THE CROWN AS AN APPRENTICE: *POLICEY*, COLONIAL ADMINISTRATION AND NEW MEANINGS OF LAW IN THE DIAMOND DISTRICT (1771-1808)

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The Crown as an Apprentice: *Policey*, Colonial Administration and New Meanings of Law in the Diamond District (1771-1808)

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A Coroa como aprendiz: Polícia, Direito Colonial e novos sentidos do Direito no Distrito Diamantino (1771-1808)

Tese apresentada como requisito parcial à obtenção do grau de Doutor no Programa de Pós-Graduação da Faculdade de Direito da Universidade de Brasília, linha de pesquisa "Direito e democracia".

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Abstract

This dissertation focuses on the transformation of Law that took place within the Diamond District, situated in the region of Minas Gerais, Brazil, during 1771-1808. In 1771, the Portuguese Crown established a special institution to be responsible for the mining extraction of diamonds, the Real Extração dos diamantes. This top-down change in the administrative design of colonial institutions had the purpose to rationalize and increase control of the activity. However, the implementation of the new regime faced a series of obstacles, mainly related to conflicts of jurisdiction with local authorities. By picking this example, I argue that it is possible to observe the relevance of colonial institutions for the emergence of modern law during early modernity. The reason for that is because, even with the efforts of centralization, the royal institution was still permeable to local circumstances, not only disputing and denying normative expectations of the locals, but simultaneously partially incorporating them. The complex communicative process triggered by the creation of this institution paved the way to new concepts of law.

Keywords: Colonial Law, Police, Diamond District, Colonial Brazil

Resumo

Esta tese centra-se na transformação do Direito que ocorreu no Distrito Diamantino, situado na região de Minas Gerais, Brasil, durante 1771-1808. Em 1771, a Coroa Portuguesa criou uma instituição especial responsável pela extração das pedras preciosas, a Real Extração dos Diamantes. Esta mudança de cima para baixo no desenho administrativo das instituições coloniais teve como objetivo racionalizar e aumentar o controlo da atividade. Contudo, a implementação do novo regime enfrentou uma série de obstáculos, principalmente relacionados com conflitos de jurisdição com as autoridades locais. Ao escolher este exemplo, defendo que é possível observar a relevância das instituições coloniais para a emergência do direito moderno durante o início da modernidade. A razão para isso é porque, mesmo com os esforços de centralização, a instituição régia ainda era permeável às circunstâncias locais, não apenas contestando e negando as expectativas normativas dos locais, mas simultaneamente incorporando-as mesmo que parcialmente. O complexo processo comunicativo desencadeado pela criação desta instituição abriu caminho para novos conceitos de direito.

Palavras-chave: Direito colonial, polícia, Distrito Diamantino, Brasil colônia

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for Dante and Ernestina, his love and his humble library inspire me even today.

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AHU: Arquivo Histórico Ultramarino

ANTT: Arquivo Nacional Torre do Tombo

APM: Arquivo Público Mineiro

TCP: Tribunal de Contas de Portugal

BNL: Biblioteca Nacional de Lisboa

BNP: Biblioteca Nacional de Portugal

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Introduction

This thesis focuses on the transformation of Law that took place within the Diamond District, situated in the region of Minas Gerais, Brazil, during 1771-1808. In 1771, the Portuguese Crown abandoned the contractors' system for the extraction of diamonds, establishing a special institution to be responsible for this activity, the *Real Extração dos diamantes*. This top-down change in the administrative design of its colonial institutions had the purpose to rationalize and increase control of their productivity. However, the implementation of the new regime faced a series of obstacles, mainly related to conflicts of jurisdiction with local authorities.

By picking this example, I argue that it is possible to observe the relevance of colonial institutions for the emergence of modern law during early modernity. The reason for that is because, even with the efforts of centralization, the royal institution was still permeable to local circumstances, not only disputing and denying normative expectations of the locals, but simultaneously partially incorporating them. The complex communicative process triggered by the creation of this institution paved the way to new concepts of law.

The relevance of "police" for legal history

Many legal historians point out the structural ruptures caused by the revolutions at the end of the eighteenth century as a turning point in legal history, describing this period as the birth of "legal modernity".[1] Without a doubt, the ruptures which took place mainly throughout the nineteenth century brought significant innovations as to how Law was conceptualized and practiced in occidental countries.[2] However, the term "legal modernity" in itself still poses obstacles to researchers.[3]

The difficulties lie basically in three main points: i) how to discern what is "modern" and what is not in this process? ii) how to ascertain which factors should be

[1] This does not only happen when the authors are praising legal modernity, but it may also be the case even when the authors are criticizing modernization in law – whatever that may be. For example, see especially GROSSI, 2010; 2005; and 2007. Grossi even coined the term "legal absolutism" to refer to the parts of legal modernity he wished to be revised. For other examples of a more neutral use of "legal modernity", see HESPANHA, 2012.

[2] Here we keep in mind especially the phenomena of codification and writing of constitutions and declaration of rights. For large overviews on these, see VAN CAENEGEM, 2003; 2000; HESPANHA, 2012a.

[3] For a useful elaboration of some of these difficulties, see DUVE, 2014a; 2014b; 2015; 2016.

indicated as causes of said process? and iii) how not to fall prey to the constant danger of imposing a teleological view to this process? All of which are challenges in historical explanation.

The first problem has to do with the scope, scale, and perspective in historical analysis, since the changing of lenses may modify or conform the object itself: the distinction between continuities and ruptures may be blurred, depending on the delimitation of the observants (i. e., depending on which time period, thematic, or cases are chosen). More than a transformation that occurred in the blink of an eye or with a single event, here it is in discussion a process that unraveled itself through a long series of social actions and communication, continuously in time, in a complex manner.

The second problem is that some "flashy" factors may hide the less noticeable factors in this process. Whenever the emergence of rational natural law, or liberalism/individualism, or even revolutionary political action are highlighted as the intellectual or political origins of "legal modernity", a series of other "on-the-ground" factors are disregarded. Nonetheless, these factors pressured the social structures towards such change in the understanding of Law.

The third problem is the short-sightedness of looking at the past only searching for what came later into being. This can cause distortions – e.g., exaggerating the relevance of some factors, excluding concurrent alternatives that were on the table, underestimating chance and accident in historical processes, and so on.

Apart from those difficulties, this line of questioning has historically presented a blind spot. Since the narrative of "legal modernity" is commonly grounded in a Eurocentric view, it often neglects the normative production of the colonies. Plus, it is even more seldom to consider how the latter also may have affected, even if indirectly, the normative production of the dominant centers.

Bearing this in mind, it becomes relevant to look back a little further to understand the pre-revolutionary legal framework, the context that made the occurrence of the so-called "legal modernity" susceptible, and exactly which components propelled it from the perspective of the internal functioning of Law. All of this makes clearer why research about "police", during early modernity, in a Brazilian colony of the Portuguese empire might be interesting for the overall discussion in legal history. The present thesis will not

adopt the category of "legal modernity" in the explanation (precisely because of the difficulties already mentioned), but, at the end, its results might be useful for the elaboration of a critique of the usual narratives around "legal modernity", and of the category itself.

It is through this line of thought that the topic of "police" appears as specially instigating, although mainly completely undermined in Brazilian (and other colonies) legal history. To understand how "police" worked on Brazilian colonial ground will be one of the goals of this work.

The case of the Diamond District

Located where once was the county of Serro do Frio, Minas Gerais, the diamond district became the main juridical and economic space overseas for the Portuguese empire during the 18th century. Since the discovery of the diamonds in 1729, the region has represented a constant challenge to the Portuguese crown[4].

In 1730, the first diamond mining regiment was established, following in general lines the previous regulation of gold, in which the Portuguese crown granted free mining, allowing anyone who discovered the mines to extract them if they paid a "head tax" and acquired a permit from local authorities. The regiment also determined that the *ouvidor* of *Vila do Principe* would serve as *Superintendente* in matters related to the extraction. This lasted until the diamond price in the international trade suffered a slump, which prompted a swift reaction from the Portuguese administration. First, the mining activity was suspended in 1734. Soon after, the *Intendência dos Diamantes* was installed, replacing the title of *Superintendente*, which was in the hands of the *Ouvidor da Vila do Príncipe*. Finally, still in the same year, the district was demarcated. With this, the Portuguese crown aimed not only to control the circulation of people from other places within the county to avoid the "*descaminho*" of the gems, but also to define the jurisdiction and administrative competence of this new institution as well.

[4] In this dissertation, the term "crown" will appear many times, and it is even part of the title. But some considerations on the term might be helpful to not fall in wrong interpretations. Following recent research on the institutional design and communicative circuits of the Portuguese empire, it is advisable to not understand "crown" as something unitary and homogeneous, but as a "bundle of organs and interests". The crown was comprised of different parts ("c*onselhos, tribunais, juntas secretarias*"), and the arrangement of these different organs of the monarchy between themselves, with their spheres of autonomy, and their relation to the king could vary in time. For this idea in detail, see BICALHO and COSTA, 2017, p. 137ss.

Between 1740 and 1771, the mining was resumed under a new system of administration through a contract regime, in which the Crown would make a contract with one or more individuals that would then take charge of the business' administration. This regime, however, did not function satisfactorily in the perception of the Crown. As the sources and the historiography show, the problems were many. For example, the administration of the *contratadores* did not stop the traffic of diamonds, even worse, some contractors were proved to be involved in it. The inobservance of the rules of the contracts was frequent, and it resulted in less profit for the mining activity.

To sum it up, the region developed organizational issues that were not being handled the way the central power desired, and to revert this situation, the crown implemented the *Real Extração dos Diamantes* (1771). This institution would act as a direct hand of the crown overseas, having the *Intendente* as its head in Brazil functioning alongside with a corresponding institution in Portugal. In this way, the *alvará* of 2 of August of 1771 established mining as a direct royal monopoly. But, more importantly, it concentrated even more administrative and judicial powers on the *Intendente dos Diamantes* and the *Real Extração*, some of which were previously in the hands of *câmeras* or even of the governor of captaincy.

Usually, the role of the *Real Extração* in the administration of the district and the normative production related to it have been described by the scholarship as a process of hierarchical imposition of the law from the top (the Portuguese crown) to the bottom (the local level). In this perspective, the Law is reduced to a mere political or economic instrument in the colonial process,[5] or to a complete inefficacy, disappearing in face of the network of local powers[6]. Distancing myself from those perspectives, I emphasize the importance of colonial institutions on the change of Law during early modernity, seeing it as a constant process of social and cultural construction. The different spaces, conditions, historical agents, and normative expectations that are involved on this process are decisive. In this context, the *Real Extração* was one specific strategy of the crown to deal with the complexity and the specificities of the normative context of the diamond district, thereby maintaining the control over an activity that was crucial for the kingdom's economy.

[5] SOUZA, 2006.
[6] FURTADO, 1996; and 2017.

With this goal, I focus on the legal construction of the Diamond District, linking it with the topic of "*Polícia*". A historical reconstruction of this process assumes that colonial law could be conceptualized as a type of "police" regulation. In this way, *Polícia* was an essential device to manage colonial administration on a "new world" with "new problems": it offered sufficient flexibility for the attempts of understanding, processing, and reducing the complexity that the colonial world represented within the normative framework of the *Ancien Régime*.[7]

In the context of corporative society, the concept of *polícia* was strongly connected to the concept of "domestic economy" (*oikonomos*). The analogy between the king and the father of the household permitted many new ellaborations on royal prerrogatives and extended interpretations of what was the actual sphere of action of the king. These intelectual movements are clearly identified in Portuguese authors and important politicians during the second half of the 18th century.[8]

Polícia, which was an old concept essentially linked with order and the preservation of said order, started to imply more and more the rational and internal management or administration of the State[9] halfway through the 18th century. Not simply did the contents under the supervision of "police" increased significantly, but its essence was not conservative anymore, it was directed to change the social conditions for the enhancement of the power of the State.

The amplification of tasks and substantial review of 'police' reflected the Monarchies' continuous attempts to expand their activities and the struggle to deal with territorial disputes in continental Europe. But, as I try to argue, it was also connected to the colonial experience of these empires. These changes forced the *iurisdictio* to give in some space to new forms of social regulation, consequently provoking tensions and

[7] PIHLAJAMÄKI, 2015.

[8] For the information in this and the next paragraph, see SEELAENDER, 2003. More on this on chapter 1 *infra*.

[9] The concept of "State" may be a tricky one to be used during this period. I have tried to avoid it as much as possible, since I do not think it fully applies to the functioning of the Portuguese royal administration during the 18th century. However, the difficulty lies exactly in the fact that this is a moment where state-formation is happening in an accelerating manner. Here, the term is used in the main text especially because it starts to appear in the sources to signalize precisely the idea of a superior public authority in contrast relation to the whole ensemble of individual subjects (population). The word is used, in the Portuguese scenario, for example, in a translation of Eli Betrands' "General Ideas of Police in a State" ("*Ideas Geraes de Policia de hum Estado*") from 1786. For this, see SEELAENDER, 2003; CUNHA, 2017b; and more on chapter 1, *infra*.

conflicts between magistrates and the crown. The creation of "police courts" and "police intendents" with the prerogative to judge cases related to 'police measures', pushing away the jurisdiction of ordinary justice, was an institutional attempt of the crown to centralize political power and amplify itself. Yet, at a local level, it was linked to specific legal problems, and moreover, to local normative regimes that contested the centralizing attempts of the crown.

The documentation shows us how the administration of the diamond district represented a constant challenge for the Portuguese crown. There were certain social expectations about what the Law should be in the face of this complex state of affairs. Through the reading of official reports, letters, etc., it is possible to see how local proposals for the mining regime mobilized diverse normative expectations, bringing up notions of justice related to the mining activity.

In this context, *police* was useful because it was malleable enough to bypass the normal paths of justice. It gave a more instrumental use to the Law, not only allowing it to handle the normative complexity of the colonial world, but also to modify it.

The Intendant had the exclusive jurisdiction on the demarcation, to judge "summarily" (an oral procedure, in which he could be both witness and accuser, without possibility of appeal for the defendant). On the other hand, the *Real Extração* centralized all the control of the matters that could influence directly or indirectly the mining activities, such as supplying, weighing and prices, commerce, etc. It was not rare that this situation created an overlapping between jurisdictions, and consequently political conflicts with other local authorities. This institutional and legal change was both ignited by the intellectual shifts around the concept of police (also with the emergence of the *Policeywissenschaft* and the cameral sciences), and by the necessity of economical control of the prices of the diamonds in the international market. Above all, this process was the aftermath of a series of trials and errors from the Portuguese royal administration attempting to deal with the complexity of the colonies.

Although the Royal Extraction was strongly linked to the central power, it was also an eminently local institution, permeable to local specificities. Different sources contain advises for the officials of the *Real Extração* about the necessity of considering the local conditions, and their differences with Portugal. Even when the implementation

of the new regime faced a series of obstacles, it is undeniable that it mobilized disputes around the concept of Law. Moreover, at the beginning of the nineteenth century, the jurisdiction of the Intendant was extended outside the boundaries of the district, and, with it, a much more instrumentalized vision of Law.

As Francisco Tomás y Valiente pointed out in his already classic text "Historia del Derecho y Historia"[10] in a phrase recently rescued by Carlos Garriga[11]: "the concept of legal history that each legal historian had and has depended and depends on his/her own concept of law".

Impelled by this provocative statement, it seems advisable to clarify that the point of departure of this thesis is the concept of Law that was being gradually consolidated in the last works of Antonio Manuel Hespanha. According to it, Law can be conceptualized as a "set of related communication systems". It is true that Hespanha was openly eclectic in his theoretical framework, something that is evident, for example, in his preface to the book "*Um reino e suas repúblicas no Atlântico*", where he proposed that the book could be understood using Luhmann's or Habermas' concept of communication, as if they were interchangeable.[12] The point, however, is not if his definition of this concept is completely solid in theory. Rather, the point is that, by emphasizing Law as a communicative process, Hespanha not only decentralized normative production and gave relevance to the agency of various agents, institutions, etc., he also emphasized a constructivist reading of the Legal dimension: the Law was being woven by that network of communications, information and disinformation that allowed mobilizing the various expectations of the various historical agents.[13]

However, to adopt this position regarding the meaning of Law is not the same to deny that some kind of administrative centralization occurred or that the royal legislation did not matter. The point is exactly to perceive how royal legislation is a part of this communicative process, what is its role, and what was the historical unfolding that allowed this source to obtain the relevance that it did in the process of state formation.

