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Luize Stoeterau Navarro

A First Approach to the Law and Institutions of Dutch Brazil (1630–1654)

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A First Approach to the Law and Institutions of Dutch Brazil (1630–1654)

Luize Stoeterau Navarro¹

INTRODUCTION

On February 15, 1630 the Dutch² fleet arose in the Brazilian northeast, prepared for war and with a very ambitious objective: to take possession of what they believed to be the economic center of the Portuguese colony. Very well organized and with some years of study on the captaincy of Pernambuco, it took them only a few days to conquer Recife and Olinda.³

The domination lasted 24 years. The region underwent great changes and its population was greatly influenced by the Batavo people.

This article will analyze the administrative, political and legal organization proposed and used by the Dutch during their domination of Pernambuco and surrounding areas. The analysis of the three different phases of the administration will be made starting from three different ordinations used to structure and regulate the colony: the Order of Government of 1629, the Instruction of 1636 and the Instruction of 1645.

In this process, the assimilation of resilient Portuguese structures and positions will be highlighted, as well as the implementation of typically Dutch mechanisms, in an attempt to understand the functioning of institutions in the Dutch colony in Brazil.

Special emphasis will be given to the municipal chambers, structures that were central to the Portuguese empire and underwent different configurations during the Dutch rule, being perfect for the understanding of the assimilation and adaptation of the Dutch to the territory and organization of the seventeenth century in Brazil.

¹ PhD Candidate at Universidade Federal do Paraná, in Curitiba, Brazil.

² Even though they do have different meanings, *Dutch*, *Flemish* and *batavi* are used in this article as synonyms for didactic purposes, as well as *The Netherlands* and *Holland*.

³ J. A. G. de MELLO. *Tempo dos Flamengos: influência da ocupação holandesa na vida e na cultura do Norte do Brasil*. 2. ed. (2. tiragem). Recife: Secretaria de Educação e Cultura, 1979, p. 35.

CONTEXT

From 1636 to 1654 the Dutch dominated the northeast of Brazil. During these 24 years, while trying to establish their own ways and ensure their hegemony, they faced the task of adapting to a population and political, administrative and legal formulas already established by their Portuguese predecessors. The work was not easy and the Batavi looked at it in a very peculiar way, showing great tolerance towards different cultures that they found in the Brazilian lands.

According to Gilberto Freyre, the years in which the Flemish ruled the northeast provided contact between antagonistic groups and cultures, which were impelled to discover zones of fraternization, or at least interpenetration.⁴ The author points out that far beyond butter, cheese and the use of bricks, people came from The Netherlands: soldiers, artists, technicians, rabbis, Jews. People of the most varied origins, whose numerous descendants would remain populating the country, greatly affecting the ways of living and the culture of Portuguese America.

In this period, the region underwent great changes and its population was highly influenced by the Dutchmen. At the height of the Dutch power, six captaincies were under its dominion: Sergipe-d'El-Rei, Pernambuco, Itamaracá, Paraíba, Potigí or Rio Grande and Siará or Ceará.⁵ The Maranhão captaincy also came under the control of the Company, but was abandoned in 1644.

As for the existing political,⁶ juridical and administrative structure, the Flemish encountered municipal councils, structural administrative units throughout the Portuguese Empire

⁴ G. FREYRE. In: J. A. G. de MELLO, *Tempo dos Flamengos* (note 2), p. 20.

⁵ P. M. NETSCHER. *OS Holandeses no Brasil* (note 3), p. 172.

