

forum historiae iuris

Erste europäische Internetzeitschrift für Rechtsgeschichte

<http://www.forhistiur.de/>

Herausgegeben von:

Prof. Dr. Rainer Schröder (Berlin)
Prof. Dr. Hans-Peter Haferkamp (Köln)
Prof. Dr. Albrecht Cordes (Frankfurt a. M.)
Prof. Dr. Mathias Schmoeckel (Bonn)
Prof. Dr. Andreas Thier (Zürich)
Prof. Dr. Franck Roumy (Paris)
Prof. Dr. Emanuele Conte (Rom)
Prof. Dr. Massimo Meccarelli (Macerata)
Prof. Dr. Michele Luminati (Rom)
Prof. Dr. Stefano Solimano (Milano)
Prof. Dr. Martin Josef Schermaier (Bonn)
Prof. Dr. Hans-Georg Hermann (München)
Prof. Dr. Thomas Duve (Frankfurt a. M.)
Prof. Dr. Manuel Martínez Neira (Madrid)
Prof. Dr. D. Fernando Martínez Pérez (Madrid)
Prof. Dr. Marju Luts-Sootak (Tartu)
Prof. Dr. Heikki Pihlajamäki (Helsinki)

Beitrag vom 18. August 2014

© 2014 fhi

Erstveröffentlichung

Zitiervorschlag:

<http://www.forhistiur.de/2014-06-lobes-pereira/>

ISSN 1860-5605

Luís Fernando Lopes Pereira

The circularity of 17th century juridical culture in colonial Brazil: hybridism and tensions between common and educated understandings of the law.

This text has been put together around a series of questions and answers, in an attempt to cover my central research questions, as they unfold along three basic axes: historical period, object of study, sources and method. 1

1. Why “colonial law”?

The very issue implies the question of why this particular period was chosen. There are several reasons for this choice, which I will schematize below. 2

1.1 Studying the colonial period can contribute to current rethinking of national classics.

Classics authors, known as “those who invented Brazil” because of the content and impact of their work, can be divided into two groups: those who belittled Portuguese heritage (Sérgio Buarque de Holanda¹, Raymundo Faoro², Caio Prado Junior³, Fernando Novais⁴, etc.) and those who exalted it: (Francisco de Varnhagen⁵ and Gilberto Freyre⁶). Caio Prado the former position the furthest, speaking of a colonial administration that is chaotic (without any division of powers), irrational (following no legality), contradictory, tied to routine and fueled by a monstrous and inefficient bureaucratic machine. In his words: “incoherence and instability in population patterns; poverty and misery in the economy; disintegrating customs; inertia and corruption among secular and religious leadership.”⁷ Lack of organization was seen as the rule: the population that had been marginalized, a legacy of slavery, tended toward social disintegration (“caboclicização” and vagrancy). This then led to general (economic and social) malaise. For Freyre, in turn, the success of the colonial project could be seen as resulting from the Portuguese temperamento, its spirit of adventure and tendency toward miscegenation. 3

A critical vision of the colonial past, sown initially through the pioneering classics and nurtured by research and teaching institutions, is the fruit of an academy that goes back to the period in which Brazilian nationalism was consolidated (during the 1920s and 1930s), reinforcing the national 4

¹ HOLANDA, Sérgio Buarque. Raízes do Brasil. São Paulo: Companhia das Letras, 1990.

² FAORO, Raymundo. Os donos do poder. São Paulo: Editora Globo, 2000.

³ PRADO JUNIOR, Caio. Formação do Brasil Contemporâneo. São Paulo: Companhia das Letras, 2011.

⁴ NOVAIS, Fernando. Portugal e Brasil na crise do Antigo Sistema Colonial. São Paulo: Hucitec, 1983.

⁵ VARNHAGEN, Francisco Adolfo de. História geral do Brasil. São Paulo: Edições melhoramentos, 1956.

⁶ FREYRE, Gilberto. Casa grande e senzala. São Paulo: Global, 2006.

⁷ PRADO JUNIOR, Caio. Op. Cit. p.65.

in opposition to the colonial, that is, to Portuguese rule. Today a good portion of general Brazilian historiography has devoted itself to revising these studies. Authors such as Ronaldo Vainfas⁸, Laura de Mello e Souza⁹, Maria Fernanda Bicalho¹⁰, Luiz Felipe de Alencastro¹¹ have made a fundamental contribution in this regard. They attempt to join forces with a kind of historiography that moves beyond the bias that colonialism left in its wake, toward elaborating a more complex, relational and plausible view of the colonial period.