[10] TOMAS Y VALIENTE, 1976, p. 162.
[11] GARRIGA, 2020, p.3.
[12] HESPANHA, 2017, p. 8.
[13] For a similar conceptualization but from another perspective see DUVE, 2022.

Sources and Archives

In recent years, the research on the Minas Gerais captaincy has benefited from various initiatives of compilation, cataloging and digitization of documents associated with the region[14]. Archives that contain several relevant documents for the history of the captaincy are either entirely digitized, like the case of the *Arquivo Histórico Ultramarino (Projeto Resgate)*, or have a great part of their documental body available online - such as the *Divisão de Reservados da Biblioteca Nacional de Portugal*, some collections of the *Torre do Tombo*, the *Arquivo Público Mineiro*, and the *Biblioteca Nacional* (especially the *Coleção Casa dos Contos*). Recently, the collection *Minas Gerais nos Arquivos Históricos de Portugal* has joined these archives.[15] With the goal of making the access to less traditional archives or the ones located outside of Lisbon more democratic[16], this collection contains in digital format the documents that are found in the *Arquivo da Universidade de Coimbra, Arquivo Distrital de Braga, Arquivo Histórico do Tribunal de Contas de Portugal, Arquivo Histórico Militar, Biblioteca da Ajuda, Biblioteca Geral da Universidade de Coimbra - Seção de Manuscritos, Biblioteca Nacional de Portugal Divisão de Reservados, Biblioteca Pública Municipal do Porto - Seção de Reservados/Manuscritos* and *Gabinete de Estudos Arqueológicos de Engenharia Militar*[17].

Although most part of the more important documents for reconstructing the case are found in these archives, any investigation of the diamond district inevitably faces a dispersion of sources, or even the impossibility of locating some of them. In her work on the effectiveness of the Regiment of 1771, Furtado points out that all the documents referring to the Diamond Intendancy disappeared in a fire during a remodeling of the building that housed it, which today corresponds to the *Prefeitura de Diamantina*.[18]. For this reason, usually the documentary base of the investigations of the region corresponds to the sources kept in the *Coleção da Secretaria da Capitania do Arquivo Público*

[14] BOSCHI et QUINTÃO, 2015.
[15] BOSCHI et QUINTÃO, 2015.
[16] BOSCHI et QUINTÃO, 2015, p. 7.
[17] BOSCHI et QUINTÃO, 2015, p. 7-12.
[18] FURTADO, 1996, p. 29.

Mineiro, the *Biblioteca Antônio Torres*, *Arquivo Histórico Ultramarino*, among others[19]. In fact, in his famous *Memórias sobre o districto diamantino*, Joaquim Felicio dos Santos claims to have been the last one to have had access to such documents, which served as the basis for his research[20]. However, Santos himself would not have had access to all of the documents either, since five books of the entry of diamonds for the coffer (that is, its registry) were sent to Ouro Preto by order of the inspector of the Treasury of the Province of 4 of February of 1847.[21] On the other hand, in his most recent work on the diamond demarcation, Carrara affirms that, of the five books that Joaquim Felicio dos Santos refers to, two are located in the *Coleção Casa dos Contos de Ouro Preto* (*Arquivo Público Mineiro* and *Arquivo Nacional do Rio de Janeiro*). This would be the case of APM CC 1067 and APM CC 1084, as well as other books produced by the Intendancy, that are also part of the *Coleção Casa dos Contos*.[22]

To this group of sources, during the course of this investigation, a new collection was added: the *Fundo da Real Extração dos Diamantes das Minas no Brasil*, in the *Arquivo Nacional Torre do Tombo,* in Lisbon. In 2019, while I was mapping the group of sources related to the Diamond District, I came across this collection in the catalog of *Torre do Tombo*. Composed of four books, the microfilmed material contains documents related to the *Direcção de Lisboa*, specifically the *Registro Geral da Direção* (1771-1773), which includes the official correspondence exchanged between the directors in Lisbon and the ones in the Royal Extraction in Brazil.

The master book that contains the records of expenditure of materials, supplies, etc., of the Royal Extraction between 1772 and 1782[23], the book of *congas* of the sixth contract (with documentation of 1764 and 1787) and the *Seção da Fábrica de Lapidação de Diamantes*. Located in Campo Pequeno, Lisbon, this section includes receipts from the *lapidários* from 1806 and 1807. According to *Torre do Tombo*, this collection was discovered in 1887, when three of the four books were sent to them by the *Direcção Geral*

[19] Furtado's own investigation is based upon the analysis of official correspondence of the authorities of the captaincy and the district, as well as in the succession's legal procedures (*inventários post-mortem*) located at the *Biblioteca Antônio Torres*. FURTADO, 1996, p. 28-29.

[20] At the beginning of his work, Joaquim Felicio dos Santos refers to these documents as "os documentos existentes na Secretaria da Administração Diamantina". SANTOS, 1808, p. 3.

[21] SANTOS, 1808, p. 65. About this same source and with a similar purpose, see CARRARA, 2022, p. 22.

[22] CARRARA, 2022, p.

[23] Other master books of the Royal Extraction can be found at the *Coleção Minas Gerais* in the *Arquivos Históricos de Portugal*.

do Ultramar, of the *Ministério da Marinha*, to where it had previously been sent by the *Tribunal de Contas*, between 30 of April of 1885 and 8 of June of 1886. They were part of the so-called "*Extraídos do Conselho da Fazenda*". The fourth book was included in the tax collection[24]. During the visit do *Torre do Tombo* in 2021, I realized that, although the collection was created in 2013, it had never been cataloged and no one had asked to access it. After the requisition of the catalogue and of the document's digitization, until then unprecedented, they are now available in the archive's digital collection.

To unfold the main argument of this thesis, we considered a broad spectrum of sources, ranging from the royal legislation and spanning to other sources of normativity, such as letters, and "administrative acts" that were used to regulate specific matters, such as the "*instruções*". In this sense, the following were scrutinized: the collection of four books of the *Real Extração dos Diamantes*, located in the *Arquivo Nacional Torre do Tombo* (Lisbon), which is a never before used documentation; two books of the collection of official letters of the *Intendencia dos Diamantes*, located at *Arquivo Publico Mineiro*; the *Coleção Ultramarina* related to Minas Gerais on the *Arquivo Historico Ultramarino*; the book 4089 of the *Arquivo do Tribunal de Contas de Portugal* on the Collection *Minas Gerais nos Arquivos Históricos de Portugal*, related to the *Real Extração dos Diamantes*, and the *Coleção da Legislação Portuguesa*.

Terminological caveat

Throughout this thesis, it was decided to use the most used translations of the terms in Portuguese. When such a translation did not exist in the verifiable international academic field, it was decided to look for the most appropriate English word. And when it was impossible to maintain the meaning, the use of the original word in italics. In addition, the names of the various instruments of royal legislation and government deserves special attention, and, in general, their original name was maintained. In order not to create possible confusion in the reader, it is pertinent to briefly define each of these diplomas. Thus, the word *lei* designated a norm that had a special dignity, and endowed with a general character, although in practice that would hardly be the case. The *alvará* corresponded to a norm of less dignity than the *lei*, being used among other things for the registration of *mercês*. The *provisão* was a document that served to convey royal orders

[24] *Catálogo do Arquivo Nacional Torre do Tombo* https://digitarq.arquivos.pt/details?id=4743744, accessed in July of 2019.

related to a specific matter. The *carta régia* served to declare the normative will of the king on a certain matter that was not necessarily of general order. For its part, the *decreto* was used to classify royal determinations addressed to a court or magistrate. The *portaria* corresponded to a verbal order given by the king or by the Secretary of State on behalf of the sovereign to the courts. And, finally, the *avisos* were orders from the Secretary of State on behalf of the king to the president or magistrate of a court.[25]

Structure of the work

The thesis is divided in four chapters. The first one has the goal to analyze the discussion around "police" and its relevance for legal history. Some methodological considerations will be addressed as well, which will be useful for the analysis of our subject in later chapters. This chapter is also important to explain, even if in broad strokes, how the reception of this concept happened in Portugal during the second half of the 18th century.

The second chapter is dedicated to describing the region of the diamond district, its problems and spatial conformation. The goal of this chapter is to demonstrate to the readers the relation between the space and the jurisdictional conflicts and how they were linked to a specific concept of Law.

The third chapter is intended to describe the population of the district and its social imaginary. This chapter shows how this space was a diverse community, composed by different social groups, possessing different normative expectations. This description is directed to try to specify some of these normative expectations, how they entangled with one another, and which problems they posed to the crown.

Finally, the fourth chapter conceptualizes how the problems of the district induced a variety of actions from the crown's side. By reading the royal legislation against the grain, alongside with an analysis of the official correspondence, the aim is to reconstruct how, in a process of normative apprenticeship, Law is being woven in this case. In this sense, the focus is on how "police" fostered a transformation of the concept of Law itself.

[25] About this, see CARDIM et BALTAZAR, 2017, p. 195-196; CABRAL 2021.

CHAPTER 1

The concept of "Police" and the "Police" on Legal History

1 "Good Police" or "Police"

This chapter provides an overview of the topic of "police". It is more heavily based on secondary literature, using sources only when it best serves to illustrate the points. The goal is to present a panorama of the theme, since it will be crucial to understanding the construction of our hypotheses and analyses. Also, the chapter serves to make take some methodological stands and emphasize the transnational circulation of legal literature and practices.

1.1 "Police" as a research subject in Legal History

The topic of "police" can nowadays be described as a classic subject of European legal history, especially in Germany.[26] In a nutshell, the academic interest of legal historians in *Policey* mainly stemmed from the perception that the creation of new administrative branches and the increase of legislation linked to this concept during Early Modernity were two of the first signs of modern state-building or state formation.[27] The

[26] For an overview of the literature around the subject, see ISELI, 2009, p. 8-9 and p.12; and KOTKAS, 2014, p.1ss. Also, for an updated account of the changes in direction around the research subject of police up until now, see ROMEIN, 2022. The dissertations and books of the series *Studien zu Policey und Policeywissenschaft*, coordinated by Michael Stolleis at the *Max Planck Institut für Rechtsgeschichte* (MPIeR) during the 90's, must also be referenced here. Aside from that, the compilation of sources in the *Repertorium der Policeyordnungen der Frühen Neuzeit*, organized by Michael Stolleis and Karl Härter at the same Institute is also evidence of the academic interest in this group of sources and the subject itself. Finally, it is also worthy of mention that there is a recent initiative to expand the MPIeR database of police ordinances, adding to the *Repertorium* legislation from different European countries, such as from Netherlands, and making it easier to access them (For this, see Annemieke Romein's project: https://www.huygens.knaw.nl/en/projecten/game-of-thrones-2/).

[27] This is an interpretation diffused throughout a lot of works of legal history, history of public law and public administration. For examples, see OESTREICH, 1982, p. 155ss; and more recently HÄRTER, 2010a, p. 57. For a similar interpretation that focuses much more on how police ordinances brought about "modernization" rather than the formation of the State, see RAEFF, 1983. It is not questionable that these perspectives are correct when it comes to describing the effective results of this historical process of state formation. Nonetheless, it should be noted that this was in no way an inevitable process. Rather it consisted of a complex mixture of many factors, contingencies, and accidents. To an elaborated critique on how this perspective may hide away a teleological anachronism, see ROMEIN, 2022.

interest was also fueled by the interpretation that "police" was the root of what later became separated and specialized branches of law – such as the criminal, the administrative and even the constitutional one.

However, as historiography on "police" developed, there has been growing awareness of a couple of "interpretational" traps around the subject. On the one hand, the temptation of overemphasizing continuity or progressiveness in the transition from police to post-revolutionary legislative action should be avoided.[28] On the other hand, the observer should be careful not to fall on the other edge of the cliff, since a description of a complete rupture with the previous traditional legal order may also perpetrate historical distortions.[29] Behind the latter position, there is often a narrative, created in the 19th century, that depicted the absolutist State as a *Polizeistaat* (consequently, in opposition to *Rechtsstaat*), where the will of the absolutist prince reigned unmatched only to be limited by liberal and revolutionary movements at the end of the 18th century onwards.[30]

In the end, "police" should not be regarded as a mere prelude to something else (be it criminal, administrative law, public administration in general or administrative science). It means to say that "police" already occupied, by its own accord, a central place in the discursive constellation of the *Ancien Régime*, encompassing a very large range of practices and widely differentiated areas.

The relevance of "police" lies in its usage, during Late Middle Ages and Early Modernity, to conceptualize the good order of society and the activities that should be implemented to maintain said order.[31] In this sense, it is a key concept: I) to explain early

[28] "Police" presented structural features so drastically different from its "successors", especially considering the legal dimension, that it makes it hard to do it justice to one ("police") or the other (postrevolutionary strands of law) by connecting them through a line of simple continuity. If there is still a desire to describe "police", even if partially and somewhat anachronistically, as the administrative or criminal law from Early Modernity, it can only be done so with a lot of attention to the differences within legal thought and practice during the *Ancién Regime* in comparison to contemporary periods. For more on this, see NAPOLI, 2003, p. 15 and p. 25.

[29] This perception of surviving structures from the *Ancien Régime* in postrevolutionary France was already remarked by Tocqueville during the nineteenth century, when he noted that the Napoleonic State was mainly continuing the centralization process from absolutism; see TOCQUEVILLE, 1997, p. 77-82. Nowadays, this line of historical inquiring has been adopted and renewed by Pierre Rosanvallon, see ROSANVALLON, 1992.

[30] NAPOLI, 2003, p. 20. For more on the construction of the concept of *Polizeistaat* in the 19th century and its bias, see SORDI et MANNORI, 2001, p. 163-165.

[31] It is not a coincidence that Michel Foucault saw in this concept and in the police ordinances of France and Germany the first steps towards the disciplined society and Biopolitics. The investigation interest of Foucault was also a genealogical one, although committed to understand the functioning of power in society. See FOUCAULT, 2005.

modern societies; ii) to grasp how the historical agents of this epoch perceived the world (and how they inserted themselves in it); and mainly iii) to understand early modern legal sources.

But, although not being merely a prelude to something else, "police" was nonetheless a vehicle or tool for surpassing traditional thought on legal matters. What is interesting in "police" is the overlapping of "new" and "old" that allowed it to be a force (or tool) propelling change in the traditional legal order. "Police", then, is a privileged piece in the puzzle to analyze the passage from traditional forms of interpretation to modern interpretation of Law.

1.2 Origins and first documented appearances

The etymological origin of the word "police" is Greek, coming from πόλις (*polis*) and πολιτεία (*politeia*), words related to notions such as city ordering, "good government", "order" and "good order", according to Aristotelian tradition.[32] These words were translated to Latin as *politia*, and the undifferentiation or even "symbiosis of meanings" between the concept of "police" and politics survived at least until the eighteenth century.[33] The usage of the word "police" in tractates, official documents and ordinances may be found from the Late Middle Ages (14th century) onwards throughout Europe, first being used by the Burgundian Court.[34] However, it should be noted that the

[32]For a history of this concept, see KNEMEYER, 1980. Also, for useful overviews on the topic, see OESTREICH, 2008, p. 155-166; STOLLEIS, 2008, p. 436ss; and NAPOLI, 2003, p.30ss. This connection with the good order of the cities will be maintained even at later stages, as some passages from Nicolas Delamare's treatise on police, published at the beginning of the eighteenth century, shows: the author defines police as the "*ordre public de chaque ville*" (for this, see SORDI *et* MANNORI, 2001, p. 135; and NAPOLI, 2003, p. 12).

[33]NAPOLI, 2003, p.31.