⁶ There are several different approaches or theories concerning the organization of the Portuguese and Spanish Empires. Even though it is not the main objective of this article to go deep in that discussion, some of them are worth mentioning, due to the fact that they can shift the perspectives in which we look at colonization. While Antonio Manuel Hespanha focuses on the lack of governmental centralization in the Portuguese empire and gives Law a central place, Laura de Mello e Souza believes that the Old Colonial system category is better suited for the case in question, especially for considering slavery in the government dynamics. Maria Fernanda Bicalho agrees with Charles Boxer that the municipal councils were the most fundamental institutions of the Portuguese colonial apparatus, and she believes that the communication between local and central institutions was assured by the privileges granted by the crown. Russel-Wood presents the center-periphery paradigm, in which the metropolitan hegemony and the mercantilist principle were progressively undermined by systemic decentralization. In the polycentric monarchies approach it is argued that there were no centers or peripheries, but a collection of European kingdoms and American city states, each claiming autonomy and all kept together by constitutional agreements and pacts. For more information: HESPANHA, A. M. *As Vésperas do Leviathan – Instituições e Poder Político em Portugal*. Coimbra: Almedina, 1994. SOUZA, Laura de Mello e. *O sol e a sombra: política e administração portuguesa na América do século XVIII*. São Paulo: Companhia das Letras, 2006. BICALHO, M. F.; FERLINI, V. L. A. (Orgs.). *Modos de governar: ideias e práticas políticas no Império Português – séculos XVI a XIX*. São Paulo: Alameda, 2005. p. 91-105. RUSSEL-WOOD, A. J. R. (1998). *Centros e periferias no mundo luso-brasileiro, 1500-1808*. *Revista Brasileira de História*, 18 (36), 187-250. <https://dx.doi.org/10.1590/S0102-01881998000200010>. CARDIM, P; HERZOG, T; RUIZ IBANEZ, J. J.; SABATINI, G (eds). *Polycentric Monarchies: How did Early Modern Spain and Portugal Achieve and Maintain a Global Hegemony?* Eastburne, UK: Sussex Academic Press, 2012.

with some standardization, so that they could be considered „the basic unit of the Portuguese judicial and administrative structure“⁷.

The councils of the Portuguese empire performed various functions, including economic, executive, judicial, and legislative functions, as well as police power. Specifically regarding judicial functions, it comprised statutory capacity for local affairs, recognized by the *Ordenações Filipinas*, and the first instance of judgment in most matters,⁸ while the *ouvidores* and *Tribunais da Relação* consisted of the second and third judgment, respectively. In order to exercise such varied roles, they had two to six councilors, two ordinary judges, and a procurator, as well as other officers nominated by the municipal councils, such as the *almotacés*.

It is worth remembering that it is a society inserted in the Portuguese Ancien Regime, a corporatist regime, with political economy of privileges and monarchist, although the crown was only one of several power existing poles, being completely autonomous and self-regulating.⁹

Also the Dutch were accustomed an institutional organization geared towards the city. The Netherlands arose from the union of autonomous cities into provinces and of these into a larger whole. At an early stage, the provinces gathered for a centralizing spirit of the Burgundian and Habsburg monarchies and, in a second, just to join forces against their hegemony. This picture of tensions culminates in a war against Spanish rule and independence, resulting, in 1579, in the formation of the United Provinces Republic, formalized by the Treaty of Utrecht.

Local power played a central role in the political, administrative and judicial organization of the Netherlands. Its main element was the *raad*, a kind of municipal council. It was the regents, members of such councils, who chose the *schepenen* – magistrates and principals in charge of administrative and judicial tasks. There were also councils at the provincial and central levels, which comprised the courts in the judicial sphere.¹⁰

By the very peculiarities of its formation, which gave strength to the particularisms, the Dutch Republic, like the Portuguese Empire, is inserted in the pre-modern reality and in the European Ancien Regime.

One of the important characteristics of this structure of the Ancien Regime – and therefore of the organization of the two regions analyzed here – is the natural character of society's constitution, which subjected social bodies to the fundamental laws of nature.¹¹ Such laws are the basis of Natural Law, which presupposes the existence of a higher order in the world,

⁷ S. SCHWARTZ. Burocracia e sociedade no Brasil Colonial: a Suprema Corte da Bahia e seus Juizes: 1609-1751. São Paulo: Perspectiva, 1979, p. 4.

⁸ A. M. HESPANHA. Poder e instituições na Europa do Antigo Regime: coletânea de textos. Lisboa : Fundação Calouste Gulbenkian, 1984, p. 341.

⁹ A. M. HESPANHA. Cultura Jurídica Europeia: síntese de um milênio. Coimbra: Almedina, 2012, p. 54.

¹⁰ J. I. ISRAEL. The Dutch Republic: its rise, greatness and fall, 1477-1806. Oxford. Claradon Press, 1995, p. 297.