1.2 (Re) positioning Brazil within the Portuguese Empire. (Re) Inserir o Brasil no Império Português.

One of the elements that is present in the classics and that should be superseded is a view of Brazil that is entirely focused on the country itself. The exception to the rule is Gilberto Freyre's work, which looked at culture through its constituting exchanges.. Nonetheless, colonial Brazil was part of an overseas Empire that engaged in forms of exchange that were much more intense than those that Freyre emphasized in his work, evoking our *zumbaias* and other orientalist expressions as well as Brazilian political and juridical experiences.

In addition to Freyre, Brazilianists such as como Charles Boxer¹² and Stuart Schwartz¹³ perceived the need to place Brazil in relation to other parts of the Portuguese Empire, and Africa in particular. They devoted themselves primarily to the discussion of themes related to the juridical sphere.

Portuguese America, when examined from a relational perspective, reveals new facets including the transposing of other experiences, fruit of the more flexible model of colonization that the Portuguese Empire promoted. Studies that are carried out from this perspective open up a possibility for comparative study of the different regions in which similar Portuguese colonial structures, such as municipal chambers, the center of administration of justice for the Portuguese, were set up and became a central governmental element. Chamber councils took on different shapes according to region, varying from those that were more subordinate to higher authority, such as those set up in the Orient and in the Indies in particular, to those that had considerable autonomy, such as the one that was established in the Brazilian city of Salvador da Bahia. Devoting attention to the complexity of these configurations may do much for our understanding of cultural exchange within the political and juridical ambit of the Portuguese Empire.

⁸ VAINFAS, Ronaldo. *Trópico dos pecados; moral, sexualidade e Inquisição no Brasil*. Rio de Janeiro: Campus, 1988.

⁹ SOUZA, Laura de Mello. *O diabo e a terra de Santa Cruz; feitiçaria e religiosidade popular no Brasil colonial*. São Paulo: Companhia das Letras, 1986.

¹⁰ BICALHO, Maria Fernanda. *A cidade e o Império; o Rio de Janeiro no século XVIII*. Rio de Janeiro: Civilização Brasileira, 2003.

¹¹ ALENCASTRO, Luiz Felipe de. *O trato dos viventes; formação do Brasil no Atlântico sul*. São Paulo: Companhia das Letras, 2000.

¹² BOXER, Charles R. *O Império Colonial Português (1415-1825)*. Lisboa: Edições 70, 1981.

¹³ SCHARTZ, Stuart. *Sovereignty and society in colonial Brazil; the High Court of Bahia and its judges, 1609-1751*. Los Angeles: UCLA Press, 1973.

1.3 *The study of juridical culture can make a specific contribution to historiographic literature.*

An element that is common to all the classics mentioned above is their lack of interest in colonial juridical culture, treated in a caricatured fashion in their hasty analyses or in the way they consciously reject it, as Freyre does. Influenced by Boas, Freyre focuses on culture and avoids the political (and the juridical). When he does approach the juridical terrain, he does so only in terms of its dependence on monarchical power or uses it in a distorted way to demonstrate the juridical flaws that we had inherited from the Inquisition. 8

The focus on juridical experience reveals an uncommon aspect of the colonial environment. Its structuring element becomes evident, just as Paolo Grossi¹⁴ has shown it to be within medieval configurations. Thus, studies such as those of António Manuel Hespanha¹⁵ (restricting ourselves here to its major figure) can cast new light on the Brazilian juridical world; a counterpart can be found in colonial studies through which new understandings of concepts originally valid for the Portuguese case can be developed. 9

2. The rationale for studies using culturalist tools.

We are all aware that the present sheds light on the past and that is why discussions carried out in Europe on the *Ancien Regime* require adaptation to an environment different from their own. Thus, the use of the concept of juridical culture and its connection to knowledge paradigms that reinforce the need for the aforementioned types of filter become necessary, keeping our current goals in mind. 10

2.1 *Colonial thought.*

If each present casts light on a past, Brazilian and metropolitan ones harbor differences. If the metropolitan case entails greater autonomy and a view of an *Ancien Regime* of juridical pluralismo, within colonial studies such a view is tempered with a dose of emphasis on control and centralization. We should not see a Leviathan where one does not exist, but should be attentive to the fact that in part, the imposing of metropolitan will, even through chamber councils, was successful. 11

This reading of the colonial is inspired in what has been referred to as post-colonial thought, emerging from authors such as Homi Bhabha¹⁶, Edward Said¹⁷ and Tzvetan Todorov¹⁸. These 12

¹⁴ GROSSI, Paolo. Primeira lição sobre direito. Rio de Janeiro: Forense, 2006.