[34] For example, in the France-speaking territory, a Royal Edict from 1371 is one of the earliest findings that utilizes the word. There is proof of use of the word even earlier at the local level: in a petition from 1360, the alderman of Reims appealed to the King to protect them from their Lord, the archbishop of Reims. The argument was that the King should naturally oversee "*la defense et protection, de tout le peuple, et de l'ordonnance, police et government*". It has also been noted, still for the French-speaking context, that the scholar Nicolas Oresme was in charge of the translation of Aristotle's "Politic" in 1371, at the behest of King Charles V – translating the word as "*Policie*". For the German-speaking context, the word can be found in documents from the end of the fifteenth century, where it was incorporated in the official language of the chancelleries of the Holy Roman Empire. One of the first mentions can be found in the combination of "*pollizey und regierung*" in a document from Kaiser Friedrich from 1466, which he issued for the imperial city of Nuremberg. Other combinations, such as "*Regiment und Pollicei*", can be found in Nuremberg Council Decrees of 1482 and 1492. For all this information, ISELI, 2009, p.14-15 and KNEMEYER, 1980, p. 174. For more literature and other early examples, see HÄRTER, 1993, p. 639ss.

concept was more intensely utilized and developed (be it in scholarly literature or legislation and official documents) in German-speaking and French-speaking regions.

At an initial stage, "police" was simultaneously understood as situation and activity – the situation of "good order" and the activity to maintain it.[35] Many times, the word was a synonym for "regiment" or "government". It must also be noted that although "*gute Policey*" was an object of literary interest from early on, it was mainly seen as part of practical philosophy – legal considerations there would be only marginal.[36] It was not until the second half of the 18th century that it started being a topic of considerable attention by jurists and discussion in legal faculties - but even then, it hardly could be understood as a legal subject *per se*, on equal footing with civil and canonic law.[37]

In a medieval estate-based society, the envisioned "good order" was naturally established by God. Besides rules based on Christian morality, this divine order had at its core a hierarchical structure, one that should be preserved in the secular realm to secure each estate's own social place, characteristics, and functions.[38] That is the reason why these ordinances were, specially at an initial stage, so often directed

[35] SEELAENDER, 2009, *passim*; STOLLEIS, 2008, p.454; SORDI et MANNORI, 2001, p. 133ss. This activity, however, should be understood (in this initial stage) as essentially conservative: it was meant to preserve the *status quo* and prevent the distortion of a preconceived order in an environment that was expanding and increasingly changing.

[36] It is not the same to say that there was no normativity at all to be found in these texts. The use of the adjective "legal" may be misleading here, since the point in using it is stressing the initial distance from this discourse to another one, way more specialized and directed towards answering a different set of questions. But it cannot escape the reader that the European literature from the 15th century up until 18th century, at least, did not present the same divisions, differentiations and specializations as that of contemporary scientific fields. Writings and arguments on politics, Law, economy and religion were many times entangled in one another. The point is that the literature that treated "good police" at the earlier period (15th to 17th century) was only indirectly interested in connecting the aspects of "police" with the applicable law in courts or to the more systematic framework of *ius commune*: the main goal was to present relevant and useful information for the *paterfamilias*, for the farmer, the merchant, the official or the prince in their domains of action. However, it is also important here that there was a unitary conceptual point of convegence for all these different activities (Law, politics, religion, "oeconomy"), which even made possible some analogies between them: at the end, the notion of an ideal "good order" could be seen as the origin and/or goal of these different fields, and it made possible the production of normativity from it. For this, see STOLLEIS, 2008, p. 439-440, p.442, p.503-504 and the references indicated there. Also, in the same line, this was called by some historians as the "rhetoric" of "*Gute Policey*", see LANDWEHR, 2003.

[37] In fact, the scientific status of "police science", alongside with that of political economy and cameralist sciences, was questioned and undermined by many jurists, even at the end of the eighteenth century. This is shown by the complaints of a professor of cameral sciences at Halle, J. Ch. Rüdiger, in 1777, about the inclination of a "certain type of jurist" to easily disregard the subject he dedicated himself to (as quoted by STOLLEIS, 2008, p. 503-504).

[38] HESPANHA, 2012, p. 98ss.

towards preserving religious morals and hierarchical relations between the estates.[39] It was not only the text of norms and ordinances that commonly expressed the goal of conserving the estate-based society: this preoccupation was constantly externalized by the scholarly literature of the time as well.[40]

The increasing use of the concept in the literature and in the text of norms after the 15th century indicates a growing sensation of disorder. Andrea Iseli attributes the latter to a spur of popular revolts and to the effects of the Reformation during this period.[41] But other structural factors played a role here, such as populational growth, the developing of cities and industrious labor, the invention of printing, the migration flow from the countryside to the cities due to plagues or pursuit of subsistence, and the expansion of trade and commerce (just to name a few).[42] The diversity generated by all and each of these factors surely must have added fuel to the imaginary of disorder.[43]

[39] This is attempted, e.g., by regulating the behavior of servants towards their superior or by prohibiting blasphemy, gambling, drinking, luxury, and the use of extravagating ornaments or clothing. The control of expenditure in ceremonial events and festivities was also another modality of this effort to maintain estate barriers, alongside other controls. Many of these examples could be grouped within the term "sumptuary laws". For studies on sumptuary laws with a global perspective in mind, see RIELLO and RUBLACK, 2019. As Riello and Rublack quite clearly put in the introduction of their book: "The (unrealised) aim of sumptuary laws was therefore to create social distinction by reinforcing established ideas of hierarchy, making it visible and recognisable" (idem, p. 12). The intent of making the presupposed natural and divine order visible, easily recognized, makes more sense when taking into consideration that Medieval and Early Modern societies heavily relied, much because of whole spread illiteracy, on the visual dimension of symbolic domination. Le Goff has already made a case for this point, stating that the medieval society is a "society of appearances" (LE GOFF, 1999, p. 297; 302-303; 317; 320-321), and much of it is equally valid for Early Modernity.

[40] The examples are various and many well-known. Just to reference a few: from the German-speaking context, there is the work from Melchior von Osse, in which he alerts about the necessity of maintaining the boundaries between estates ("*Standegrenzen*") and avoid the erosion of morality. For this and other examples (such as Oldendorp), see ISELI, 2009, p. 23-24; and ISELI, 2003, p. 28ss. For more on Oldendorp, see STOLLEIS, 2008, p. 455-456. For other examples of authors, see KNEMEYER, 1980, p. 179-180. Also, regarding England during the Tudor era, there is Edmund Dudley's "The Tree of Commonwealth", written in 1509 (see DUDLEY, 2012 [1859], p.30 and *passim*).

[41] Regarding this explanation, there seems to exist academic controversies: this approach was criticized by Karl Härter, which sees in it a mere reproduction of the historical interests of Peter Blickle, Iseli's supervisor: "Two trouble spots are (in Iseli's view) important for the 'rise of the *Policey*': 'riots and revolts of the common man as well as the Reformation'. Of course, this is contradicted by the earlier or parallel developments in the late medieval cities and in France that Iseli has already described. There are also no substantial differences between Catholic and Protestant police legislation, and revolts play practically no role in them" (HÄRTER, 2010, p. 196).

[42] Some of these factors are mentioned by Oestreich (1982, p.156-157).

[43] Here, it must also be noted that the increase in *Polizeigesetze* is a sign of how the distinction between estates was gradually losing its force in maintaining social hierarchies: "The extent of regulation through *Polizeigesetze* was in large part determined by the functional decline of the estates. The more the distinctions between estates became blurred and the estates were no longer able to fulfil their function of regulation, the more the responsibility for legislation devolved to the *Landesherr*" (KNEMEYER, 1980, p. 178).

Parallel and somewhat connected to these factors, there was also an increase in complexity of the subjects of regulation, alongside a professionalization and specialization of those in charge of these matters (like mountains, mining, economy, and manufacture), which prompted more detailed regulation.[44] Finally, the sensation of acceleration of time and the dominant insecurity in face of novelties that was shared by the historical agents cannot be underestimated here.[45]

All these changing structural factors provoked a gradual dissolution of the estate-based society while stimulating rash reactions; from the side of the authorities (Crown, city councils, church, universities, etc.). "Police" legislation and "police" literature were just two of the most significant ones. To sum it up, with one precisely formulated statement by Oestreich: the multiplication of police ordinances was a response to an increase in complexity; "Greater social complexity brought a greater deployment of authority".[46]

1.3 "Police" and Sozialdisziplinierung

It is fair to say that a considerable portion of the academics working on "police" from the last decades have, to a higher or lesser degree, utilized Oestreich's category of *Sozialdisziplinierung* for providing meaning to their own individual research's findings, by accommodating these into a cohesive historical narrative. It is also fair to say that many important nodules of discussions about the subject revolved around this category. That is one of the reasons why grasping this category and the ramification of questions that came from it is fundamental for understanding the historiography about "police". Taking the time to focus on it is also a fundamental step to move on further developing the field.

This key category is as an ideal-type conceptual construction, originally intended for explaining the transformation of the Early Modern absolutist monarchies into proper "modern" States. In his famous lecture, *Strukturprobleme des europäische*

[44] STOLLEIS, 2011, p. 221.

[45] Idem.

[46] OESTREICH, p. 157. Härter has affirmed the same thing through different words: that the "police" legislation originated and expanded itself as a "reaction to problems of a social reality in rapid transformation" (HÄRTER, 1994, p. 640).

Absolutismus, published in 1969, Oestreich identified the "social disciplining" as the goal, driving force, and result of a historical "fundamental process".[47] *Sozialdisziplinierung* should be understood as an analogous and concomitant phenomenon to the ones of *rationalization* (Weber) and of *civilizing* (Norbert Elias), occurring during the passage to modern times.[48] In this sense, the category is often grouped with these so-called "modernization theories".[49]

For Oestreich, *Sozialdisziplinierung* was a process both occurring in the intellectual and material dimensions, conscious or unconsciously to historical agents, within the geographical scope of Europe. For the intellectual part, it had to do with general trends of late Humanism and "Neo-stoicism" or "Neo-Roman", which (according to Oestreich) were reviving notions of public virtue and of state power (like *auctoritas* and *disciplina*) from roman sources.[50] The material aspects were mainly those concerning the consequences of religious and civil wars in Europe.[51]

Within this framework, Oestreich perceived the police ordinances as the clear examples to sum up his argument about social discipline:

> The very concept of 'police' sums up the process (of *Sozialdisziplinierung*): the later academic study of 'police', as the science of civil administration in the seventeenth and eighteenth centuries, aimed to provide rules for good behavior and order in the expanding field of public life. The territorial ordinances help us to understand the motives behind all this. At first the aim was apparently to preserve and restore good Christian living and respectability, but later they made deep inroads into private life, laying down rules and educative prescriptions in every conceivable area. The idea of general welfare and good 'police' was closely linked with the notion of discipline.[52]

Although Oestreich's proposed thesis was overall well accepted, there were nonetheless quite a few critics to it.[53] The discussion soon turned to questions like: What

[47]OESTREICH, 1968. It is fair to say that one of the reasons why this text enticed such a heated and long debate, and maybe why it acquired the repercussion that it did, was because it was an essay (that means, it was not the fruit of long and patient research on a subject, but an instigating new look on an old subject of historiography and an invitation for in-depth research into it). Many loose ends were left open and vague in the original text. For this reading, see FREITAG, 2001.

[48]OESTREICH, 1968; STOLLEIS, 2008, p. 441-442.

[49]AJOURI, 2020, p. 6ss.

[50]OESTREICH, 1982, p.6. For objections over the importance of Neostoicism and of Justus Lipsius (the main example studied by Oestreich) in state formation, see AJOURI, 2020, p. 11.

[51]OESTREICH, 1968. In later a text, focused on "police", Oestreich brings more arguments, such as the enlargement of cities and others, already mentioned in footnote n.20.

[52]OESTREICH, 2008, p. 270.

[53]Hans Maier, for example, was vocal about his skepticism on the comprehensiveness of the category's power of explication. For Maier, not every relevant social or political impulse from Early Modernity could be explained only with *Disziplinierung*, nor was he so sure that the concept of "Discipline" was unequivocal to the point where all the sources meant the same thing with it (he brought up what discipline

is the definition of discipline? What is its scope? To whom was it addressed? and was it efficient or not? The main critiques to "social disciplining" may be simplified as follows: a) accusation of projecting a teleological narrative to historical explanation; b) accusation of being a state-centric perspective; c) allegation of ineffectiveness and unfulfillment of social disciplining.[54]

The last critic deserves more attention here. It originated after the implementation, application, and effectiveness of "police norms" were questioned in historiography. It has been decades now since social historians have pointed out to the fact that many "police norms" were "ineffective". This led some to question whether the category of *Sozialdisziplinierung* would be useful at all – since these norms did not produce the desired effects (it was satirically remarked that they were only "upheld by the church door") could there be any talk about social disciplining? Then, the question would be if Oestreich conceived the phenomenon as being totally effective from the get-go. As the German historian Robert Jütte has stated in defense of Oestreich: to strive for social disciplining is not the same as implementing it. For Jütte, it is clear that Oestreich understood this historical process as dynamic and took into account the diversity of historical agents.

In favor of Oestreich, it must be said that at least a large disciplining of state officials was accomplished by the end of the 18th century. Although not completely dominating the *pouvoirs intermédiaires*, the State could foment and fairly domesticate a group of officials that were linked to the center through a hierarchical chain of command. This bureaucratization was still rudimentary in many places, but it was noticeable especially in France[55], Prussia, and Austria. At least for the German-speaking context, "ordinances increasingly contained regulations for personal position of officials" (that is, the royal officials started to be more and more the addressees of the norms) during the

meant to Kant as an example). Maier seems to make his point with the affirmation that the composition of any society is made not only by disciplining and restrictions, but also on liberation. For more on this, see MAIER, especially p. 239ss. Other critics were Martin Dinges and Peter Blickle. For descriptions of these discussions, see JÜTTE, 1991 and FREITAG, 2001.

[54]For an appreciation of the discussion, without a complete endorsement of such critics, see STOLLEIS, 2011, p. 224. For another overview of the discussion but supporting many of the critics, see AJOURI, 2020, p. 6-17.

[55]For a brief description of the implementation of the system of *commissaires* and intendents in France, see SORDI and MANNORI, 2001, p. 102-127.

turn from the 17th to the 18th century.[56] Portugal was undoubtedly inserted in this context: many initiatives from the Marquis of Pombal and later, even after the so-called *viradeira*, clearly tried to emulate these changes in the political structures.

But if we distance ourselves from Oestreich (a movement that may be necessary, especially since this dissertation is not committed to the defense of his ideas nor will spouse social disciplining as a central category) the general discussion on the implementation of norms (*Normdurchsetzung*) in Early Modernity keeps being of interest. To deal with the fact that the nonapplication of statutes was a "structural feature" of Early Modern societies, Schlumbohm concluded that police norms served primarily to present royal or local authorities as "good authorities" in charge of taking care of "good order". They would, then, present a symbolic function in a "theatrical state".[57]

In another direction, Achim Landwehr, Michael Stolleis and Karl Härter presented their oppositions to this interpretation by affirming that it was not all simply "role-playing" in the enactment and implementation of norms during early modernity. To Landwehr, it is not advisable to adopt a position before looking at the individual cases: whether the application of norms would follow a pattern of theatricality or if authorities would accomplish the task of enforcing the statute in some degree, it would all depend on contingency.

Achim Landwehr advanced some important methodological considerations on police norms as historical sources. For him, instead of seeing police norms simply as commands or attempts of an absolutistic State to impose rules top-down, the researchers should see them as products of a communicative process. This type of approach displaces the problem of ineffectiveness from the center of discussion. Then, attention can be spent on how the communication is woven through different stimulus, inputs and interactions.

[56]STOLLEIS, 2008, p. 474. This movement was interpreted by Stolleis as the beginning of law of public employment. These ordinances accomplished the feat of molding and consolidating this direction towards professionalization and bureaucratization of state officials (although it must again be noticed that these general movements continued in the nineteenth century). They created a differentiated apparatus of officials and molded them accordingly to the new demands and changes in political direction, by disciplining the officials (through proper channels of education and sanctions) and offering them some rewards based on the description of functions, the giving of a military rank and fixed salary (idem, p. 476).