¹¹ R. C. H. LESSAFER. A short legal history of the Netherlands. In: TAEKEMA, H. S. (Ed.). Understanding Dutch Law. Den Haag: Boom Juridische Uitgevers, 2004, p. 36.

anterior and higher than the will or the laws of men. Justice was conceived as an expression of social and political life, and it was also open to religiosity,¹² and, in the midst of this social context, besides the justice of corporations, ruled the *ius commune*, nomenclature given to Western Europe from the 12th to the 17th centuries. It was a kind of law in force in a broader and less particular sphere, prone to the general, held to be common precisely because founded on natural reason.¹³

Characterized by the union between canon law, Roman law and customary law, *ius commune* had the tendency to unity as the main attribute and reason of its name. This is due not only to the union of several sources of law, as already explained, but also to its constitution as a single law; the use of common knowledge; to their rather unified teaching at universities all over Europe; and the use of a universal language, Latin. In a context of juridical pluralities, the unity of *ius commune* did not make it superior to other legal manifestations. Ordinary law was taken as a subsidiary, which means that it was applied only in cases that could not be solved using the instruments and rules of the particular spheres of rights.¹⁴

As Evaldo Cabral de Mello points out, when „the Netherlands militarily consolidated its independence from Spain in Europe, the bourgeois offensive unfolded in an overseas offensive aimed at destroying the colonial bases of Iberian wealth and power“¹⁵, establishing for that very purpose the West Indies Company (WIC).

THE ORDER OF GOVERNMENT OF 1629

With the initial conquest of the Dutch, the *Order of Government, for Police as well as Justice, in the places captured or still to be captured in the West Indies*¹⁶, dated October 13, 1629, will be enforced in Brazil, which we will call the Order of 1629. It is a regulation of the Company of the Indies itself, which established general norms for the control of all lands conquered and that could still be conquered. This Order should be the foundation of government, containing rules on government institutions, law and jurisprudence for all Dutch colonies.¹⁷

Recent bibliography affirms that the Order of 1629 had two main purposes. The first was the idea of a central government for all Dutch colonies, with institutions based on those of

¹² A. WEHLING; M. J. WEHLING. *Direito e justiça no Brasil colonial: o Tribunal da Relação do Rio de Janeiro (1751-1808)*. Rio de Janeiro: Renovar, 2004, p. 27.

¹³ A. M. HESPANHA. *Cultura Jurídica Europeia* (note 8), p. 121.

¹⁴ A. M. HESPANHA. *Cultura Jurídica Europeia* (note 8), p. 114.

¹⁵ E. C. de MELLO (Org.). *O Brasil Holandês*. São Paulo: Penguin Classics, 2010, p. 12.

¹⁶ REGIMENTO das Praças Conquistadas ou que forem conquistadas nas Índias Ocidentais de 1629. In: RIAP, n. 31, 1886, p. 289-310.

¹⁷ J. A. SCHILTKAMP. *On Common Ground – Legislation, Government, Jurisprudence, and Law in the Dutch West Indian Colonies: the Order of Government of 1629*. In: HalveMaen, vol. LXX, n 4, p. 73.

the United Provinces; the second, the uniformity of laws between the colonies and the Republic, which would allow the same Dutch laws to be applied to all colonies.¹⁸

Named by many the constitution or fundamental law of the WIC for the colonies in the west, the Order of 1629 brings in itself „if not the entire Dutch system of government, legislature, jurisprudence, and law, then, at least most of it“¹⁹. One could say, in this way, that it was the main thread of the Dutch system to the Americas.

The Order regulated the organization of government and justice in the WIC possessions, initially establishing for the government of each colony a board composed of nine councilors chosen by the different chambers that composed the WIC. The Amsterdam chamber could appoint four of these councilors; the one of Zeeland two, and the others (Rotterdam, North Quartier and Frisland) one each, which explains the influence and centrality of the Company for the government of the colonies.²⁰

These nine councilors formed the Political Council and were to be chosen from honorable individuals born in the United Provinces or who had resided there for at least 7 years, devotees of the Reformed religion and versed in politics, justice, and commerce. All nine were considered equal in hierarchy and would alternate in power, each presiding over the Council for a period of one month.²¹ The exercise of official duties were (quite relative)/quite pertaining to each role, and also very characteristic in Portuguese chambers where functions in different officers often overlapped.

The nine councilors had supreme power over all matters of government, including finance, the administration of justice and the police, and military affairs, and it was up to them to „maintain public order, peace and harmony among all kinds of people, such as residents, soldiers, sailors and others, regardless of their nationality, status or condition, who are under their authority“²².

They were also guaranteed the right to legislate, editing positions and regulations on small subjects such as markets and taverns, inns, small businesses and commerce, which, however, should be approved by the Dutch central government. Here, a similarity between the Council and the Portuguese chambers, which also assured their councilors the ability to edit ordinances.