¹⁵ For merely illustrative purposes (since many of Hespanha's works have been used in this research) let me name here only those that were used the most: HESPANHA, António Manuel. O direito dos letrados no Império Português. Florianópolis: Boiteux, 2006. HESPANHA, António Manuel. Caleidoscópio do Antigo Regime. São Paulo: Alameda, 2013. HESPANHA, António Manuel. As vésperas do Leviathan; Intsituições e poder político Portugal século XVII. Lisboa: Almedina, 1994. HESPANHA, António Manuel. O Antigo Regime. In: MATTOSO, José. História de Portugal. Lisboa: Estampa, 1998.

¹⁶ BHABHA, Homi. "Signs Taken for Wonders: Questions of Ambivalence and Authority under a Tree Outside Delhi, May 1817", in *Critical Inquiry*, 12, 1985.

authors demonstrate, in their own particular ways, the relationship between imperialism and culture and between different interpretive models on colonialism. I use this perspective to suggest a filtering of received elements, also employing the concept of cultural circularity – in this case, in reference to the relationship between metropolis and colony, center and periphery - elaborating a perspective of my own that does not reproduce a nationalist bias nor exalt “the native”, but rather carries out reflection on European theories (bringing the specificities of different locale, with particular historical and social bases, to bear on them).

2.2 Juridical culture: relational viewpoints that break with center-periphery dichotomies.

The use of the term “juridical culture” seems quite adequate within this context of an attempt to establish a more dialogical view of the component parts of the *Ancien Regime’s* system of justice for Portuguese America. The notion of culture that I use here is of anthropological inspiration, indebted particularly to Clifford Geertz¹⁹ and to the aforementioned post-colonial autores. It is meant to go beyond the home-colony dichotomy that is characteristic of traditional studies and whose view of culture centers around an ontological dichotomy between high and low cultures, with the latter always seen as a degeneration of the former. From such a perspective, popular culture is little more than a distant echo or vulgar version of high culture. Such a viewpoint has impregnated the analyses of legal history and of the relationship between metropolis and colony. The law of the cultured classes is seen as juridical culture in its entirety. Yet in reality, juridical culture is frequently reduced to those expressions, linked to the notion that law is an elite phenomenon. When applied to those who inhabit its margins, the latter are seen from a stereotypical and prejudiced point of view, as degenerate versions of cultured manifestations.

A review of concepts of culture should lead to the notion that Law also includes what Clifford Geertz referred to as “local knowledge” which takes on particular characteristics in each place; as he puts it, “Law, I have been saying, (...) is local knowledge; local not just as to place, time, class, and variety of issue, but as to accent (...) It is this complex of charaterizations and imaginings, stories about events cast in imagery about principles, that I have been calling a legal sensibility”.

Furthermore, this revision of the idea of culture meshes with the the concept of circularity, initially inspired in the work of historian Carlo Ginzburg, who himself takes inspiration of Mikhail Bakhtin. The latter suggested the notion of a polyphonic reality in a world in which discourse is always dialogic and in which truth is neither to be found in the subject who speaks nor in s/he who hears, but in the encounter between the two, in the relationship. Through this understanding, the concept of cultural circularity is constituted, demonstrating that cultural elements move not

¹⁷ SAID, Edward. *Cultura e imperialismo*. São Paulo: Companhia das Letras, 1996. / SAID, Edward. *Representation of the intelectual*. New York: Vintage, 1996.

¹⁸ TODOROV, Tzvetan. *La Conquista de America; El problema del otro*. México: Siglo XXI, s/data.

¹⁹ GEERTZ, Clifford. *Local Knowledge*. USA: Basic Books, 1983.

13

14

15

only from top to bottom (which can be relevant for the center/periphery and cultured/lay persons relationship) but also from the bottom to the top.

Thus, analysis of juridical culture attempts to recover a multicultural and relational perspective which makes it possible to give salience to the elements that are circulating. It should however be kept in mind that the culture that is being discussed here is juridical and therefore retains some of the particularities of the field. This is the source of the demand for contextual knowledge of juridical configurations which escapes anthropologists and clamors for the jurist to open up to such dialogues and bring his or her voice into the frontiers of knowledge. After all, the study of Legal History has its specificities and should not become a juridical anthropology;²⁰ on this point, I follow Paolo Grossi's²¹ notion of the specificities of juridical phenomena.