[57]SCHLUMBOHM, 1997.

1.4 Police as rational administration of a territory

The concept of "police" was also strongly connected to that of "domestic economy" (*Oikonomos*). With the analogy between the realm and the domestic government, the Monarchs slowly incorporated paternal prerogatives of ordering and disciplining their subjects inside their own territorial domain (as a father would with his servants, sons, and wife in his household).[58] This new disciplinary function was institutionally materialized as a regulatory power made to interfere with the social structure, i.e., the legitimization to enact "police ordinances" (*Policey Ordnungen, ordennances de police*).[59] It is also noteworthy that "police" gains, with the passage of time, more and more normative[60] contours - this is reinforced as a consequence of the growing mass of "police" norms produced.[61]

In this scheme, the distinguishable separation between private interests and

[58]As Stolleis affirmed: "From the domestic good administration, the '*gute Policey*' of the territorial administration was formed". For his in-depth explanation and examples, concerning the links between *Hausväterliteratur*, Aristotelian notions and literature on the art of governing in German-speaking territories, see STOLLEIS, 2008, p. 443-448. For a more in-depth analysis of this analogy through other examples, see FRIGO, 1991.

[59]Nevertheless, it was far from being an exclusive attribution of the King as it would be the case in a monopolistic and centralized political system (SORDI and MANNORI, 2001, p.137). On the contrary, it was a dispersed power shared between multiple agents (corporations, church, *Landesherren*), each possessing considerable autonomy in the pluralist medieval context. These agents interacted with each other in the elaboration and application of police norms (See SIMON, 2009, p.138). In practice, therefore, this was not a prerogative exclusive to the prince, nor was an action taken forward by the King or his council alone. Cities, as political communities, and local authorities could emanate norms on "police" on their own or make petitions to the Crown, demanding their enactment. In many cases, "police" norms were also copied from one place to another, and in other cases, the suggestion of making new norms came from the state officials that were at the localities.

[60]Here, the adjective normative means that "police" is being treated more and more as a normative matter: it means, primarily, that normative expectations are being formed around the discourse of "police". The ramifications of this interrelation also start to be taken into consideration through a normative framework: efforts increasingly appear to place "police" within known normative schemes, and normative consequences are extracted from this concatenation of arguments.

[61]This may be perceived even at the conceptual level. For example, Loyseau describes "*le droit de police*" as the power to emanate particular regulations for all the citizens of a district or a territory in his *Traité des seigneuries* (LOYSEAU, 1608, p. 201). The remarks of Loyseau that these regulations should be seen as "laws and ordinances" (idem, p. 202) shows also his efforts of placing these new "edicts of police" as normative sources in the legal scheme he was acquainted with (and which did not predict "police" norms). For an analysis of this source, see SORDI and MANNORI, 2001, p. 138-139. It must also be noted that even here, however, "police" is still within the jurisdictional paradigm (*idem*, p.141). Apart from that, a pragmatic literature starts to be produced around the written ordinances, while at the same time some pragmatic features are incorporated in the literature more prone to theoretical considerations (for the case of German-speaking territories, see STOLLEIS, 2008, p.460 and p.467ss).

state objectives is slowly blurred to the point it was unrecognizable. The welfare of the subjects is soon identified with the wealth and power of the State. Every action that strengthened the latter assured the "happiness" of the subjects.[62] This movement strengthened the identification of the exercise of power with the act of legislation and projected the State as the paramount institution in charge of it.[63]

This link with *Oikonomos* was in syntony with a set of preoccupations from mercantilist and cameralistic ideas.[64] The latter focused on the collection of revenue and augmentation of military power, understood as means for survival in a situation of competitive relation with neighboring powers. The real function of "police", in this context, was its capability of rendering the social life as an object of governmental rationality.[65]

From a marginal activity of royal or city authorities, "police" became one of the most central and operative concepts for internal administration.[66] The paradigmatic shift in police is also reflected in the change and expansion of matters of interest or resignification of old ones. So, although at first "police" norms were directed to correct religious morality and to secure social hierarchies of an estate-based society, by the second half of the 18th century, the goal had shifted considerably towards a maximization of rational efforts and efficiency enhancement of state administration

[62]SEELAENDER, 2009, p.77-78; STOLLEIS, 2008, p.508.

[63]A shift that may be also described as the passage from the predominance of a "judge-king" to the "lawgiver-king" (seen as ideal-types; for this see SEELAENDER, 2008 and *idem*, 2009). Such affirmations, clearly, are only sustained if observing the long-term process. In the middle and short term, there is a profusion of meanings connected to the concept of "police" (not all promoting centralization), as well as disputes around them and even a high degree of confusion to what "police" should be or accomplish. It is safe to say that the concept was broad, and its limits were not clear most of the time. For an example of this broad interpretation, Jean Domat at the end of the seventeenth century, recognized in what he called the "universal police of society" an all-comprehensive order covering the totality of secular power, comprising both what he called "les Lois de l'État" and "civil law" together (see NAPOLI, 2003, p. 39). Aside from that, the path towards political centralization and monopolization of law was not generally intended nor totally foreseen by all those involved in it. In many cases, the officials and even the Crown were more than anything merely trying to react more efficiently to the problems that kept on surfacing. But the use of "police" norms as an instrument for social change and intervention generated a whole set of new problems which kept on pushing for further innovations.

[64]Although this connection has been for a long time underlined as a particular feature of Prussia and Austria (imagined through the depiction of a *Sonderweg* of German bureaucracy), there has been attempts to show how this set of ideas circulated all around Europe and beyond (see the introduction of NOKKALA and MILLER, 2020). Here, cameralism is perceived less as a unitary set of ideas and much more as a "language" that may be pragmatically combined with other elements: therefore, cameralism is not "defined as a stable category of analysis" but rather as a "porous field open to the influence of alternate and competing intellectual strains, impulses and traditions". (*idem*, p.1-2).

[65]NAPOLI, 2003, p. 14. In the same sense, STOLLEIS, 2008, p.505-506.

[66]SEELAENDER, 2009, p. 78.

and even of society itself.

This clarifies why a significant amount of "police" norms after the 17th century were directed towards economic and trade matters, or to discipline work forces. Even the protection and ailment of vulnerable groups (such as orphans, invalids, and the poor) became part of this new encompassing notion: the State started, in some places, to share or take this competence from ecclesiastical institutions. Aside from the topics already mentioned, many of these regulations were also directed to steer or control the economy of cities and of commercial business, foster specific trades, and seeking an increase of revenue. In the same direction, weights and measures, monopolies, taxes, and other topics were also understood as part of "police" and "oeconomic government". The historical unfolding of the concept of police followed the vicissitudes of the "fiscal state", sharing its internal contradictions and even its crisis at the eighteenth century.[67]

Halfway through the eighteenth century, therefore, 'police' was reconfigured: it started to imply more and more the rational and internal management or administration of the kingdom.[68] Not simply did the contents under the supervision of 'police' increased significantly, but its essence was not conservative anymore: it was directed to change, guide and promote the social conditions, in line with the cameralistic ideals.[69] The concept also lost a great deal of its religious and moral connotations, giving way to a rationalized form of these issues to be addressed. In the Prussian context, for example, "police" started to be developed into a specialized knowledge and scientific discipline (*Policeywissenschaft*) that, combined with the cameralistic, was designed to rationally optimize the absolutist administration of a fiscal and military state.

The amplification of tasks and substantial review of 'police' reflected the Monarchies' continuous attempts to expand their activities and the struggle to deal with territorial disputes in continental Europe. But, as I try to argue, it had also to do with the colonial experience of these Empires and the unforeseeable problems that this "New World" brought to matters of governance.

[67] SORDI, MANNORI, 2001, p. 132.
[68] See STOLLEIS, 2008, p.508 and the literature there referenced.
[69] SEELAENDER SORDI.

Parallel to these changes, state bureaucracy was expanding and specializing. *Iurisdictio* started to give in some space to new forms of social regulation,[70] consequently, provoking tensions and conflicts between magistrates and the Crown.[71] The creation of 'police courts' and 'police intendents' with the prerogative to judge cases related to 'police measures', in a way that would drive away the ordinary justice, was the institutional attempt of the Monarchy to centralize the political power and amplify itself.

Notwithstanding all of this, 'police' never accomplished to fully separate justice and administration: although the public tasks were incremented, they continued to be fulfilled 'indirectly', via jurisdictional authority.[72] The absolutist Monarchies before 1789 were unable to implement an institutional apparatus that fully corresponded to their absolute pretension of social control. Curiously, the path for conceptualizing an unparalleled state administrative authority over all individuals was cleared only after the intellectual fractures of the French Revolution, the Enlightenment, and liberal thought dismantled the corporative power configuration.

[70]Essentially because the problems purposed by the 'police' were very different from those of the jurisdictional administration: the first was concerned with the definition of a plan of action and to chose the best ways to implement it; to the second mattered the defense of acquired rights and the security of the legal order. SUBTIL, 2011, p.257-274. In addition, the time required for both operations to be processed was completely diverse. Justice demanded attention and prudence, it could not be rushed. Meanwhile, 'police' asked for immediate and effective answers to problems that should be resolved as fast as possible.

[71]Examining the French example, Mannori and Sordi highlighted how the powers of the apparatus that consisted with the bureaucratic machine made up of royal commissars "continued to be harshly contested under the profile of constitutional legitimacy" (p.233-234).

[72]SORDI and MANNORI, 2001, p.141. Mannori and Sordi also point out how the king's intendants were not always perceived as executive officers. On the opposite, they were 'formally considered as the instruments of the monarch's personal justice' – at least in the French context of the 18th century, where it could be arguable moreover that absolutism reached one of Europe's most polished and strong presentation (p.233). In other words, on a discursive dimension, a non-jurisdictional functioning of absolutist administration was not acknowledged by the semantics of the time. Not only that, but political centralization was far from being achieved from a practical point of view. The society of the Ancién Regime remained till the end decentralized, with no possibility of governance without negotiation with the estates. This is shown by Ladurie with the example of Domfront, a french police tenant that accumulated many functions. He was simultaneously representative for the king and the city, had local familiar and friendship ties and was immersed with the now and then suspicious business of the city, the prefecture and the surrounding fields (1994, p.22).

1.5 Methodological Considerations on "police" from the perspective of Legal History

Now that the basic ground is laid around the subject of police and its state of discussion, some methodological considerations are necessary to stress the relevance of this topic from the perspective of legal history. As previously mentioned, "police" norms and "police" literature were products of a legal context which was structurally different than any contemporary legal system. It means to say that European (and colonial, equally, in this regard) legal sources from early modernity were comprehended and operated through a unique legal framework and intellectual constellation.[73]

First, unlike contemporary legal notions from countries within the so-called Roman-Germanic "family", written law and legislative action were not in the top of the hierarchy of legal sources in the hermeneutic of jurists. Law was not mainly composed by codification and statutes – that is, law was not seen as a set of general abstract commands emanated by a sovereign nation-state to be applicable to individuals. Rather, Law was something to be discovered through observation of the nature of things: the craft of the jurist from these periods may be better described as that of an interpreter (or reader) of this natural order (not that of a creator). That is also why custom occupied such a central place in medieval and early modern legal thought.

More than that, legislative action could often be regarded even with suspicion and aversion, as a novelty that could endanger the traditional order. An active prince was not the standard nor desired many times. What was expected was a passive King, whose main duties would be to maintain peace, order, and justice in the realm. Written law (statutes) should be, in general, the crystallization of custom or natural law, not a voluntaristic command of the prince.[74]

Despite the existence of a stipulation of subsidiarity of *ius commune* in face of *iura propia*, the common practice of the jurist was not to apply royal statutes, but to recur to *ius commune*. Whenever royal statutes could simply be bypassed with some *glosa*

[73] CABRAL, 2021, p. 20.
[74] HESPANHA, 2012; GROSSI, 2014.

or comment, they were left to the side. The jurists tended to rely on what they were more used to, on what was hammered into them through repetition in the university's lectures, although this choice obviously also depended on what was most beneficial for their own interests as well. Even with all the efforts from latter tendencies of Enlighted Absolutism to contain the use of Roman Law by learned jurists (and the *Lei da Boa Razão* may well be one of the best European examples of this attempt to control the use of legal sources by jurists), this situation was not reversed until after the French Revolution.

Here, however, lies a tension or ambivalence within the discourse around "police"; namely, between political action and law, or between conservation and innovation through law and politics. Initially, it is merely latent: while most of the earlier authors emphasized the absolute importance of the prince in maintaining the traditional legal order – customary laws and the fundamental laws (*leges fundamentales*) –, they often also made a case for new laws and actions in police matters (to those new situations that threatened good order). This latent tension or ambivalence becomes conscious and explicit in the seventeenth century, when some authors begin to describe, in an innovative way, the traditional law as hinderance to efficient political actions.

This is also a slow shift that can be described from a conservative notion of "police" ("police" as good order, in the sense of Aristotelian politics, achieved through peace and respect of normative...) to a utilitarian notion of "police" (police as the "internal administration of the realm", meaning all those matters where the sovereign may intervene in order to enhance and promote the strength of his own reign). In this latter notion, rather than a traditional order that must be respected, or a remedy used for conservation of said order, law ("police" law, that is) is more seen as a tool for transformation, which the prince could adapt and use at his will, according to circumstances.

The normative tradition underlying "police" was also unfamiliar with the distinction between public and private law (which also implies the undifferentiation between criminal and private law), and the distinction between Justice and Administration.

The latter indistinction meant the predominance of a jurisdictional type of activity from the authorities over an "administrative" one (an indistinction which survived even at later stages of the eighteenth century). For example, police intendants (or *commissaries*) were still essentially seen as holders of *iurisdictio* just as much as any

other *juiz ordinário* (or any other *corpora* of this society, which would have their own *iurisdictio* as well, their own sphere of autonomy). It is true, however, that their jurisdiction would be understood as a special one, separated from the ordinary contentious jurisdiction. Even the king would predominantly be perceived as a judge in last instance, in charge of safeguarding the peace and justice of the realm. It was only in the sixteenth century that the power to enact laws would be described, in some intellectual circles, as a fundamental function of sovereignty – and even so, it would hardly be understood as divorced from the jurisdictional function. It must come to no surprise, then, that conflict and confusion of jurisdictions was recurrent in this scenario – and it is something to be conscious of when studying the legal sources from Early Modernity.

1.6 Police in Portugal

In Portugal, the overall use and transformation of the concept of "police" followed similar patterns as the ones presented so far, which is not surprising since there was much borrowing of institutional and intellectual practices from rivals and neighbors.[75] The word "policia" appear in a *Carta Régia* as early as 1478.[76] Up until the 17th century, the term appeared in Portuguese literature as an equivalent of "good order" and "good government", not differently from other cases. Aside from this meaning, the connotation of civility and politeness ("*urbanidade*", "*civilidade*") was also recurrent.[77] If there is one characteristic of the Portuguese case that may slightly deviate from others brought up so far (France and Prussia, especially), is that religious and specifically catholic overtones are more pronounced in the discourse.[78]

[75]These borrowings were intensified during the second half of the 18th century due to feelings of backwardness of Portugal expressed by the Portuguese elite with affinity towards the Enlightenment. In 1743, Sebastião José de Carvalho e Melo, the future Marquis of Pombal (this title would only be obtained in 1770), wrote that "all nations of Europe" expand themselves through "reciprocal imitation" (see MAXWELL, 2009, p. 22). But even before Pombal's era, exchanges and copy of practices between chancelleries in Portugal and other European monarchies would be far from being rare, as it is known.

[76]See SEELAENDER, 2003, p. 57. About this, Seelaender also conjectures that it "cannot be ruled out that the close connection to the Burgundian court in the 15th century contributed to the early reception of the concept in Portugal".

[77]See SEELAENDER, 2008, p. 92.