On March 14, 1630 the Political Council was effectively installed in Olinda, according to the orders of the metropolis. In that same year, the seat of the council was transferred to Recife.²³

¹⁸ J. A. SCHILTKAMP. On Common Ground (note 16), p. 74.

¹⁹ J. A. SCHILTKAMP. On Common Ground (note 16), p. 74.

²⁰ REGIMENTO das Praças Conquistadas (note 15), p. 289-310.

²¹ REGIMENTO das Praças Conquistadas (note 15), p. 289-310.

²² REGIMENTO das Praças Conquistadas (note 15), p. 290.

²³ J. De LAET. História ou Annaes dos feitos da Companhia Privilegiada das Índias Occidentaes, desde o seu começo até ao fim do anno de 1636. Rio de Janeiro: Biblioteca Nacional, 1916, Vol. 1, p. 47.

It was also planned for the government to have an advisor, subordinate to the nine councilors. This position should be filled by a jurist chosen by the *Heeren XIX*²⁴ to perform the following functions: giving opinions when requested, writing the memoirs and records, issuing the letters and signing the other acts; that is, the advisor held the positions of pensioner, secretary and notary for the business of justice and the police, following the example of the „good cities of these United Provinces.“²⁵

Besides the Council, the order also ruled that in each colony a governor should be chosen and a small local government formed, always subordinate to the council of nine advisers. Such a governor would have access to meetings of the college and would be summoned to meetings involving war matters, important expeditions and building of forts, in which they exercised advisory functions.²⁶

As for criminal justice, the statute establishes that offenses punishable under natural, divine and ordinary laws, practiced by all individuals, regardless of nationality or condition, would be judged by ordinary justice. For soldiers and sailors, the intervention of the general and the governor is made possible.²⁷

There is a legal provision for the appointment by the Political Council of a *schout* for each of the jurisdictions. The *schout*, a trade imported from the Netherlands, has among its attributions the responsibility to arrest criminals, to promote the execution of sentences, to watch the execution of these same sentences, to watch over the observance of ordinances and civil regulations decreed the States General or the WIC and punish the perpetrators.

It was also the function of the *schout* to lodge a complaint or prosecution, which would initiate the criminal justice proceedings, thus being responsible for the role of chief of police²⁸, approaching quite closely the figure of the *almotacé* of Portuguese America.

For the development of criminal process procedures, consisting of the accusation by the *schout* and subsequent trial in different instances, the college of counselors, in full composition, would be converted into a court and become responsible for the progress of the process and for the possible revision of the sentences, in a second instance.

Finally, the regiment affirms that

[...] As for criminal prosecution, torture, trial of criminals and execution of punishment, the ordinary uses of the United Provinces and the common law will be observed, applying them, as they ask for the circumstances, so that the bad ones do not go unpunished, nor also very strict.²⁹

It is noteworthy that the law of criminal procedure used by the Dutch was based on legal customs of the United Provinces and the *Ius Commune*, according to article 55 of the regiment. The legal customs in question are two ordinations of Felipe II, of 5 and 9 of July of 1570, with

²⁴ Name given to the direction board of the Dutch West-India Company, with nineteen directors.

²⁵ REGIMENTO das Praças Conquistadas (note 15), p. 289.

²⁶ J. A. SCHILTKAMP. On Common Ground (note 16), p. 75.

²⁷ REGIMENTO das Praças Conquistadas (note 15), p. 290.

²⁸ J. A. G. de MELLO. Fontes para a História do Brasil Holandês: a administração da conquista, v. II. Recife: Secretaria da Cultura, 1985, p. 31.

²⁹ REGIMENTO das Praças Conquistadas (note 15), p. 304.

which the emperor sought to unify the criminal process in the Netherlands. The common law should be used subsidiarily, if local ordinances and customs do not provide a response to the specific case under analysis, in the same way as in the Portuguese Empire.³⁰

Therefore, following the steps of what happened in Holland, in seeking to apply the law to a concrete case, one should first seek a rule applicable in written laws and, in the alternative, unwritten laws or customs, which acted as a subsidiary source of law. If there was still no solution, an answer would be looked for in Roman Law, which acted as supplementary law, being called the general written law, a term that frequently appears in the legal texts of the time of the Dutch dominion.³¹

These concepts also applied to civil cases, which, according to the rules of procedure, should be processed as swiftly as possible, provided that they do not deny the parties' right to justice.³² The Order of 1629 is more extensive when it comes to civil justice. It begins by determining that three commissioners of the board of advisors to be determined by the Council itself every three months, ensuring rotation, should administer any real or personal legal action.