Thus, one should not look to the analysis of juridical culture for the same elements emphasized here, that is, the popular aspect of the phenomenon; or, at the very least it should be kept in mind that the juridical case implies poses certain limitations on the field, if only because it is more steeped in high culture forms. Yet I have sought here to take inspiration in those boundary-crossing characters who within the legal field have played the role of representing "the popular" insofar it contributes to the construction of juridical knowledge.

In the specific case of the study of colonial juridical culture, I focus on the figure of the common judge, a boundary-crossing character; a figure who is taken by high culture to represent the illiterate and the uneducated, but whom has real participation in the Chamber Councils that were a part of the administration of justice in the name of the King.

2.3 Revising the relationship between educated people and simple folk: circularity and boundaries

It is my focus on the common judge that enables me to revise thinking on the relationship between the Law of the educated classes and that of simple folk. The way high juridical culture has been received by simple folk can also cast light on analyses of the cultural relations between colony and metropolis. It may also show that Portuguese colonial Law was often a result of the way sophisticated understandings of the law were filtered by people who inhabited its margins.

The issue of boundaries and margins is also of fundamental importance for the type of studies discussed that are pertinent here. In the first place, due to the fracture it provokes in classical dichotomies such as the one between high and low expressions of juridical culture; secondly, because those who inhabit the border zones enable us to better identify the elements that circulate between high and low culture. Bakhtin's Rabelais²² in this sense reflects not only his educated background

²⁰ I refer here to the Anthropology of Law in order to go beyond a dichotomous separation of disciplines; the term contains within it the notion of a dialogic relationship.

²¹ According to Grossi, "the juridical dimension is an autonomous dimension of reality, in which the "juridical" refers to a typical and specific value". In: GROSSI, Paolo. *História da propriedade; e outros ensaios*. São Paulo: Renovar, 2006.

²² BAKHTIN, Mikhail. *Cultura popular na Idade Média; o context de François Rabelais*. São Paulo: Hucitec, 2010.

and high culture, but also his popular roots and what they contributed to his work. The same could be said of the inspiring sociological analysis that Norbert Elias made of Mozart²³, drawing our attention to a person who although not a member of the nobility circulated within the court, a factor which enabled him to accumulate symbolic capital. Thus, even without using the term, Elias also identifies this circularity. A similar circularity is diagnosed by Carlo Ginzburg in his analysis of a miller who was persecuted by the Inquisition. Ginzburg analyzes Menocchi's readings of books that were a product of high culture and then went about his own interpretations of them.

Thus, in looking at the issue of the circularity of juridical culture I employ here Bakhtin's concept of the sign, permitting a better understanding of juridical phenomena and their symbolic value, their meaning for a particular society. In Bakhtin, the sign is not neutral, but permeated with values; semiosis is not a unified process but one which is multiple and heterogeneous, as the sign both reflects and refracts.²⁴ Since he does not see the Law as solely a discourse of authority (mere coercive command) but also as containing dialogic elements²⁵ that demand a study of diverse meanings for each culture, the cultural space becomes one where multiple dialogues take place.

Juridical language was constructed within the colony, in particular through intricate networks of common judges who managed justice within different settlements, with the support of a central figure to manage the exchange between high and low juridical culture, the auditor – central character in the dissemination of high juridical culture in the tropics. The common judge is thereby the boundary-crossing figure of colonial juridical culture. Chosen among the “good men” of the village, by the Chamber Council, common judges were responsible for the management of justice. Without formal training, as time went by they became increasingly familiar with the formalities of colonial justice, learning its procedures and correcting actions through the intervention of the General and Regional Auditors, notwithstanding the fact that, in the last instance, it was the interests of “landowning nobility” that prevailed. In fact, the very existence of the latter term demonstrates how local elites reaped the fruits of the consolidation of the monarchy's symbolic power in the tropics, while at the same time it demonstrates the more permeable character of the Portuguese court in relation to its English and French counterparts.

From the point of view of juridical culture we see how these figures, initially far from juridical debate, become familiar with the latter over time, learning how to manage technical aspects and respect the procedures for the judicial sphere as they were set up within the chambers. Thus, from the reception on the part of these “simple folk” of juridical high culture, as well as its fusion with elements that were popular in origin, a colonial juridical culture emerged in which local

²³ ELIAS, Norbert. *Mozart; sociología de un genio*. Barcelona: Península, 1991.

²⁴ BAKHTIN, Mikhail. *Marxismo e filosofia da linguagem*. São Paulo: Hucitec, 2009.