[78]For some examples, see SUBTIL, 2013, p. 289-290. The author remembers some publications on "Christian police" of one Antonio Alvarez and one Frei Pedro de Santa Maria. Seelaender also refers to an anonymous text whose title is "*Policia, e urbanidade christam*" ("Christian police and urbanity"), see SEELAENDER, 2008, p. 92. However, this apparent overuse of catholic discursive repertoire should

These meanings are well condensed in the 1720 edition of "*Vocabulario portuguez e latino*..." from the priest Raphael Bluteau.[79] In the respective entry, "police" is firstly defined as "the good order that is observed, and the laws that prudence stablishes for human society in Cities, Republics, etc.". After that, the meaning of civility or civilization is inferred, by attesting that neither art nor *policia* can be encountered in "Barbarian people", such as the "*Gentio do Brasil*". The latter, according to an observation of the priest Simão de Vasconcellos quoted in the dictionary, stroll naked through the jungle in herds and their "light of reason" is out "almost as in beasts themselves".[80] Finally, the term "police" is, in this source, also related to military regiments, politeness, good and courtly manners, cleanliness (in dressing, for example), well-ordered cities and urbanity.[81]

However, it is not present here, in a clear way, that *policia* is a task of the State (or of the crown, the prince). Rather, the impression is that "police" was dispersed through society in different authorities (and much more as a collective and personal ideal of behavior and situation than a power in itself).[82]

If we, however, jump to the edition of 1789 of the dictionary of Bluteau,[83] it is noticeable how the entry changed.[84] *Polícia* was then the "government, and internal administration of the Republic", especially in what refers to "convenience" (*commodidades*), i.e., cleanliness, abundance of supplies, vestiary, and the security of citizens. The comments on the "*Gentio do Brasil*" were suppressed. The relation with urbanity is still present, but it is less elaborated and even illustrated with fewer examples.

This change in the entry is only a tiny fragment of a larger conceptual transformation. After 1750, the concept of "police" would imply in Portugal mainly the

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only be a hypothesis to be further explored in comparative studies (the cases of Spain and Austria could then be used as contrast between these catholic monarchies).

[79]BLUTEAU, 1720, p. 589.

[80]The original quote: "*Andaõ em manadas nos campos, de todo nûs, assim homens como mulheres, sem empacho algum da natureza; vive nelles taõ apagada a luz da razão, quasi como nas mesmas feras; parecem mais brutos em pé que racionaes, etc.; nem tem arte nem policia alguma, etc*." (idem).

[81]It is hard not to notice how these meanings come close to the categories of social disciplining (Oestreich) and the process of civilization (Norbert Elias), briefly mentioned earlier.

[82]This notion that "police" was dispersed throughout the institutions and lower authorities is also how Paschoal de Melo Freire dos Reis would years later present the panorama in the "proofs" of his draft for a Public Code, even though this interpretation is diverging from his inclination towards favoring the Crown as holder of supreme power.

[83]BLUTEAU, 1720, p. 589.

[84]BLUTEAU, 1789, p. 213.

rational internal administration of the State,[85] following similar patterns as to other enlightened absolutist monarchies.[86] By then, "police" would be conceived as not only belonging to cities, but as a power of the prince and a duty before his subjects. This arrangement also meant a new disposition towards government, one that saw itself responsible for a more active role in driving the subjects towards enhancement through rational means, which meant having to take charge of more tasks in society.[87] If we focus on the internal discursive structure of this shift, then it is clear that "utility" slowly replaced or overlapped itself with "justice" as the main operative concept for deciding on matters of "police".

In Portugal, this conceptual transformation followed a chain of events that would ultimately pave the way for the adoption of this new style of government. In the political structure, the death of D. João V and the small interest his successor nourished for matters of government ended up placing Pombal as a *de facto* head of the State.[88] In the social sphere, the ascension of a new class of officers and the confluence of interests between the high bourgeoise and the State facilitated and even pressured for efforts of intervention in matters of economy.[89] The earthquake of 1755 created opportunities for a

[85]This affirmation would not be possible without the previous research of SEELAENDER, 2003 - to which the present dissertation much owes to. See also *idem*, 2008; 2009; 2011.

[86]However, it is noticeable a certain delay in the circulation of this new conceptual configuration and in the late appearance of institutionalized spaces of discussion around "police" in Portugal (see SEELAENDER, 2011, p. 38-39). This delay may be attributed to the weight of Counter-reformation in Portugal (with the censorship of books and difficulties it imposed to the circulation of enlightened books - which is not to say that they did not circulate) and to the relative prosperity of the reign of D. João V with the discovery of gold and diamonds in Brazil (which weakened the urgency of decisive action in strategic areas of government and made possible the postponement of reforms).

[87]See the literature from the last footnote. For more on a similar direction: SUBTIL, 2013. Although here it must be alerted that the explanation of Subtil still seems to miss the mark: Subtil understands the emergence and use of "police" in governance as the complete transition to an active State in theory and in practice. As was already noted, however, "police" was never able to surpass the jurisdictional paradigm of the *Ancien Régime*, still being a couple steps behind the appearance of an Administrative State.

[88]MAXWELL, 1990, p. 78-79. Indeed, there was much contingency here: Sebastião José de Carvalho e Melo was especially summoned from his diplomat services in Vienna by Maria Anna of Austria, then regent queen of Portugal, in 1749, to make part of the ministry in Lisbon. This calling probably was facilitated or even assured by the fact that Pombal had recently married Eleonore Ernstein Daun, a noble Austrian woman and very close friend to the empress Maria Theresia, who personally blessed the marriage.

[89]The assimilation of this new high bourgeoise, formed in the beginning of the 18th century, in royal administration (possessing leadership positions in institutions such as the "*Junta do Tabaco*", the "*Erário Régio*", the "*Junta do Comércio*") is exemplified by José Rodrigues Bandeira and the Cruz brothers. The panorama was already elaborated by SEELAENDER, 2003, p. 16-24. Here, it is also important to notice, as Seelaender emphasized, that the subtraction of obstacles for the *cristão-novos* to officeholding after 1750 was another contributing factor for the introduction of this distinct social class into the political institutional structure.

renewal of the court and state apparatus without much resistance: the crisis cabinet headed by Pombal had much room for display of power and implementation of novelties in Lisbon,[90] but the impacts were felt also beyond the boundaries of the city.[91] The need of faster response to economic crises (such as the fall in production of sugar, gold and diamonds) and of adjustment of the commercial balance, in addition to the threats of invasion from Spain, also were pushing for a more active government.[92]

The Pombaline reforms reflected the combination between ideas from the Enlightenment (such as the valorization of rationality and the distrust of tradition) with absolutist conceptions of paternalism and supreme authority.[93] A crucial reform for the present study was the creation of the *Intendência Geral de Polícia* (General Intendance of Police) in 1760.

The *Intendência Geral de Polícia* was an institution aiming for State centralization in Portugal, its creation is better understood when looking at the disputes of the Crown against the judges and courts concerning the application of norms. The *Alvará* from 25th of June of 1760 which created the *Intendência* clearly expressed that, according to the "dictates of reason" and as "manifested by a long and decisive experience", there was an incompatibility between the contentious jurisdiction and the "Police of the Court" ("*Polícia da Corte*"). The assessment was that the junction of

[90]SUBTIL, 2006. The interpretation of Subtil, however, sometimes seems to exaggerate the political importance of the earthquake. As the author sees it, the "earthquake of 1755 was the event with the biggest repercussions in the Portuguese political process during the ancient regime" (*idem*, p. 11). Even Subtil himself admits that this should not be understood as deterministic: the point is that the earthquake provoked a chain of political consequences that would be hardly imagined without it happening. Nonetheless, it is important to notice that the earthquake occurred in confluence with a series of other factors, which could be given almost the same degree of importance depending on the perspective of the observer.

[91]SUBTIL, 2013.

[92]SEELAENDER, 2003, p. 35-45. Many of these economic issues had to deal with the unbalanced trade between Portugal and England. It was already noticed early on that Portugal had become economically dependent on England. More than that, contemporaries even noticed how this unbalanced relation and higher rate of importation of English products created a situation where all the gold, silver and diamond extracted from Brazil ended up in the hands of Englishmen. MAXWELL, 1990.

[93]This kind of combination is also noticeable in figures that will occupy important positions after the fall of Pombal. One representative is Paschoal de Melo Freire dos Reis, see REJS, 1859. However, the break from tradition was still not a complete one: there were still many remnants from tradition within the actions of Pombal and the speech of Melo Freire.

deciding power over both matters of justice and of "police" in one magistrate resulted in the "lack of observance of many and holy laws".[94]

The motive presented in the *Alvará* was precisely that these laws should be observed because they were means to achieve "useful and desirable ends".[95] According to this reasoning, the establishment of a distinct magistrate to employ all his "dedication, activity and zeal to this most important matter" (e.g., "police") was necessary to impose the observation of said laws. The adoption of such a type of institution was consciously trying to imitate "other Courts in Europe", which, after being "disillusioned by experience", decided to separate the contentious jurisdiction from the "political" jurisdiction.[96] The concepts of tranquility and security were also central in the discourse of the *Alvará*, but what matters most here is that this security is directly linked with the observance of laws on matters of "police".

However, it must be highlighted that the authority of the Intendency was still being conceptualized essentially as jurisdiction. As a matter of fact, in the article 2 of the *Alvará*, it is stated how the intendent should be equated to a *Desembargador do Paço* in his "*Graduação, Authoridade, Prerrogativas e Privilégios*".[97] This shows how the concept of jurisdiction was still central for conceiving power and legitimizing authority. It also shows how there are layers of tradition and innovation in this discourse: the Crown

[94]In the original: "*a falta de observância de tantas e santas leis*". The laws that were specifically here were those relating to the regulation of police of the Court and of the city of Lisbon, only referenced by the dates: 12th of March of 1603, 30th of December of 1605, and 25th of March of 1742.

[95]The original quote: "*os uteis, e desejados fins, a que se applicavão os meios das sobreditas leis*".

[96]The complete quote is: "(...) até que sobre o desengano de tantas experiências vierão nestes ultimos tempos a separar, e distinguir as sobreditas jurisdicções com o successo de colherem logo dellas os pertendidos frutos da paz, e do socego publico". Here it is once again clear how Pombal, and his intelectual circle, were paying close attention to developments from other countries. Especially here, the most probable is the comparison with France, Prussia, and Austria, which had adopted the system of intendency in one way or another. Austria is particularly pointed out as one main point of reference, since the Marquis of Pombal had served there for 5 years as emissary for negotiations in behalf of the king D. João V. The fact that Austria was a catholic monarchy and was connected with Portugal through family ties between the royal families may also be taken into consideration here to explain their political proximity and why it was taken as an example. For the same reading and an attemptive comparison between these pombaline reforms and the Austrian reforms of Count Friedrich Wilhelm von Haugwitz from 1748, see CUNHA, 2017, p. 161-166.

[97]Here is useful to remember how Paschoal de Melo Freire would defined the *Desembargo do Paço* court: "The *Desembargo do Paço* is considered the first court of this country, and the *desembargadores* are the most illustrious from all of the magistrates" (original: "*O Desembargo do Paço é considerado o primeiro Tribunal do País, e os seus desembargadores os mais ilustres de todos os magistrados*" (REIS, 1966, p. 106).

is trying to propose a transformation in the political configuration, but it is doing so through ancient forms and arguments.

Almost at the same period, the foundation of the Royal Treasury (*Erário Régio*) was also a structural transformation in the institutional design of the Crown's administration. The *Erário Régio* would replace the Conselho da Fazenda (Financial Council) as the main institution in charge of finances in the realm. The *Erário Régio* signalized the attempt of centralizing the control over finances of the Royal administration and the adoption of more rationalized forms of accountability.[98]

Another impactful Pombaline reform was that of the educational system: especially interesting for our focus here are the Coimbra reforms of 1772, which made structural changes in legal education. After the expulsion of the Jesuits from the reign of Portugal and its domains, many educational institutions were abandoned or left without guidance, since this ecclesiastical order oversaw most of them in Portugal at the time. This prompted decisive action from the Crown to perform a series of reforms at different layers of the educational system, including at the main (and only one, after Évora was closed in 1759) university of Portugal.

The general scope of these reforms was to refunctionalize the nobility into useful personnel for the Crown: to produce a new body of enlightened officials to serve State bureaucracy and the reformed Church.[99] In this sense, the jurists were an especially problematic group when considering the impact of their activities in society and their own hermetic and very idiosyncratic tradition of knowledge, which could easily render the national legislation useless.

In matters regarding the teaching of law in Coimbra, before the actual reforms took place in 1772, some relevant voices had already condemned the dominance of the study of Roman law from the reception and the total absence of the study of the *direito*

[98]As Alexandre Mendes Cunha explains: "If the Casa dos Contos did little more than compare revenues received against expenditures made by tax collectors, the Royal Treasury was responsible for a substantial innovation. The treasury itself now paid and received everything, dramatically increasing control over accounts and also auditing the use of funds. The institution was internally structured in a very hierarchical fashion, and at its head was Pombal himself" (For this quote and more on this, see CUNHA, 2017, p. 161-162).

[99]The creation of the *Real Colégio dos Nobres* (1761) and the *Aula de Comércio* (1759) are clear measures towards this direction. For discoursive evidences in this line, the writings from 1777 of Francisco Xavier de Lemos, the first rector of the university after the reforms in 1770, present many examples of how he connected the incorporation of enlightened ideas in the university with the flourishment of the State (see VILLALTA, MORAIS and MARTINS, 2015).

pátrio.[100] The critique was especially directed to how this type of education led to an abuse of casuistic interpretation by Portuguese jurists, who could favor the "opinion of the *doutrinadores*" over the written law at their own will when deciding cases.[101] Again, it was a matter of securing the observation of the legislative acts and the will of the legislator (i.e., the prince), and of aligning the interests of the jurists with the "commonweal" ("*bem comum*") proposed by the State.

It was through the making of new *Estatutos* (statutes) for the University that the reform was formally conceptualized and carried out.[102] The *Estatutos* from 1772 brought a whole set of changes to the course of law, even lowering its length from 8 years to 5 with pragmatic purposes. Regarding the pedagogy, the *Estatutos* favored the adoption of the "*método sintético*", based more on systematization and deduction, over the until then prevailing "*método analítico*" from Scholastic (which aimed at forming an encyclopedic and detailed knowledge).[103] Parallel to this, it was determined that each

[100]Here, we may especifically make reference to Luís António Verney, with his "*Verdadeiro Método de Estudar*" (1746) and to the publication "*Compêndio histórico do Estado da Universidade de Coimbra*" (1771), which was signed by a board of important figures in Pombal's circle, the *Junta de Providência Literária*. It is also noteworthy that up until the Coimbra reforms, the students had no contact with the national laws during their studies (a request of the Portuguese Crown, from 1629, to insert a correspondent discipline on the matter was simply rejected by the University). For more on these sources and topic, see SEELAENDER, 2003, p. 28-30. For a broader perspective on the same sources, relating their shared intellectual environment with Pombaline reforms and the Enlightenment, but also bringing some contextualized information, see VILLALTA, MORAIS, and MARTINS, 2015.

[101]The intention of the reformers was not to completely abolish Roman law from being part of the formation of jurists. Rather, the goal was, on one hand, to exclude the study of glossators, such as Bartolus de Saxoferrato and Accursius, while replacing it by the literature of the so-called legal humanism, specifically with the work of Jacques Cujas; and, on the other hand, diminish the predominance of Roman law in disfavor of other disciplines more prone to strengthen the relevance of Crown's legislation over other legal sources (CABRAL, 2011, p. 135).