The Law to be applied is, in the exact terms of the Rules of Procedure, the common procedure of the United Provinces or what the *Heeren XIX* decided to implement. This common process, it is believed, refers to a Dutch ordinance of 1 April 1580, entitled "Ordinance on justice in the cities and countryside of the Netherlands", which describes the procedure for civil cases in 32 articles.³³

There is the possibility of appealing the final judgments or interlocutory decisions given by the three advisers appointed in cases whose value exceeds 25 florins, and the full council then judges such appeals. From the decision of the full council, however, there is no appeal under the Rules of Procedure.

THE INSTRUCTION OF 1636

In 1637, after the main period of conquest and maintenance of territory, a new regiment, made by WIC especially for Brazil, comes into force. The *Instructie*³⁴ – or Instruction – was enacted on August 23, 1636 and its vigor basically coincides with the Nassovian government,

³⁰ J. A. SCHILTKAMP. On Common Ground (note 16), p. 75.

³¹ J. A. SCHILTKAMP. On Common Ground (note 16), p. 76.

³² J. A. SCHILTKAMP. On Common Ground (note 16), p. 76.

³³ J. A. SCHILTKAMP. On Common Ground (note 16), p. 76.

³⁴ *Instructie, vande Ho: Mo: Heeren Staten Generael deser Vereenighde Nederlanden, voor de hooge ende lage Regieringe der Geoctroyeerde West-Indische Compagnie, naer de welcke voorts aen beleyt ende gederigeert zullen worden alle het bewint ende zaecken, met den aenkleven van dien, vervallende, ende noch voor te vallen inde geconquesteerde Capitanien, Steden, Forten ende Plaetsen in Brazijl, ende die noch naemaels geconquesteert zullen worden. In date den 23 Augusti 1636.* In: C. CAU. *Groot-Plackaet Boeck*. Boeck 5, Titel 5, 9 Deel, cols. 1247/1264.

a period of “relative peace between two periods of war”³⁵. As Gonsalves de Mello explains, “only in the second half of 1637, when the most urgent military problems were resolved, did the Count and the High and Secret Council begin to organize the various administrative and judicial jurisdictions of the conquest, according to the Dutch model”³⁶.

Nassau’s choice as governor-general changed drastically the organization of the colony, which was then guided by the Instruction of 1636. This regulation is much longer and detailed than its predecessor, with 99 articles dealing with the most varied subjects, which leads to the belief that the experience of previous years was assimilated and taken into account in the elaboration of legislation specifically made and tailored for the Brazilian colony.

As a result of this legislative change, the governor-general, Maurice de Nassau, together with the High and Secret Council, constituted the High Government of the Dutch colony in Brazil.

The governor-general, appointed by a charter of Amsterdam on August 8, 1636, was given power over all the places conquered and still to be conquered in Brazil by the West Indies Company, as well as all the land and sea forces that the WIC has there or is yet to acquire.³⁷

Any matter involving matters of public government, such as exploration of the conquered lands, displacement of troops, export of the production and construction of forts would have to require the endorsement of the governor. In matters requiring a joint decision by the Governor and the High and Secret Council, this would be the case, since Nassau’s vote would be a tie-breaker, and could count as two.³⁸

The Council was responsible for the administration of the police, finance, and everything else on which public administration depended. The three senior and secret advisers were also chosen by the *Heeren XIX*³⁹.

Their functions comprised consulting and deciding on the exploration of water and land, establishment and displacement of troops, construction of new forts, displacement and demolition of the old ones, choosing a place of residence. The text of the law mentions that the will of one should not overlap with that of others, and that they should only communicate their decisions when they reach a consensus.

Finally, the Instruction authorizes the Governor and the High Council “to make, publish and enforce censorship and ordinations on markets, hostels, small businesses, professions and trades and others, when police and good order are needed; [...]”.

The Political Council remained active, but became subordinate to the High and Secret Council and its attributions were greatly modified by the new regiment. It remained, however, in nine members, chosen by the WIC chambers in a similar way to the disposition of the Order of 1629.

³⁵ E. C. de MELLO (Org.). *O Brasil Holandês* (note 14), p. 161.

³⁶ J. A. G. de MELLO. *Fontes para a História* (note 27), p. 22.