²⁵ All artistic and literary manifestations are dialogic. All linguistic reality is dialogic, responding to and eliciting questions and answers, and thus acting on an intra-dialogic plane. All enunciations are dialogic and social conscience is semiotic and multi-vocal in its entirety. Bakhtin puts it this way: “No word occurs without the oblique gaze of the other.” Thus, for him, our speech is borne from the mouth of others, within a universe of heteroglossia (multiple languages and multiple dialogic networks); the sentence, therefore, is not given, abstract, monologic, dead data but rather a set of citations. Here, again, we encounter a movement beyond the individual-collective dichotomy, as in Norbert Elias. See: BAKHTIN, Mikhail. *Questões de literatura e de estética; a teoria do romance*. São Paulo: UNESP, 1993.

patrimonialist interests and exchange of favors within a network that sustained such exchanges were hidden under juridical disguise and with the approval of the King (and the elite). Elites were also made up of citizens, having been chosen to carry out tasks (and in particular, those of Common Judge) within the Councils.

These simple folk were seen by the educated as illiterate people who made decisions orally, in summarized form and lacking formalities, using their local connections and private interests as their bases. 24

An examination of juridical sources pertaining to the position of common judge may offer clues for revising established notions on the people who took on that role. 25

3. Why resort to archival sources?

Since the French revolution in historiography that was authored by the Annales School, official archival sources – the only sources used by Rankean historiography and the focus of New School criticism – were progressively abandoned. In reality, the widening of sources for the historiography proposed by the French led to an emptying of archives and a loss in faith in the official sources that had been exhaustively used by positivists. 26

Nonetheless, one of the particularities of history is the use of evidence, clues and signs; a considerable part of the material that can be used to look at the issue of colonial juridical culture can be found in archival sources. First, because there is a connection between the administration of colonial justice and the set up of Portuguese institutional apparatuses (whether Council Chambers, regional auditors or Courts), placing our sources within archives along with the documentation belonging to the Portuguese administration. 27

The fact that these sources have simply been narrated within a context in which they provided a basis for nation-states today demands a response from historians, unless we are to simply repeat traditional narratives and interpretations. Thus, the aforementioned sources should be brought to bear again and reinterpreted in the light of new theories and new research on the functioning of the societies of the *Ancien Regime* and the colonial system. Juridical historiography can today make use of an accumulated body of historiographic theory as well as work on the period. We need to return to the available colonial historiographic sources for analysis of juridical culture and from the dialogue that they permit, enable both new interpretations of old sources and a revision of existing interpretations. 28

3.1 *The Chamber Council of the Vila de Nossa Senhora da Luz dos Pinhais, Curitiba.*

There is another aspect that urges clarification: sources. Signs, clues, and evidence²⁶ used here are related primarily to the Village of Curitiba, including documents from the Auditor of Paranaguá, 29

²⁶ I refer here to the clue-based method developed by historian Carlo Ginzburg. See: GINZBURG, Carlo. *A micro-história; e outros ensaios*. Lisboa: Difel, 1989.

the Captainship of São Paulo and the Overseas Council. Most of them come from the Village of Curitiba: legal cases within the domain of the Common Judges²⁷, some sent to the Paranaguá Auditor, and correspondence between the Village and the São Paulo captainship, as well as intermediating correspondence pertaining to the Overseas Council, and minutes from Chamber Council, Common Judge and *almoçoaria* hearings, as well as other sources that have been preserved within the Municipal Chamber of Curitiba (as well as Chamber accounting, licences and permits). A major element deserving salience is the exceptional amount of colonial sources that can be found in Curitiba, both within the Municipal Chamber and the Public Archives of the state. Almost all of the documentation relative to the Chamber Council and the Curitiba Common Judges are available for researchers' use.

In spite of the fact that these sources speak of a border region (Southern Brazil, and 18th century Curitiba in particular) that is conventionally seen as anomalous or not representative of Portuguese dealings, such notions can only be tested through comparisons of what went on in this village to that metropolitan will and that which happened in Portuguese cities and overseas colonies. After all, it is only through connecting cases to context that a case can be interpreted as anomalous (that is, with regard to a norm). As Ginzburg says, attention paid to the deviant and the exceptional creates the possibility of revealing something about the nature of the norm that attention focused exclusively on the norm would not reveal. In his eyes, “the violation of a norm holds within itself the norm (insofar as what it presupposes), whereas the opposite does not hold true.”²⁸

Yet the historian should not let herself or himself be deceived by sources or directed exclusively by them; s/he should keep in mind that what is important is the possibility that such sources, clues and signs give us to relate micro and macro (which in fact characterizes micro-history²⁹) in order to interpret and give meaning to the past. As Walter Benjamin argues, “not all in life can be taken as a model, yet everythings serves as example”.³⁰

3.2 *New interpretation of sources: colonial juridical culture (between high and low)*

The councils were the training grounds for a colonial juridical culture that did not necessarily present itself as a force opposing the high juridical culture of the educated but, through complex circularity, offered and received elements that were used as a base for such constructions. What we find there is

²⁷ There are close to 5000 legal cases from the 18th century that can be found in the State Division of the Public Archives. Some of them also include appeals that were made and final judgements made by the Paranaguá auditor regarding each case.