[102]For more information on the details of the reform of the Law faculty of Coimbra, see VILLALTA, MARTINS, 2015, p. 466-467, p. 472-473. For more on the *Estatutos* through the perspective of legal history, see CABRAL, 2011, p 133-151. The contribution of Cabral's interpretation is to show in detail the parallels between the *Estatutos* and the *Lei da Boa Razão*: although the Estatutos were directed towards university reform, a considerable amount of its content actually intended to reinforce the same ideas and goals of the *Lei da Boa Razão*. The "Legislator-king" gained preeminence in the Portuguese legal system with the restructuration of the hierarchy of legal sources: the *direito pátrio* was placed at the top of it while the glossas would be demoted to the bottom. The latter would be then understood as subsidiary legal sources that could only be activated when there were gaps in the national legislation, and concomitantly if they stood the test of "good reason" - in other words, it was treated by this new rationale as a complete last resort in legal interpretation.

[103]This measure was ground-breaking when it came to legal education: "This discursive model lead to the reduction of law to a system, ruled by axioms, from which concrete normative consequences were to be derived (the so-called 'methodo demonstrativo e scientífico')" (2016, p. 312). However, it did not mean a complete abandonment of the "*methodo analytico*" in legal education. In fact, the so-called "analytic method" would especially be suited for the teaching of interpretation of law, after the lessons based on the "synthetic method" presented the students with the systematic perspective, since the detailed study of the *direito pátrio* and its mastery by heart would be more appropriate for the stimulation of an exegetical interpretation of law (CABRAL, 2011, p. 144). The motive was expressly to give the students a "rehearsal

professor should write his own compendium based on an overview of the teachings, to offer the students the main guiding material for classes.[104]

The main changes in the curriculum of the Law faculty were the addition of natural law and *direito pátrio*. The centrality of History was also a major change which related to the big picture. The study of Roman law would still be prevailing in quantity over the study of *direito pátrio* until 1808, however the position of the former changed drastically. Roman law, rather than being the base for the formation of jurists, would then be conceived as a subsidiary source, which could only be used when a complete gap of rules existed. Roman law, more than anything, would provide substance for the formal organization of the legal system,[105] but when it came to its content, it would be helpful only if not in contradiction with *direito pátrio* and "Good Reason". Whenever there was compatibility, Roman law would serve as proof that the *direito pátrio* was endowed with natural reason – in other words, Roman law would be reinforcing the validity of national law.

The expulsion of Jesuits and the creation of new disciplines made way for the appointment of new professors at the university, which were then very selectively chosen by Pombal and his inner circle. Filling strategical spots in the universities with young men (more aligned with new ideals of Enlightenment, loyal to the monarchy, and eager to ascend in status and career) was also another way to promote and facilitate change in the structure of education. Amongst these men was a Portuguese legal scholar who would dominate the legal intellectual circle in later decades, Paschoal de Mello Freire dos Reis

for the application of law to facts, which happens in court" ("*ensaio para a applicação das Leis aos factos, que lhes occorrerem no Foro*") (ESTATUTOS, 1772, p. 307).

[104]"In turn, demonstrative method should be combined with 'methodo compendiario', this one aiming to reduce the exposition to a compact panoramic overview, easily remembered. This model was also to be followed in composing handbooks for students" (HESPANHA, 2016, p. 312).

[105]This may be shown by looking at how Paschoal de Melo Freire organized his compendium of national law: as *Institutiones*. The allegiance to this model in Melo Freire, however, is more formal than anything else, and there are clear ruptures and much creativity in his construction. For example, one of the most important breaks with the *ius commune* tradition is the clear-cut distinction between public and private law, and the presentation of public law before private law. Nonetheless, this choice would also place difficulties for his own objectives when accommodating certain matters in his system (such as seigniorial jurisdiction and municipal jurisdiction). For a deeper analysis on this, HESPANHA, 2016, p. 312-313.

(1738-1798).[106] Mello Freire, as he is most well-known, was, in the words of Hespanha, "the leading jurist of the Portuguese Enlightenment".[107]

Mello Freire was the first teacher of *Direito Pátrio* in Coimbra – serving as "*Lente Substituto*" from 1772 to 1781, and after that, becoming full professor at the university, from 1781 to 1790. For his classes, Mello Freire wrote three compendia: *Historia iuris civilis lusitani* (History of the Portuguese Civil Law), 1788; *Institutiones juris civilis Lusitani, cum publici tum private* (Institutions of Portuguese Civil Law, as Public and Private), 1789-1793; and *Institutiones iuris criminalis lusitani* (Institutions of Portuguese Criminal Law), 1794. Important here for our analysis is also the draft of public code ("*Projecto de Código de Direito Público*") written by Mello Freire, but only posthumously published in 1844.

In the works of Mello Freire, it is possible to find a significant reception of the concept of police for the context of Portugal, with efforts of adaptation of the concept, which had notable importance within the whole argumentation. First, this is clear if we observe the divisions of his *Institutiones*, where police is granted with a session of its own. Second, the rather considerable acquaintance of Mello Freire with the foreign literature on police is also evidenced by his references – especially to Justi, Becher, and De Lamare –, although Mello Freire himself considered to be not well versed in these matters.

[106]For information on Mello Freire, see HESPANHA, 2016, p. 311-314; SCHOLZ, 2001, p. 434; FERNANDES, 2016. But above all, see SEELAENDER, 2003, p. 123-124, and the literature indicated there. Alongside his career as a university professor, Mello Freire also occupied high positions in State and Church administration. He became a *desembargador* at the *Casa da Suplicação* in 1785 and was nominated as part of the Royal Council in 1793; he was also a member of the Royal Academy of Sciences of Lisbon and holder of nobility and land titles. Mello Freire was also part of the *Junta do Novo Código*, a legislative commission created in 1783, designed for drafting a new code for Portugal. At the end, the fruits of the commission, the two projects of a public law code and a criminal one, were never enacted as laws, and the drafts were discarded. Seelaender highlights how the resistance of rivals from Mello Freire (here, at least António Ribeiro dos Santos must be remembered) and the fear of the Crown of causing political upheaval after the French Revolution were important factors for explaining the failure of the drafts. Nonetheless, they remain as important vestiges of the ideas of Mello Freire, reflecting his political purposes and intellectual environment as well.

[107]HESPANHA, 2016, p. 311. Here, however, a critical assessment must be presented, based on SEELAENDER, 2003, p. 129-130. Seelaender makes a case for not hastily identifying Mello Freire with the enlightened absolutism (a concept which is already very much open for criticism). It is undeniable that Mello Freire incorporated a great deal of the ideas from the Enlightenment, especially those related to criminal policies. Using Beccaria, Filangieri, Montesquieu and Thomasius, Mello Freire propagated the humanization and rationalization of the whole criminal process. He criticized the disproportionality of punishments, the persecution of witches, the penalizing of the offspring of criminals and the use of torture. However, the main point is there is still possible to find many points of tension between "traditional" and enlightened elements in his discourse.

The centrality of police to Mello Freire is especially clear in the definition he provided for the clarifications on his draft of new code: "by police it is understood the economy, direction and internal government of the kingdom; and this is the main majestic right".[108] The description of police as the "main majestic right" was not present in his *institutiones,* which might imply how the topic gained more relevance over the years, at least in the eyes of an attentive observer interested in promoting the power of the Crown.

However, Mello Freire's argumentation in this same text quickly turns to complaints and flexibilizations when he assesses the situation in Portugal. The reading of Mello Freire's text not only show the efforts of this conceptual reception, but also its limits in the Portuguese legal context.

In Portugal, the link between state expansion and amplification of 'police' can be clearly noticed by the increase of legal diploma (in numbers and types), dealing with a growing variety of matters, using the word "police". This process seems to be intimately connected with the economic crisis that the Portuguese empire suffered at the end of eighteenth century, since it demanded intensive and rapid responses from the crown.[109]

1.6 Police and mining

The links between police science and mining activity run deeper than one might initially conceive. To demonstrate this statement, it is helpful to remember that some of the central bureaucratic positions that Johann Heinrich Gottlob Justi (considered to be the "father" of *Polizeiwissenschaft*) undertook were connected to mining (*Bergbau*).[110] In this regard, Justi was not alone, since many were attracted to the

[108]In the original: "*Por policia se entende a economia, direcção e governo interno do reino; e este é o principal direito majestático*" (REIS, 1844, p. 352).

[109]SEELAENDER, 2003; idem, 2007.

[110]Also, some of the publications from Justi were specifically dedicated to mining and metallurgy activities (e.g., *Grundriss des gesamten Mineralreiches worinnen alle Fossilien in einem ihren wesentlichen Beschaffenheiten gemässen, Zusammenhange vorgestellet und beschrieben werden*, from 1757; and *Abhandlung von den Eisenhammern und hohen Oefen von dem Herrn Marquis von Courtivron und Herr Bouchu. Aus dem Französischen übersetzt und mit Anmerkungen versehen*, from 1763). Besides his academic and teaching work in universities and academies of sciences, Justi took important positions in the high administration of different German territories. Justi served in the financial and mining councils of Austria during the early 1750's, and after that, "in 1765, he entered Prussian service as a

possibilities and promises of securing an office position related to the profitable mining activity.[111] During the second half of the 18th century, many mining academies (*Bergakademie*) started to pop out in Saxony, Prussia, and Austria.[112] These were spaces where police science was not only being applied and taught, but also where the field was constituting itself accordingly to the practices and circumstances of the particular activity of mining.[113]

The *Bergakademie* of Freiberg counted amongst its list of alumni, at the end of the 18th century, a fair share of Portuguese and Spanish students, including two Brazilians who enrolled as Portuguese natives. Both of which would later take over important positions in royal administration (first, of the Portuguese empire, and, after

Berghauptmann (director of mines) for Frederick the Great" (WAKEFIELD, 2009, p. 28; see also AHL, 2001, p. 340).

[111]Just to bring some illustrative examples: other cameralists, such as "Daniel Gottfried Schreber and Georg Heinrich Zincke, also had connections to mining and metallurgy"; "Justi's half-brother, Christoph Traugott Delius, wrote the first textbook for Maria Theresa's imperial mining academy in Schemnitz" (modern-day Slovakia), and also served as a mining official and as "one of the first teachers at Maria Theresa's new mining academy"; and even Leibniz (in Harz Mountains), Goethe (in Ilmenau), and Alexander von Humboldt (in Freiberg) tried to attain positions in this field. All quotations and collection of information from this note comes from WAKEFIELD, 2009, p. 26-27, p. 42, and p. 160.

[112]WAKEFIELD, 2009, p. 26-48. Wakefield concentrates his analysis on the first *Bergakademie* established in Freiberg, Saxony, in 1765, from which he could extract interesting conclusions. The creation of such institutions, and the circulation of cameral sciences, should be understood in a context where the mining of silver and other minerals in German territories were undergoing considerable decline facing the boom of mining gold and diamonds in Portuguese and Spanish colonies, Smuggling and bad handling of accountability quickly became targets of fierce discussion and reprimend. Tracing the documents from the founder of the academy, Friederich Anton von Heynitz, Wakefield perceived how the "true purposes of the Bergakademie" went beyond simply transmitting technical knowledge for future officials (idem, p. 46). Above all, the aim of the mining academy was to create trustworthy and useful officials: this could be accomplished not only with shared ideals lectured in class, but more efficientely by the selection of students, which could be granted even with titles and positions by professors, who were simultaneously the directors of the mining comission. All this was consolidated with the close socialization and interactions between students and professors. There was also preference into co-opting members from the high nobility, due to their facility in attracting foreign investments. At the end, the students should not only master "chemical principles and geology", "but also how to coax more work out of recalcitrant miners and entice investors". This is why Wakefield prefers to define cameral sciences not so much as "a useful tool for technical experts, but a noble lie spun for Dutch investors" (idem, p. 48).

[113]Wakefield also stresses how the mines sometimes even served as an organizational role model of well-ordered police. More than any other economic sector, the mines had incorporated the "principle of hierarchy", where ideally a group of obedient workers follows the strict directions of the mining officials, holders of knowledge and authority. This was noticed by proeminent cameralists, such as Veit Ludwig von Seckendorff, who understood the mining regions as "zones of dense regulation": "For a peculiar police or community, which must be maintained through discipline and the strict execution of offi ce, arises out of the large mines." As Wakefield puts it: "Mining officials were the Ur- cameralists" (For all the information here, see WAKEFIELD, 2009, p. 26ss). This link between mining and "police", however, should no be overstressed, since "police", as noted before, encompassed a whole range of activities and social sectors other than mining. Although there is a case for affirming some especial position for mining in "police" discourse, it is true that "police" was much more than that; and even the argument defending a discoursive centrality of mining before other activities (such as agriculture, luxury, urban planning, public health issues, and so on) is not sustainable.

1821, of the Brazilian empire). The first is José Bonifácio de Andrada, notably considered to be one of the "founding fathers" of Brazil. The second is Manuel Ferreira da Câmara, who would be appointed by Rodrigo de Sousa Coutinho to serve as *intendente-geral das minas* in 1800.

They were granted, alongside the Portuguese Joaquim Pedro Fragoso, with scholarships by the Portuguese Crown in 1790 to embark on a scientific tour across Europe (staying in France and Freiberg for mining studies, but also visiting strategic places such as the Netherlands and Sweden).[114] This action in itself also demonstrates the efforts of the Royal administration in promoting rationalization, through the professionalization of future officials and the imitation or borrowing of other countries in terms of practices and knowledge.

These examples are illustrative of a connection between "police" and the mining activity, pointing how the circulation of people could make this knowledge end up in Brazil. But the truth is even way before these examples, it is possible to see points of connection. One clear point of similarity is that of how the institution of the intendency was applied to Minas Gerais, and especially to the diamond district with the *Intendente dos Diamantes* and the *Real Extração dos Diamantes* (Royal Extraction), in an almost exact parallel with the creation of the *Intendência Geral da Polícia* in Lisbon (a topic which we will expand on in the next chapters).

But where it is most perceivable the connection between police sciences and mining in Minas Gerais is in practice, with the usage of certain techniques of administration. First, the double-check in financial accountability becomes the norm also in colonial administration after the Pombaline reforms. Second, although tables were already employed earlier in administration of mining gold in Brazil, during the 18th century, it is possible to notice how they become more detailed as times go by – which attests the increasing importance that statistics are receiving in governmental rationality. The appearance of expressions such as "political arithmetic" in documentation from the Diamond District alongside the developments mentioned before seems to solidify the interpretation that the discourse of "police" was entangled with the mining activity. [115]

[114]CUNHA, 2017, p. 172-177.

[115] "Oficio do Intendente Geral dos Diamantes, Jõao da Rocha Dantas e Mendonça para o Sec. de Est. Da Marinha e Dom. Ultramarinos, Martinho de Melo e Castro, no qual remete as relações de todos os habitantes da Demarcação Diamantina." AHU, MG, cx.108, doc. 9

CHAPTER 2

"Some stones so called diamonds": territory and jurisdiction on the Diamond Demarcation

1. The Diamond District

The diamond district, "*distrito diamantino*" (or diamantine demarcation, "*demarcação diamantina*") was located on the north-northeast of the captaincy of Minas Gerais, where once was the county (*comarca*) of the Serro do Frio. The settlement of this land happened in the year of 1734. This date marks the decision of the Portuguese Crown to fix the boundaries of said territory with the goal of controlling and organizing the production of diamonds in Brazil, in face of the stones' devaluation in the international trade.

In the middle of the *Sertão*[116] of the Serro do Frio, with a sandy ground, partially dry but covered with boulders,[117] the location presented a landscape drawn by mountain ranges (such as the *Serra do Espinhaço*[118] and the *Serra do Ó*). The latter was a mountain

[116] Textually, the word *sertão* means desert, both geographically and demographically. It was used in this sense by some travelers and naturalists who visited the region of Minas Gerais and the Diamond District, such as Saint-Hilaire. Thus, in "Journey through the province of Minas Gerais and Rio de Janeiro" the Frenchman refers to the *Sertão* as "the most deserted part" of a region and points out that "it does not at all designate a political division of the territory, merely indicating a kind of vague and conventional division, determined by the particular nature of the region, and above all by its small population". However, the use of the word in the colonial period is also associated with several meanings that denote the imagination of the overseas territory by the Portuguese Crown. Thus, it usually indicates the "unknown, wild and mythical interior of the colony", but also "beyond the sea" being "from the perspective of the colonizer, a blank sheet on which the marks of domination will come to be inscribed". In this way, the *sertão* was also a frontier between the world of "savagery" and "civilization". For a complete study of the word and its use in the Portuguese lexicon of the time, see FONSECA, 2011, pp. 55ss.