³⁷ J. A. G. de MELLO. *Fontes para a História* (note 27), p. 13.

³⁸ INSTRUCTION of 1636 (note 33).

³⁹ J. A. G. de MELLO. *Fontes para a História* (note 27), p. 13.

The Political Council received, from 1636 on, a central position for the administration and direction of Justice, both criminal and civil. According to the Instruction: “XXV - The College itself should have the direction and administration of Justice, in both criminal and civil cases, to administer and direct them according to the orders and regulations, as will be explained from now on.”⁴⁰

Those responsible for the High Government report in a report that because of the powers of the Political Council, it would be advisable for counselors to be jurists, not only to have attended the academy but also to have some experience with courts.⁴¹

Wätjen states that the decisions of the Political Council were still open to appeal, and the appeals should be heard by the High and Secret Council:

[...] all civil and criminal proceedings, as well as appellations against final judgments of the Councils of Escabinos - an instance considered immediately inferior, belonged to the jurisdiction of the Political Council. If authors and defendants did not comply with the Political Council's verdict, they could appeal to the High Council as the supreme court of the colony.⁴²

The Political Council was also responsible for judging civil and criminal cases in the second instance. His close approximation with the judicial causes in this second model of organization of Dutch Brazil made it, in the 1640s, become the Council of Justice.

For the organization of justice in the captaincies and cities, the *schepen* councils were created, composed of groups of at least 5 people chosen by the political advisers. These chambers, analogous to those of Portuguese councilors, would be responsible for local and first-instance justice, whether civil or criminal. In the process of its implantation, the Dutch took advantage of the division in capitánias and their jurisdictions already existing in the colony, as well as the seats of the municipal councils, that were conserved with only some modifications, like the transference of the captaincy from Pernambuco de Olinda to Mauritius.

In total, one can find record of the existence of 10 councils in Portuguese and Dutch sources in the period between 1630 and 1654: Olinda (later transferred to Mauritius), Serinhaém, Igararassu, Porto Calvo, Alagoas, São Francisco, Santo Antônio do Cabo, Itamaracá (or Goiana), Paraíba and Rio Grande.⁴³

With this the administration of the municipal justice was delegated to courts of local magistrates: „XLVIII – The *schepen* or Administrators of the Civil and Criminal Justice must be at least 5, or more, depending on the size of the city or locality, and if a political adviser is present, he can preside them if he deems necessary“⁴⁴.

⁴⁰ INSTRUCTION of 1636 (note 33).

⁴¹ J. A. G. de MELLO. Fontes para a História do Brasil Holandês: a economia açucareira, vol. I. Recife: CEPE, 2004, p. 97.

⁴² H. WÄTJEN. O domínio colonial hollandez no Brasil: um capítulo da história colonial do século XVII. São Paulo: Comp. Ed. Nacional, 1938 (Brasiliana, v.123), p. 301.

⁴³ LUCIANI, F. T. Municípios e Escabinos: Poder local e guerra de restauração no Brasil Holandês (1630-1654). 2007. 181 f. Dissertation (masters in Social History) – Universidade de São Paulo. São Paulo. 2007, p. 87.

⁴⁴ INSTRUCTION of 1636 (note 31), art. XXVIII.

The instruction ends up quoting both political advisers and scabbins as administrators of justice. However, it is believed that there is no inconsistency, since each would have different functions in this administration: the scabins would be the ones in charge of the local administration, whereas the advisers, in general. Moreover, as far as the competence to judge, the scabbins were placed at the first instance and the Political Council with the second.

The choice of *schepen* initially required the selection of a group of at least twenty voters. These were appointed by the political advisers and could vary in number according to the size of the city, nevertheless could not exceed thirty. Voters should be qualified, honest and trustworthy citizens, either Dutch or Portuguese, in the service of WIC or not, and serve as voters for life.

Following what happened in the United Provinces, elections for *schepen* in the colony were highly elitist. In the Netherlands, only a small part of the population could vote and be voted on, causing a monopoly of positions by a small number of families. It is believed that the same restrictive criterion was brought to Brazil, since „the 47 squatters of the Olinda-Recife-Mauritius chamber, in the 7 exercises ranging from 1637 to 1645, are occupied by only 30 individuals“⁴⁵.

It is worth remembering that the elitist criterion existed also in Portuguese America, since only the so-called *good men* could hold official and prestigious positions, a criterion that remained with the Portuguese population during the Dutch rule, so that the presence of Portuguese and local *schepen* did not break the elite monopoly.