²⁸ GINZBURG, Carlo. *Uma história noturna*. São Paulo: Companhia das Letras, 1990.p.26.

²⁹ First work of its kind written by Luiz González y González (México), a micro-history of San José Gonzalez. He attempts to recompose a portion of the social that is much closer to the family nucleus, in its affectivity, history from a private point of view. See: Ver: GONZÁLEZ Y GONZÁLEZ, Luis. *Pueblo en vilto; microhistoria de San José de Gracia*. México: El Colegio de México, 1968. The method that he puts into practice took shape in Italy during the 1970s, via the publication *Quaderni Storici* and represented by historians such as Edoardo Grendi, Giovanni Levi and Carlo Ginzburg. The latter is largely responsible for its popularization. See: LIMA, Henrique Espada. *A micro-história italiana; escalas, indícios e singularidades*. Rio de Janeiro: Civilização Brasileira, 2006.

³⁰ BENJAMIN, Walter. *Magia e técnica; arte e política. Obras escolhidas volume 1*. São Paulo: Brasiliense, 1985. p.36.

30

31

32

a fair assimilation of formal rules and technical procedures, although each Chamber attempted to put together a content that permitted a fit between its own reality and technical drappings. In terms of configuration, the majority followed what had been determined by the Orders of the Kingdom in its Book I, Title 65 (Phillipines) initially prescribing that such councils be formed by the “good men of the municipality”, from among whom common judges would be chosen. In Curitiba there was little regularity with regard to the choice of common judges and their mandate, not even in terms of something so basic as how many of them were chosen.

Common judges’ functions were both judicial and administrative and legislative (albeit using this modern terminology in an anachronistic way, since within the logic of the Ancién Regime such a separation made little sense). Councillors’ roles included “an ancient sense of punishment, charging taxes and fiscalization of particular people in particular places, both preceding and within its institutional sense and which continues up to the present.”³¹ This includes a certain policing power which the Senate retained, particularly through the figure of the *almotacés*.

In any event, on this urban stage, planned and thought up by the Portuguese and shaped to adapt to the tropics, there emerged a colonial juridical culture made up of visions of justice and ways of applying it to the Southern villages of Colonial Brazil. The Common Judge was the greatest boundary-crossing figure within this culture; initially uneducated or with little schooling, over time he came not only to appropriate the instrumental procedures of Portuguese Law but to employ such juridical instruments in his own interests or those of the group to which he belonged, yet without running contrary to metropolitan intentions.

3.3 Common Judges and colonial juridical culture.

From an examination of forces at play, we can demonstrate a plurality of meanings within Portuguese colonization, even if we take only the Americas as our example. The locale where the village of Curitiba was set up was initially occupied by people “from São Paulo”; this dates back to the mid 17th century (the first land concessions date back to 1632 the years immediately following), a period in which the region was juridically connected to the Marquis of Cascais, heir to a donating captain. The settlement became a village in 1668, when the first pillory (for public punishment) was set up, in response to a petition for the establishment of justice and in conjunction with population growth and the advancing age of the Captain responsible for the settlement. However, the first Chamber Council was not elected until 1693. Curitiba, situated on a high flatland (over 900 meters above sea level) was at that time extremely difficult to get to and over 100 kilometers inland from Portuguese Maritime Empire ports. In this regard, we can say that for its time and the reigning standards, Curitiba constituted a peripheral village - beyond the commercial heartland and lost in the hinterlands.

Yet we find there a vast documentation of the functioning of the Chamber Council, one which in and of itself begins to problematize traditional evaluations of the simple folk, dealing exactly with the

³¹ MARX, Murilo. *Cidade no Brasil: em que termos?* São Paulo: Studio Nobel, 1999. p. 13.

formalization of juridical proceedings (for cases involving common judges) and the administration of justice within this village of the periphery. Council record keeping shows cases that follow the steps required by the King's Orders, put together in a series of books that the Curitiba Council had at its disposal since 1704, period prior to the connection of the whole Southern region to the São Paulo captainship, which occurs in 1715. After this period, Curitiba and other Southern districts came under stricter control, which is not necessarily detrimental to their autonomy but does often signify a greater accumulation of formal knowledge, enabling juridical solutions where conflict with metropolitan interests arose.