[117] According to José Vieira Couto, sand was the main component of the district's soil. COUTO, 1994 [1799], p. 57.

[118] According the description by Eschwege during the 19th century the mountain "*forma a cordilheira mais alta, mas, além disso, é notável, especialmente para o naturalista, pois forma um importante divisor não somente sob o ponto de vista geognóstico, mas também é de maior importância pelos aspectos da fauna e da flora. [...] As regiões ao leste desta cadeia, até o mar, são cobertas por matas das mais exuberantes. O lado oeste forma um terreno ondulado e apresenta morros despidos e paisagens abertas, revestidas de capim e de árvores retorcidas, ou os campos cujos vales encerram vegetação espessa apenas esporadicamente. O botânico encontra, nas matas virgens, plantas completamente diferentes daquelas*

shaped like a *Pão de Açúcar*: a "living stone" whose height and cliffs sometimes made it necessary to "walk through rocks" to cross it and move through.[119] The portrait of this land was also composed by the borders, bars, and streams (following north-south direction) of rivers with crystal clear water, such as the *Jequitinhonha*,[120] the *Rio das Pedras*, and the *Inhai*. The forest was "not too high or dark"[121] and the weather had a fresher air than the surrounding regions.[122] The weather on the district was described as "special" because, differently than Portugal, the four seasons were hard to differentiate, making only two of them noticeable: the "wet season", from October to March, and the "dry season" of the rest of the year. Usually, the temperature did not fluctuate much during the year, only in the middle of May it was possible to notice a "soft winter" with 14° Celsius on the coldest days.[123]

Beyond these features, the weather in the district triggered challenges for the inhabitants and local authorities. Some years, the drought was felt especially hard, damaging activities such as agriculture or livestock. For example, this was particularly felt in the years of 1776 and 1778.[124] But there were also many rainy years as well, such as 1786. In this case, the administrators had to face problems with the services "due to floods caused by unexpected rain" during the dry season.[125] These diverse and sometimes contradictory characteristics, alongside with the estrangement of encountering what was perceived as exotic, were some of the reasons why travelers of the 19th century described the district as a beautiful and bucolic place.[126]

This region first became relevant for the crown at the end of the 17th century, when the *bandeiras* (which were groups made up of various types of people such as Portuguese, *mamelucos*, and some *sertanistas* from São Paulo) ventured in search of gold and

dos campos e o zoólogo acha uma outra fauna, especialmente de aves, tão logo passe das matas, pela Serra do Espinhaço, para os campos." ESCHWEGE, 2005 [1822], p. 99.

[119] RAPM V.2, 1911, Jul-Dez, p. 310.

[120] This river started at the "north of the Serra do Arraial do S. Antonio do Itambé in 18 gr. and 2) min. it dilates its course towards the East, already thickening with the waters of many streams and rivers: it later empties into the Ocean in 16 gr. changed the name of Jequitinhonha to that of Rio Grande." RAPM V.2, 1901, Apr-Jun, p. 767. According to José Vieira Couto, the Jequitinhonha River was the "most famous due to its wealth of gold and diamonds." COUTO, 1994 [1799], p. 55.

[121] Idem, p. 48.

[122] Ibid.

[123] Idem, p. 56.

[124] TCP Liv.4088, f. 190; TCP Liv. 4088, f. 268.

[125] TCP Liv. 4089, f. 316.

[126] SAINT-HILAIRE, 1941, v 1. p. 2.

emeralds. To find emeralds was actually the big goal of the Portuguese crown in the region, but it was the discovery of gold on the *Jequitinhonha* River that attracted people from different places and propelled the first waves of migration during the 18th century to the region.[127]

On this context, an urban structure, that until then only existed near the coast of Brazil, started to emerge in this place.[128] These urban networks had an accelerated expansion especially after the first diamonds were encountered on the *ribeirões* of the *Tijuco*, making the diamond mining the predominant activity in the region.[129]

There is no precise date nor an exact place to pinpoint the discovery of diamonds on the county of *Serro do Frio*. But the stories surrounding the event are many. The memorialist Joaquim Felicio dos Santos suggests that this vagueness may be explained by the fact that the district mines were believed to be only of gold and, since the miners didn't know what diamonds were, the news took longer to reach the ears of royal officials.[130] Nevertheless, it is unlikely that this answer is accurate if we consider that news about diamonds in Brazil circulated from the 16th century on.[131] On this matter, the explanation of social historians is more plausible: the delay happened due to private interest of omitting the notification of the discovery to the metropolis in order to take advantage of the resource as much as possible.[132]

Even if we follow some scholars according to which the diamonds appeared for the first time in the region around the year 1714,[133] the documents are contradictory and point to different agents, dates, and places of the supposed discovery. For the anonymous author of "*Memorias das Minas Geraes*", the discovery happened around "the years of 1727 to 1728" during the government of D. Lourenço de Almeida when, "in the slopes of the *Morrinhos* that flowed into the *Pinheiros* River" and the Tejuco, the first diamonds appeared. These gems were supposedly so big that the slaves used them as earrings.[134]

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[127] SANTOS, 1808, p.3; DA MATA, 1980, p.9. Among others.

[128] FONSECA, 2011, p. 1.

[129] According to the description of the Brazilian mineralogist José Vieira Couto: "Gold became a satellite of diamond. The untouched land showed, in its golden bed, the stone that fascinates and enchants. The diamond district filled up with adventurers, *beleguins* and troops." COUTO, 1994 [1799], p. 56.

[130] SANTOS, 1808, p. 640.

[131] FURTADO, 1999.

[132] Among others, FURTADO 1996, 2017; RODRIGUES, 2014.

[133] LIMA JÚNIOR, 1945, p.15-18.

[134] BNL, Avulsos, Cód. 7167, f. 101.

On the other hand, Martinho de Mendonça de Pina e Proença wrote a memory of when he was the officer in charge of the demarcation of the district, stating that the date of the first appearance of the stones was the year of 1721, when Bernardo da Fonseca Lobo found diamonds in his mine on the *Morrinhos* River. As reported by Mendonça de Pina e Proença, Fonseca Lobo tried to notify different authorities, but this was made impossible due to the efforts of other government officials, which desired to keep hiding the fact to continue mining the stones in clandestinity. The ones who the author identified as being part of this scheme were the *ouvidor* of Serro do Frio, Antônio Rodrigues Banha, and the governor of the captaincy of Minas Gerais, D. Lourenço de Almeida.[135] In fact, after the official notification of the discovery of diamonds, D. João V, King of Portugal, in a letter addressed on 2 of February of 1730, qualified D. Lourenço de Almeida's attitude of hiding such an important fact as unforgivable.[136]

However, according to a third version, it was not Bernardo Lobo da Fonseca who discovered the diamonds, but a friar – whose name is unknown. This cleric supposedly had seen the Tejuco inhabitants using the stones in various games and recognized them from his experience in Golconda (*Estado da India*), where diamonds were already mined.[137]

Despite these conflicting stories, the year of 1729 can be set as the official date, since it was then that D. Lourenço de Almeida addressed a letter to D. João V communicating the finding of "some stones so called diamonds" on the rivers of Serro do Frio.[138] This discovery meant the promise of great profits for the Portuguese crown, and the joy of D. João V and his court was such that they threw parties to celebrate the good news.[139]

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[135] RAPM, 1902, vol. 7, Jan-Jun, p. 251-355.

[136] On the original "Foi me presente a vossa carta de 22 de julho passado em que me dais conta do descobrimento que se fez na Comarca do Serro do Frio, de umas pedras brancas de que remeteis amostras, referindo a opinião que corre de serem diamantes, e as razões, porque até agora, não me participastes esta notícia, e porque sou informado, que ela se divulgou nessas minas há alguns anos e que há já dois, que nas frotas se remetem várias pedras semelhantes com a certeza de serem diamantes vos estranho muito a indesculpável omissão que tivestes em não averiguar logo no seu princípio uma novidade de tanta importância." BNP Cód. 1612 113v-114.

[137] SANTOS, 1808, p. 640.

[138] RAPM, 1902, v.1. a.7. v.1-2. Jan./jul. p.263-264.

[139] SANTOS, 1808, p. 641.

Amongst all the gems, the one of greatest value and relevance in the colonial economy was the diamond.[140] The finding of these precious stones in *Serro do Frio* (with other metals, such as a gold) seemed accompanied by a sense of natural justice, since these colonial territories had not yet revealed their natural wealth by then in the eyes of the Portuguese, differently than the Spanish domains in South America[141]. In the same line of reasoning, these findings would allow the revitalization of the role of Portugal in the international trade. With this, it could be possible to fix the deficit within the Portuguese economy, granting also higher autonomy to the crown in face of the courts. In this sense, the phrase that Charles Boxer attributes to D. João V, sums the picture up: *"Meu avô temia e devia; meu pai devia, eu não temo nem devo"*.[142]

Yet, the direction of Portugal's social and governmental actions during the 18th century was, in many ways, guided by the richness provided by the region of Minas Gerais.[143] The discovery would force the metropolis to set up and adapt an administrative structure dedicated to obtaining the benefits of the resource, while they needed to deal with the complexities of the local circumstances. On the level of the administration of the space, as we shall see,[144] the failure of the "head tax" (*capitação*) to balance the price of the diamond in the international trade led the metropolis to put a halt to the mining activity altogether in 1734 and make a demarcation of the Diamond District.

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[140] SOUTHEY, 1862, v 6, p. 319.

[141] Interpretations could vary also in this regard. For instance, Frei Vicente do Salvador percieved the not finding of metals and precious stones as a product of the "*negligência dos Portugueses, que, sendo grandes conquistadores de terras, não se aproveitavam delas, mas contentam-se de as andar arranhando ao longo do mar, como os caranguejos*" SALVADOR, 1975 [1627]. liv. I, Cap. III, p. 59. Joaquim Romero Magalhães contests this version by pointing out that the Portuguese carried out a constant search for metals and precious stones in Brazil, and that the establishment of population on the coast was related to the sugar transportation. In the author's words: "*As buscas de pedras e de metais preciosos nunca cessaram, em expedições em que as mais das vezes se misturava a prospecção mineira com a procura de índios para os escravizar. Vai-se isso evidenciar no movimento das entradas para o interior, depois chamado das "bandeiras", que se organiza em especial com a partida de São Paulo de Piratininga e algum tanto do Pará, Mas também a partir de outras capitanias*" (MAGALHÃES, 1998, p.30).

[142] Boxer, 2002, p. 171. In a similar sense, Junia Furtado points out the relevance that the captaincy of Minas Gerais had for Portugal during the 18th century: "In Portugal, the 1700s were marked by the splendor of the riches derived from the Brazilian mines. If Louis XIV was the Sun King, Dom João V was the Sun Emperor, as Brazilian gold made his transoceanic empire shine." FURTADO, 2017, p. 28.

[143] FURTADO, 2017, p. 27.

[144] See *infra* p. 60

2. The Demarcation of the District

With the objective of finding "*os meios de conservar a reputação dos Diamantes*", in 1734, D. João V ordered Martinho de Mendonça Pina e Proença[145] and Rafael Pires Pardinho to make the demarcation of the "*terras minerais dos diamantes do Serro do Frio*".[146] The first of them, a recognized official due to his diplomatic and military skills, was sent to assist in the task of collecting knowledge about the territory and defining the boundaries of the demarcation. In fact, Mendonça Pina e Proença was close to the *padres ignacianos* who had initially mapped the region, and according to some studies he and these missionaries drew one of the first maps of the places where the stones were located.[147]

In turn, Rafael Pires Pardinho, a military engineer[148] who had a wide experience as *ouvidor* of the captaincy of São Paulo, oversaw the demarcation of the district, and was nominated as the first *Intendente dos diamantes* as well. Until 1741, Pires Pardinho was the head of an institution that had (at least in theory) the privative competence over matters related to the administration of the activity: the Intendency of diamonds.

[145] Martinho de Mendonça Pina e Proença (1693-1743), of noble origin, dedicated his life to the service of the king. According to Cavalcanti, Marinho de Mendonça was a former colleague of two governors of Minas Gerais in the 18th century (D. Lourenço de Almeida and Gomes Freire de Andrada) at the *Colegio das Artes* in the University of Coimbra. In Minas Gerais, he was responsible for "thorny missions, although not being appointed for any office with an established career" ("*espinhosas missões, apesar de não ser indicado para nenhum cargo de carreira já estabelecida*". CAVALCANTI, 2010, p.176). Among them was participating in the discussion for a new system for collecting fifths of gold conducted by Alexandre de Gusmão. After preparing an opinion on the matter, Martinho Mendonça was sent to Minas Gerais with the purpose of helping the governor Gomes Freire de Andrada in the implementation of the new colleting system. Shortly after his journey in 1738, which included passing through the Diamond District, Pina e Proença assumed the position of advisor in the *Conselho Ultramarino* (CAVALCANTI, 2010, pp. 156-180).

[146] RAPM, 1898, v.3 p. 85-86.

[147] RODRIGUES, 2016.

[148] FURTADO, n.d., p. 3.

Figure 1: Map of the rivers and streams where diamonds were discovered and mined from 1729 to the present 1734[149]

As Carmen Rodrigues points out, the delimitation of the district required extreme care and dedication from the officers, since it demanded a detailed reconnaissance of the territory.[150] The definition of the boundaries had to be easily legible for the various agents that circulated in the region. In this sense, the documents show us the prevalence of natural landmarks over abstract limits.[151] Trees, stones, and previously explored *lavras*, being information easily readable by the historical agents, were usually selected as signaling flags of the diverse outlines of the territory.[152]

In this way, a quasi-quadrilateral shape delimited the surroundings and boundaries of the Tijuco's *arraial*. According to Joaquim Felicio dos Santos, the benchmarks of this quadrilateral were the *barra do rio Inhaí*, the *corrego das Lajes*, some *penhascos da Serra*

[149] GEAEM. Nº 4637. c.1734/5.

[150] RODRIGUES, 2014, p. 44.

[151] RAPM V.2, 1911, Jul-Dez, p. 310.

[152] In fact, Maps, in the same fashion as works of art and literature, are a means of communication and as pointed out by Turnbull they constructed knowledge spaces. TUMBULL, 2007. About a detailed study of the maps linked with the diamond activity on the county of Serro do Frio see RODRIGUES, 2017.

do Ó, the *Morro das Bandeirinhas*, a *penha alta Tromba d'Anta*, e a *cabeceira do Rio Pardo*.[153] The administrative center of the demarcation was settled at the *Tijuco*. The district included other *arraiais* and settlements located in the region such as Milho Verde, São Gonçalo, Gouveia, Chapada, Rio Manso, Picada, and Pé do Morro. Some scholars (and sources as well) point out that these boundaries were flexible since they needed to continuously incorporate new diamond mining sites.[154]

Although the demarcation had the goal to control the activity as well as the diverse factors that could affect it (for example, the circulation of people inside the region), the effectiveness of such action is a constant point of stress in the historiography that studied the place. On the one hand, for a long time, the "exceptionality" of the region in the context of Portuguese America was a consensus. Following the memorialist of the nineteenth century,[155] the *Intérpretes do Brasil* described the district as a "state within state",[156] where rigorous laws supposedly were in force.[157] On the other hand, in the last decades, through an analysis of the district's daily life, some scholars have relativized the understanding on the control the crown exerted over the region, and the relevance of the Intendency of the diamonds as well. Apparently, in relation to the social practices, the legislation (and the administration) had a soft enforcement, not different from what happened in the rest of the captaincy or even in the rest of colonial Brazil.[158]

Despite these points of view, as we will see in the next sections, the demarcation of the district was also an effort of "legal construction". In other words, the crown aimed to handle a series of local complexities and problems that could interfere with the exploration of the diamonds through a clear definition of jurisdiction. In this sense, it is

[153] On the words of Joaquin Felicio dos Santos "colocaram-se seis marcos: o 1º na barra do Rio Inhaí, e subindo o Jequitinhonha, foi assentado o 2º no Córrego das Lajes, uma légua acima de sua barra; o 3º foi assentado em uns penhascos da Serra do O; o 4º junto ao Morro das Bandeirinhas; o 5º em uma penha alta, chamada Tromba-d'Anta, fronteira ao córrego das Bandeirinhas; e, seguindo as serras que rodeiam a Chapada, foi o 6º marco assentado na cabeceira do Rio Pardo e descendo o Inhaí até a barra, onde começou, ai terminava a demarcação" SANTOS, 1808, p. 57.