The *schepen* should follow „the style and manner of procedure determined in the Dutch Regiment of 1580, on the organization of cities and plains, or they should seek something similar with the *Heeren XIX*, with the approval of the States General“ and they are also recommended to make judicial proceedings as expeditious as possible without prejudicing the parties.

It can be stated, therefore, that the city councils were absorbed by the new organization of the Dutch, who took advantage of the seats, some members and even the names of their predecessors, giving them their own contours and a typically Republican seasoning. It is thus clearly a hybrid institution, which unites elements of Portuguese legal culture, such as the organization of chambers and councils, with Dutch elements, escabins and escetets. Even the right to be applied revolved around Ordinances of both communities. This very characteristic and multicultural construction is an absolute example of the circularity of legal culture.

As to the determination to follow Dutch law, it is important to clarify that such a task was complicated for the Portuguese *schepen*, for the linguistic and cultural barrier that it was. Nassau explains that in the early years this demand was relativized, while a translation of the ordinations of the United Provinces was not made for its use:

For some months now, the Colleges of Schepen have been set up and functioning, but to date it has not been possible for them to proceed according to the orders and style of the Netherlands and West

⁴⁵ M. NEME. Fórmulas políticas no Brasil holandês. São Paulo: Difusão Europeia do Livro: Ed. Univ. S. Paulo, 1971, p. 244.

Frisia, first because it is a very serious matter to cause a whole people to change laws, order and style, and learn a new style; and secondly, because of the difference in the language, and because it is difficult to translate our orders from Dutch into Portuguese, in which we are very much engaged, and we will soon translate into Portuguese the ordinations on things of justice, as far as they are concerning these colleges⁴⁶ (MELLO, 2004: 97).

The Instruction deals with civil and criminal justice separately in some aspects. As for criminal, the figure of the *Schout*, a Dutch trade already introduced in the Brazilian administrative boards by the 1629 Regiment stands out. The *schouten* were chosen by the Governor General and by the High and Secret Council in all the localities in which there was a chamber of scabies and his functions were close to those of the police:

XLIII – For the apprehension of criminals, to carry out the execution of sentences, to administer and verify compliance with the Ordinances of both the *Heeren XIX* and the Governor and High Council, to correct those who overtake them, the Governor and the High Council, advised by the Political Council shall elect an *schout*, or deputy prosecutor, and, below this, three more servants, and this in each place where there is a court of first instance or in which there is administration of justice.⁴⁷

According to Wätjen, the function of the *schouten* united the prerogatives of a state attorney and a police chief.⁴⁸ The police power conferred on the *schout* was sometimes abused, causing even fear in the Portuguese residents. Often they executed arbitrary arrests and could interfere with the judgments of the *schepen*. As Gonsalves de Mello sums up, „because of their charges, and also because of the fact that several of them had no qualms about arresting and extorting the Portuguese-Brazilian residents, under false pretenses, the most hated and feared officials of the administration in Dutch Brazil were the *schouts*“⁴⁹.

Finally, the Instruction provides explicit information on the material right to be applied in criminal cases: the customs of the United Provinces and the Roman Law: „XLIII - In the politics of justice and criminal prosecution, torture and execution concerning crimes must follow the custom of the United Provinces and the common written law“⁵⁰

INSTRUCTION OF 1645

On May 6, 1644, Count Nassau left Brazil. After his departure, the Instruction of 1636 became, in parts, outdated, since his position was not filled by another Dutchman, but simply ceased to exist. For this reason, in 1645 the States General approved a new Instruction to serve as Regiment in the Brazilian lands under Dutch rule. The only major change brought about by the new legislation is a different composition for the High Government, which now consists of a president and five advisers.

⁴⁶ J. A. G. de MELLO. Fontes para a História do Brasil Holandês (note 40), p. 97.

⁴⁷ INSTRUCTION of 1636 (note 31), art. XLIII.

⁴⁸ H. WÄTJEN. O domínio colonial (note 41), p. 329.

⁴⁹ J. A. G. de MELLO. Fontes para a História (note 27), p. 31.

⁵⁰ INSTRUCTION of 1636 (note 31), art. XLIII.

In addition, the new Instruction of 1645⁵¹ did not bring changes and even affirmed that, in what has not been expressly modified, one must continue to use the Instruction of 1636.