There are also cases relative to those who have commented the Ordinances and debates in which the juridical books that circulated even within that remote part of the Empire are cited. Perhaps laypersons' conditions were different there, or reflected the high vs. low culture dichotomy. The fact is that sources identify a common person who went on to act as judge at least ten times during the decades of 1630, 1640 and 1650, Francisco de Siqueira Cortes.³² The procedures that he adopted as common judge show that he initially had no inclination toward the exercise of such a function, which involved rules of conduct, In fact, he had been removed from the position of evaluator in a situation in which a person capable of accounting was required, "the evaluator, attendant Francisco de Siqueira Cortes was not well qualified and did not know how to distribute property..."³³ This was in 1737, after he had exercised the function of common judge for the first time. Nonetheless, it seems that such inaptitude for numbers did not interfere with his opportunity to assume a place within juridical logics and come to master its procedures and techniques. After all, he exercised this function on nine other occasions, in addition to having exercised other similar ones within the chamber council, such as councillor and *almotacé*. Furthermore, Francisco de Siqueira Cortes also acted as a defender of local elites involved in conflicts over land ownership³⁴. In the minutes of different cases that were under the jurisdiction of the Curitiba Common Judges, we find evidence of a series of formal legal acts that were carried out and in which strict adherence to established measures (Ordinances book III) was invoked. The person described here seems to represent the typical boundary-crossing figure of juridical culture. He learned through contact with the material that was at hand (Ordinances and some commented works) together with the recommendations made by General and Regional Auditors Gerais, in order to build up his own juridical culture,

³² Born in Curitiba in 1682, son of Luiz de Góes (explorer for D. Rodrigo del Castel Blanco and the person who signed the petition for a justice system in the village) and Maria de Siqueira Cortes. Francisco de Siqueira Cortes acted as Common Judge on ten different occasions, in 1730, 1739, 1740, 1742, 1743, 1744, 1745, 1747, 1754 and 1756. He passed away in the same village in 1762, at 80 years of age.

³³ BOLETIM DO ARQUIVO MUNICIPAL DE CURYTIBA [Bulletin of the Curitiba Municipal Archive] . Documentos para a História do Paraná. Sob a direção de Francisco Negrão. Volume XIII. Correspondências e Actos Diversos (1721-1767). Curitiba: Impressora Paranaense, 1925.p. 79.

³⁴ Civil lawsuits, 1736 concessions, in which Antonio dos Santos Soares initiates action against Alves Martins, Francisco da Silva Xavier and Manoel dos Santos, claiming to have legal rights to the land in the Campos Gerais district, covering thirty leagues and a half. Through Paulo da Rocha, those who have had the caveat imposed defend themselves as settlers and first inhabitants of those lands, where they have been for over 15 years. They argue, furthermore, that Francisco da Silva Xavier received lands as heir to João Alves de Castro, upon marrying his widow. Antônio Luis de Távora, Governor of the São Paulo Captainship, emitted a letter with the date of the land concession to Francisco da Silva Xavier, confirming his land rights. In this case, Francisco worked together with Paulo da Rocha for the ratification of land rights.

which went as far as proposing specific solutions for cases such as that of Indians and their legal status (analyzed by my Master's student, Liliam Brighente.) Based on these sources, he enabled the construction - within the São Paulo Captainship and within the domain of common judges- of a category of public administration which served to hide slavery and mask the status of the captives as subjects under the royal system of administration and its rules.

Yet there were also centrifugal forces at work. At the end of the 18th century, Brazil was divided into 24 regions³⁵, representing greater proximity to Royal Law and a more sophisticated circularity of juridical culture, given the presence of Royal Auditors and lesser distance between the Captainships that kept up an intense network of correspondences, linked with the Metropolis.³⁶ The redefinition of political-juridical configurations, with the expansion of the Southern frontier, led the jurisdiction of the Rio de Janeiro Court to cover the territory that included all of Espírito Santo and extended to the Sacramento Colony, including the hinterlands of Mato Grosso and Curitiba. The Auditors of the Regions and the heads of the Captainships were the key pieces in the dissemination of high juridical culture within Brazilian cities and villages. Through constant corrections, Auditors sent the fundamental procedural models for implementing Royal Justice out to the councils.

