their own authorities. The provincial court system intervened only in cases of serious crimes or robberies, through a staff official. . . . The clash of arms did not disturb the tranquility of those places. Even when caudillo activity upset the whole country, the Laguneros remained a peaceful

93. Ibid., 93–98.

94. Ibid.; Fidel A. Roig et al., *Guanacache: Fidel Roig Matóns, pintor del desierto* (Mendoza, Argentina: EDIUNC, 1999); Carlos Rusconi, *Poblaciones pre y posthispanicas de Mendoza*, vol. 1, *Etnografía* (Mendoza, Argentina: Imprenta Oficial, 1961).

95. Sarmiento, *Vidas de Fray Félix Aldao*, esp. 85.

people, fishermen and herders isolated from the rest of the world on the shores of their lakes.<sup>96</sup>

In this version the protagonist's father, who is called a Huarpe cacique,<sup>97</sup> is elected justice of the peace.

Undoubtedly the role of judges and other local authorities in the nineteenth century depended on the community's consensus, the authority's leadership qualities, and, especially, the ability to mediate political issues attributed to the caciques in various contexts, among independent indigenous groups as well as those that had long been incorporated into state structures.

Despite the narrative of extinction, the identification of the Laguneros and much of the rural population as indigenous does not seem to have been simply an invention by Sarmiento. In the era when *protector* Escalante developed his defense of the Lagunero Indians and Sarmiento constructed the typology of the gaucho as he wrote the Argentine nation (in Tulio Halperin's phrase) in *Facundo*, many parishes in San Juan and Mendoza baptized babies who were classified as Indians and kept parish registers organized by ethnic *casta*. The Lagunero authorities themselves apparently promoted such ascription. The appointment of 1828 had initially called Escalante the "*protector* of the residents of Las Lagunas de Guanacache." But justice of the peace Miguel González in 1828, as well as Villegas and Salazar in 1832, referred to themselves as delegates "of this reducción" or reducciones, invoking an indigenous identity. And finally the decree ratifying the land claim designated Escalante as "*protector* of the native peoples of Las Lagunas de Guanacache."

The federal governments of the time established a framework that was favorable to dealing with community claims. That happened not only because of the party affiliation of the Laguneros but also because during the period new government institutions and practices were developed that gave rural peasant and indigenous groups either access to the courts or a paradoxical degree of inclusion, even as they maintained relative autonomy.

Did the principles and procedures of the *derecho indiano* tradition promote the Indianization of the Laguneros? Or did the Laguneros themselves, self-identifying as Indians, invoke the legal system that recognized indigenous "rights and privileges" as one of several strategies of resistance? What is certain is that the troubled development of state-building strategies and republi-

96. Pedro Echagüe, *Dos novelas regionales* (1931; Buenos Aires: Jackson, 1936), 95.

97. Estrada, *Martina Chapanay*; Julio Fernández Peláez, *Martina Chapanay, poema histórico* (Mendoza, Argentina: Best, 1934).

can institutions, as well as increasing pressure for the privatization of land the Laguneros had occupied, was the context in which local authorities or leaders succeeded in having their land claims heard. It was also important that in a region and period (the 1830s) in which indigenous communities were considered nonexistent, the Laguneros obtained recognition of their rights to the land “since time immemorial.”

The memory of those struggles and their archival record continued to be operative through the nineteenth and twentieth centuries, despite their apparent disappearance. Between the petition of 1879 and the reappearance of the Lagunero archives in the 1920s, Rosendo González, who had organized the 1879 petition, submitted a new request to the government in 1900 asking for recognition of property in the countryside of El Rosario based on “community rights that are and have been protected since time immemorial.”<sup>98</sup> There was no clear suggestion of indigenous identity in this petition, but it ended in the colonial-era formula found in claims by the Lagunero judges and the *protector* since 1828: “We ask for favor and justice” (*Es gracia y justicia que pedimos*).

98. “Expediente sobre derechos de posesión de los campos del Rosario,” 1900, AHM, carpeta 578, doc. 3.