The new regiment of 1645 brings symbolic modifications only to the high government, which is re-exercised in the form of collegiate.⁵² However, with the beginning of the restoration, portuguese municipal councils and schepen councils begin to coexist, although there is no indication of how the relationship between these institutions occurred.

With the beginning of Restoration, virtually all the municipal councils existing before the Dutch invasion were reestablished. That means that untill the Dutch left Brazil, in 1654, those institutions coexisted with the dutch hybrids: *schepen* councils. There is no further information on how the two types of chambers coexisted, but because of the presence of the particularism so characteristic of the societies of Ancien Regime, it is believed that the councilors attended the Portuguese cases, while the escabinos attended the Dutch, leaving the latter also issues of public utility, since they responded directly to the government established.

Wätjen goes further and reports that the councils of *schepen* completely lost their significance after 1645, although they did not immediately cease to exist: „at the time of the Revolution, the Colleges of *Schepen* were quickly destroyed as a result of the irreconcilable attitude of opposition between Holland and Portuguese – and even the Court of Schepen of Mauritius, after 1645, had entirely lost its importance“⁵³.

After the departure of Nassau, the Luso-Brazilian union gained strength. The uprising and the insurrection took shape and gained strength. In 1654, after a war of insurrection, the siege of Recife and the battle of the Guararapes, the Dutch leave Brazilian lands.

FINAL CONSIDERATIONS

Three major regulations were used by the Dutch to organize their colony in Brazilian lands.

The first, the Order of 1629, sought to organize all the territories acquired and conquered by the Dutch West India Company. There was a political council, a collegiate body that centralized political, administrative and judicial functions. Some Dutch positions, such as the *schout*, with police functions, were also planned. During this period, the Portuguese municipal councils remained in operation, with their Portuguese officers and customs.

The second, the Instruction of 1636, was written specifically for Brazil. The main change is in the central government, which is then exercised by a governor-general, Maurice of Nassau, in union with the High and Secret Council. The Political Council, formerly responsible for

⁵¹ “*Instructie vande Gecommitteerde wegen de generaele geotroyeerde West-Indische Compangie ter Vergaderinge vande Negenthiende, voor die vande Hooge Regieringe van Brazil, waer naar de zelfe haer zullen hebben te gedragen. In date den 12 October 1645. Met de Approbatie van haer Ho: Mo: vanden 6 November 1645*”. In: CAU, C. *Groot-Plackaet Boeck*. Boeck 5, Titel 5, 9 Deel, cols. 1247/1264, art. I.

⁵² INSTRUCTION of 1645 (note 50).

⁵³ H. WÄTJEN. *O domínio colonial* (note 41), p. 307.

the management of the colony, has functions for the administration of justice. During its term, the chambers of *escabinos* are formed, which unite the Portuguese chamber structures with the main local Dutch official, the *escabino*, demonstrating the great circularity of legal culture of the period.

Finally, with the Instruction of 1645 little is modified. With the departure of Nassau, the figure of the governor-general is extinguished and the government is again exercised by a collegiate body. Although there are no major changes foreseen in the regulation regarding local organization, in practice the Portuguese municipal councils are gradually returning to work, in face of Portuguese restoration.

After an analysis of the legal institutions of the period, it is concluded that the Dutch system was not applied in a pure way at any time of the Dutch domination of Brazil. Not only because it would be difficult to speak of a single system in the United Provinces, but also because, even during the validity of the Instruction of 1636 and the height of Dutch power, what is perceived is a mixture of Dutch and Portuguese institutes and circularity of the legal culture in the period. While the Flemish influences prevailed in some moments, it can not be denied that Portuguese customs remained entrenched in society and in its political, juridical and administrative organization.

Even the political-administrative divisions of the territories by the Portuguese was taken advantage by the Dutch, since in most cases a council of *schepenen* only replaced an old council chamber that existed in the same place before the Flemish invasion.

As for the law, the set of rules and regulations to be used in the chambers and councils could not be more imprecise, which is very close to the logic of the Ancien Régime, where legal pluralism was the rule. In Dutch Brazil, Dutch and Portuguese regulations were used and such plurality resulted in cultural and legal wealth, in order to approximate the Law to its population.

There is no doubt that the period was rich in exchanges. Exchanges of culture, not only that of the law, but also of the latter, which resulted in institutions as characteristic and as special as the council of *schepenen*, part Dutch and part Portuguese.