38

4. Bibliography

ALENCASTRO, LUIZ FELIPE DE: *O trato dos viventes; formação do Brasil no Atlântico sul.*

São Paulo: Companhia das Letras, 2000.

BAKHTIN, MIKHAIL: *Marxismo e filosofia da linguagem.* São Paulo 2009.

BAKHTIN, MIKHAIL: *Questões de literatura e de estética; a teoria do romance.* São Paulo 1993.

BAKHTIN, MIKHAIL: *Cultura popular na Idade Média; o context de François Rabelais.* São Paulo 2010.

BENJAMIN, WALTER: *Magia e técnica; arte e política. Obras escolhidas volume 1.* São Paulo 1985

BHABHA, HOMI: "Signs Taken for Wonders: Questions of Ambivalence and Authority under a Tree Outside Delhi, May 1817", in: *Critical Inquiry* 12 (1985).

BICALHO, MARIA FERNANDA: *A cidade e o Império; o Rio de Janeiro no século XVIII.* Rio de Janeiro 2003.

BOXER, CHARLES R.: *O Império Colonial Português (1415-1825).* Lisboa: Edições 70, 1981.

ELIAS, NORBERT: *Mozart; sociología de un genio.* Barcelona 1991.

³⁵ Porto Alegre (Captainship of Rio Grande de São Pedro and Santa Catarina); Paranaguá, Itu, São Paulo (São Paulo Captainship); Rio das Mortes, Sabará, Serro Frio and Vila Rica (Minas Captainship); Belém (Pará Captainship); São Luís (Captainships of Maranhão and Piauí); Ceará (Ceará Captainship); Rio Grande (Captainship of Rio Grande do Norte); Paraíba (Paraíba captainship); Sergipe, Salvador, Ilhéus, Porto Seguro, Jacobina (Bahia Captainship); Rio de Janeiro and Espírito Santo (Rio de Janeiro Captainship); Cuiabá (Mato Grosso Captainship); Goiás (Captainship of Goiás); Pernambuco e Alagoas (Pernambuco Captainship).

³⁶ This documentation, in reference to the exchange of correspondence between the Captainship of São Paulo and the village of Curitiba, is available in the Collected Documents on the History and Customs of São Paulo published by the Public Archives of São Paulo State (Arquivo Público do Estado de São Paulo).

- FAORO , RAYMUNDO : Os donos do poder. São Paulo 2000.
- FREYRE , GILBERTO : Casa grande e senzala. São Paulo 2006.
- GEERTZ , CLIFFORD: Local Knowledge. USA: Basic Books, 1983.
- GEERTZ, CLIFFORD: Interpretação das culturas. Rio de Janeiro 1989.
- GINZBURG , CARLO : A micro-história; e outros ensaios. Lisboa 1989.
- GINZBURG, CARLO:Uma história noturna. São Paulo: Companhia das Letras, 1990.
- GONZÁLEZ Y GONZÁLEZ, LUIS: Pueblo en vilo; microhistoria de San José de Gracia. México 1968.
- GROSSI , PAOLO : Primeira lição sobre direito. Rio de Janeiro 2006.
- GROSSI , PAOLO : História da propriedade; e outros ensaios. São Paulo 2006.
- HOLANDA , SÉRGIO BUARQUE : Raízes do Brasil. São Paulo 1990.
- LIMA , HENRIQUE ESPADA : A micro-história italiana; escalas, indícios e singularidades. Rio de Janeiro 2006.
- MARX , MURILO : Cidade no Brasil: em que termos? São Paulo 1999.
- NOVAIS , FERNANDO : Portugal e Brasil na crise do Antigo Sistema Colonial. São Paulo 1983.
- PRADO JUNIOR , CAIO : Formação do Brasil Contemporâneo. São Paulo 2011.
- TODOROV , TZVETAN : La Conquista de America; El problema del otro. México: Siglo XXI, s/data.
- SAID , EDWARD : Cultura e imperialismo. São Paulo 1996.
- SAID , EDWARD : Representation of the intelectual. New York 1996.
- SCHARTZ, STUART : Sovereignty and society in colonial Brazil; the High Court of Bahia and its judges, 1609-1751. Los Angeles 1973.
- SOUZA , LAURA DE MELLO : O diabo e a terra de Santa Cruz; feitiçaria e religiosidade popular no Brasil colonial. São Paulo 1986.
- VAINFAS , RONALDO : Trópico dos pecados; moral, sexualidade e Inquisição no Brasil. Rio de Janeiro 1988.
- VARNHAGEN , FRANCISCO ADOLFO DE : História geral do Brasil. São Paulo 1956.