[154] Among others, FURTADO, n.d.; SANTOS, 1808. Thus, for example, in 1757, the demarcation began to include the district of Minas Novas, which had been incorporated into the jurisdiction of the government of Minas Gerais (FONSECA, 2011, p. 172). Not much after, in 1780, the limits of the district were expanded again, this time by the discovery of mines to the north of the Diamantine Demarcation, in the Serra de Santo Antônio do Itacambiruçú, at a distance of 47 leagues from the Arraial do Tejuco (ANASTASIA, 2005, p. 104).

[155] FURTADO, 1996, p. 26-32.

[156] HOLANDA, 1995, p. 103.

[157] PRADO Jr, 1961, p. 174; HOLLANDA, 2003, pp. 113-115; FAORO, 2001, p. 224-25.

[158] FURTADO, 2012.

possible to reconstruct the effectivity or enforcement of the administration, and the Law, within the framework of the dominant imaginary of the early modern catholic monarchy, such as the Portuguese crown.

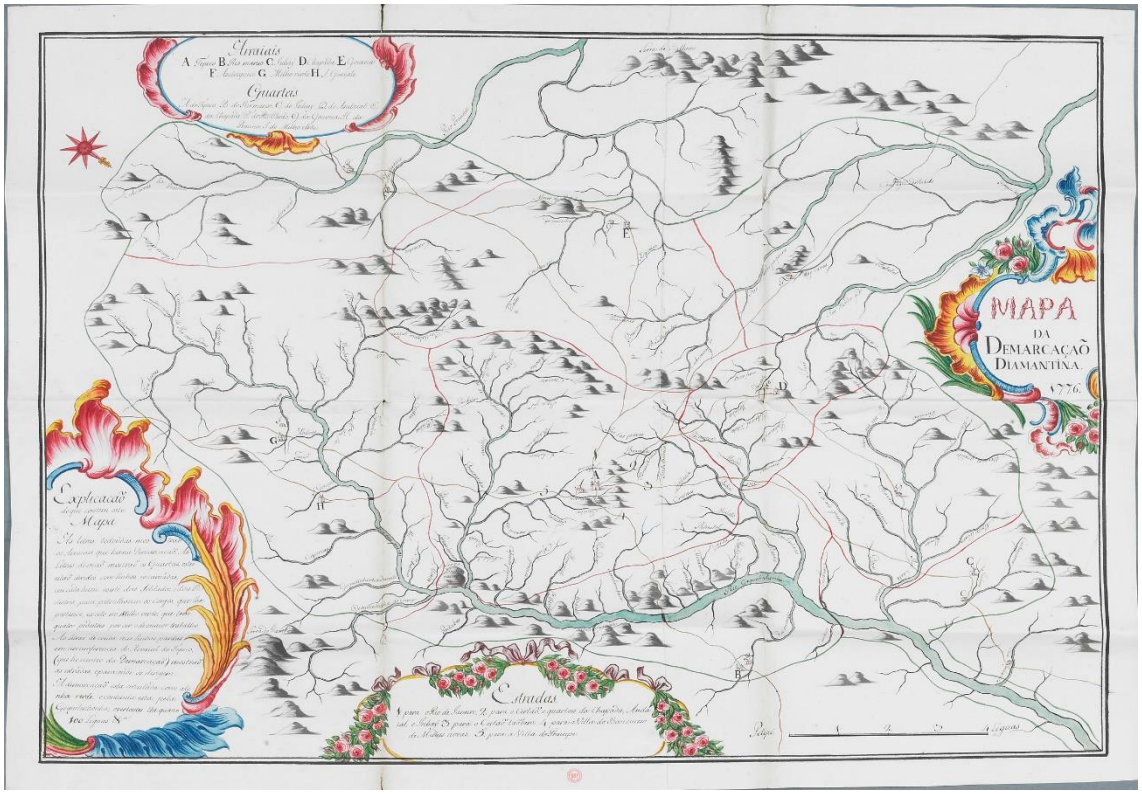

Figure 2: Map of the demarcation, 1776.[159]

[159] BNP, Lisbon 1916 http://purl.pt/22667

3. The relevance of word *arraial*: administration and conflicts of jurisdiction on the demarcation

3.1 The legal construction of the diamond district and its spatial dimension

As mentioned above, the demarcation of the diamond district and the normative production that it entailed have been characterized in two opposite ways. In one, the traditional historiography described the district as a region where written law (*lei*) reigned absolute. In this depiction, the Portuguese crown would have successfully and despotically imposed its rule top-down to the helpless local population. Authors such as Caio Prado Jr., Sergio Buarque, and Raymundo Faoro followed this line of narrative. Most of their conclusions are based on the chronicles of travelers and memorialist from the 19th century, as well as on the already classic work of Joaquim Felicio dos Santos: the memories of the diamond district.[160]

On the other hand, some recent historiographical approaches opposed that characterization. In her work, Junia Furtado describes the legal and social situation of the district as a "theater", where noncompliance of the royal legislation would reduce the latter to insignificance. In this "theater", allegedly nothing changed after the demarcation of the district and the creation of the Intendency of diamonds, or even after the Regiment of 1771: there was a continuity of non-enforcement of the statutes enacted by the crown. Roughly speaking, the governor of the captaincy continued to interfere primarily in political and legal affairs of the demarcation, while the law continued being manipulated

[160] The *Memorias do districto diamantino* was first published as a book in 1868. Originally published in the *diamantinense* newspaper *O Jequitinhonha* between January 1861 and September 1862, these memories were republished in 1864 in the Jornal do Rio do Janeiro (an edition to which Santos added the first two chapters of the work) and in book format in 1868 by Tipografía Americana (SANTOS, 2018, p. 223). Although the work is an extremely important source for the study of the region, covering a number of themes ranging from social life in the district to a study on the performance of intendants based (apparently) on the documentation of the *Intendencia dos Diamantes*, it also must be very carefully read and interpretated. Especially in regard to the emphatic description of the the district being a place where the power of the Portuguese crown was supposedly relentless. As some studies show, Felicio dos Santos had a close connection with Brazilian liberals during the 19th century. In fact, the newspaper Jequitinhonha, where the text was published for the first time, was a newspaper from Minas Gerais destined to circulate liberal ideas in the region. Santos also had a fluid intellectual exchange with characters like Quintino Bocaiúva, then editor of the Jornal do Rio do Janeiro who would have invited him to republish the memoirs in said media (SANTOS, 2018, pp. 224-225). In this sense, it is presumable that the author's political background directly influenced the description of royal control in the district, as part of the strategy of creating a memory of despotism that served to nurture a national identity in the face of the recent independence of Brazil.

by local elites and families at will, being enforced basically only to the (social control of the) lower strata of society (if at all).[161]

Behind both perspectives, there is a misconception of the role of Law on an early modern corporative society. Even if the royal legislation was not enforced like the traditional historiography imagined, as correctly highlighted by Furtado, her work nonetheless still presents the tendency to ignore the existence of legal pluralism and different patterns of normative implementation. And this is mostly because she identifies the whole of Law, in this context, as being (limited to) the statues and written law enacted by the crown. In a similar way, many of the actions that Furtado describes as being guided by "mere individual interest" were deeply linked to the cosmology of the period and to the function that different normative constellations had in it (for example, moral theology and "gift economy"). Furthermore, the sources depict how (especially in the second half of the eighteenth century) this royal legislation had the capacity to mobilize a series of normative expectations from different social agents.

The documents related to the process of zone demarcation are diverse: they include letters, maps, and complaints from the inhabitants of the region, alongside advice from jurists and royal officers for the crown, containing the details of the problems of local administration and its possible remedies. According to them, the monarchy was aware that the government of a specific space was entangled to a particular vision of Law as well.

[161] Underlying this interpretation of Furtado is the thesis that, due to "the distance from the centers of power" and the "patrimonial nature of the state", the administration of overseas domains would be based on "clientelist networks". The latter would create mutual benefit for the parts: while the local elites would enrich themselves, the crown could also govern through them, as far as possible given the scarcity of cadres (FURTADO, 1998, p. 2). Although alluding to some ideas developed by Antonio Manuel Hespanha and Angela Barreto Xavier (HESPANHA et XAVIER, 1993), when Furtado conceptualizes the mechanism by which the crown sought to extend and sustain its administrative structure as a clientelist network, it seems that the author's use of this concept is closer to a patrimonial vision (of Weberian roots, and disseminated in Brazil by Faoro in his work *Os donos do poder*). In fact, the central thesis of Hespanha and Xavier is that these patronage or clientelist networks functioned based on the so-called "gift economy" or moral economy. In accordance with this, they were anchored in the very structures of the social imaginary of the *Ancien Régime* in which concepts such as "give", "receive", and "repay" allowed to maintain the functioning of a society built on the principle of "*effectus* by affectus" (HESPANHA et al. XAVIER, 1993, p.381). Furtado, on the contrary, conceives these clientelist networks as mobilized by patrimonial interests of individuals from the "dominant class" and the crown (among others, FURTADO, 1993 and 1998). By focusing on the intentions and "interests" of the historical agents (something more difficult to trace than might initially appear), Furtado ends up disregarding not only the underlying structure through which these agents should operate to achieve their possible personal goals, but also the relevance of the agency of these various historical agents in the process of building spaces of sovereignty and/or normativity, which is dissipated in face of power struggles.

In this sense, the creation of specific boundaries and frontiers to the diamond district could be understood as a complex process aiming to construct a legal landscape that considered not only the space in a geographical or demographical sense, but that also involved a concept of Law that became increasingly instrumental as the crown was able to centralize – gradually – its political structure.

Over the last decade, legal historians have started to consider with more emphasis the relationship between the legal and spatial dimensions. In this context, the category of space, that has been present – expressly or not – in the historiographic work, has acquired new contours of meaning. Traditionally considered as the mere scenario where actions take place, the space has become a protagonist on the production of the law in different levels. The so-called "spatial turn" allowed the shift from a reconstructive perspective of the space (where the category has merely an instrumental role as an external element which can give us some details about the object of analysis) into a constructive approach (where the space is relevant for the construction of the legal dimension itself).[162]

In a constructive key, the space is a socially constructed reality, formed by the practices or actions of the various historical agents. And it possesses a constitutive role as well: it is a factor (amongst others such as social, economic, cultural, politic, etc.) that conforms these practices within the historical context. All of which is equally valid for the legal phenomena. On the other hand, as a socially produced entity, space has a symbolic dimension and is endowed with meaning. The socially constructed meaning of a space is also part of a mentality: it reflects a certain image of society and its social order.[163]

Several scholars have added significant depth to our knowledge about the spatiality of law within early modernity. On the context of a social reality that was primarily pluralistic and polycentric, the relationship between law and space reflected the configuration of a corporate society, centered around collective bodies (*corpora*) with the capacity of self-regulation.[164] This worldview was, as already mentioned, based on a natural order that serves to maintain and legitimize its hierarchical structure.

[162] MECARELLI, 2015, p. 3.

[163] HESPANHA, 1986, p. 116. For an analysis of the domain of the space during the Enlightenment in Portugal, see NOGUEIRA DA SILVA, 2007.

[164] AGUERO, 2015, p. 103.

Within the normative aspect, this pluralism meant the coexistence of diverse normative orders overlapping in the same social space.[165] *Ius Commune*, canon law, and *Iura Propria* were part of the kaleidoscope of the *Ancien Régime*. In this scenario, the localities and their normative expectations were extremely relevant in the production of Law if compared to the figure of the monarch, who had a primarily jurisdictional function.[166] The crown had the role of harmonizing the social body founded on order, tradition and love. The Law was precisely the expression of the various social bodies, hence its centrality to the imaginary, since it was up to the jurisdictional activity to declare and ensure the coexistence of the different regulations, where the written law (statutes) was not the protagonist.[167]

The corporate and jurisdictional form of the Portuguese monarchy implied a territorial division that could facilitate the compositional government, as well as maintain the balance between the various jurisdictional autonomies of local level (local communities, *donatários*, the clergy, landlords and nobility, etc.) and the power of the crown.[168] However, there was no coherence or standardization in the administrative models that operated in the metropolis. Rather, what is observed is the overlap, often conflicting, between three forms of political organization that correspond to heterogeneous universes of power (*concelhos*, Royal administration, and patriarchal household administration). Even though in abstract (in political writings of the 17th and 18th century) all the lower jurisdictional levels emanated from the royal jurisdiction, in practice the autonomy of the local world was original and effective. Material issues such as distance, accessibility or the demography itself placed real limits on the spaces of control of the crown.[169]

Governing long-distance spaces such as the overseas domains posed an even more complex matter. The vastity and dispersion of the Portuguese empire impacted its justice system's configuration, especially during the 18th century. In this context, the crown had no uniform strategy concerning political administration of its colonies. Thus, the empire

[165] HESPANHA, 2005, p. 161.
[166] GROSSI, 2014.
[167] HESPANHA, 2012.
[168] CARDIM, 2001; HESPANHA, 2011.
[169] HESPANHA, 1986, p 41-41, 53.

was shaped by a network sensible and adaptable to the different local circumstances, such as territory, local elites, and military, mercantile or religious interests.[170]

The presence of Portuguese justices and administration in the colonies adopted different configurations according to the diverse normative regimes that regulated Portugal overseas. In this sense, we observe a variety of models, some more "traditional European-type administration", others more diffuse, "with purely informal type of administration".[171] There was a whole range of variations between these two points, depending on the greater or lesser presence of the crown in these administrative and judicial activities.[172]

In the context of the *Ancien Régime* (and even more, if we think of the "*Antigo Regime nos Trópicos*") it is difficult to separate the territorial division from the other administrative functions. Considering that the spheres of control had material limits, the form of governing the territory was directly linked to the space as a scene where natural conditions (topography, and specific resources of these territories) were entangled with diverse and conflictual interests (from local communities and elites, families, freemen and slaves, and royal administration).

As Camarinhas remind us, the complexity of the Portuguese judicial and administrative apparatus overseas was directly related to the political and economic importance of a specific place.[173] The Fragmentation of the territory into small political and juridical unities facilitated the government in these circumstances. Thus, the administration was fraught with different territorial levels.

In a first territorial level, Colonial Brazil was divided into *Capitanias* where the Governor (*Governador*) was the highest political authority – yet, his power was not

[170] More than being determined by the territory, the Portuguese Empire was built around networks (many times built on maritime trade routes) that allowed it to address both territorial dispersion and its jurisdictional complexity. In this context, as Hespanha points out, "the seat of power could be the mobile deck of a military or trade vessel. It was therefore, at a lower level that the political structure of the empire was to be defined, case by case, according to formal political models that pre-existed in the thessaurus of Western European legal tradition but were deeply adapted to the peculiar situations" (HESPANHA, 2013, p. 189). On the same direction, see HESPANHA, 2019, p. 23.

[171] CAMARINHAS, 2009.

[172] About this, see HESPANHA, 1986.

[173] CAMARINHAS, 2009.

unquestionable, and conflicts between local authorities were frequent.[174] On the other hand, the *Concelhos* were the basic unity in the political, judicial, and administrative Portuguese organization. The aggrupation of *Concelhos* formed more extended territorial circumscriptions, namely, the *Comarcas* (counties). The counties were under the jurisdictional domain of the *ouvidores*, settled in the *vila* that served as *cabeça da comarca* (literally translated as "head of the county"). The attributions of this officer on the colony were varied: advising the fiscal management of the *camaristas*, and overseeing the justice administration of the *juizes ordinaries*, etc.[175] Even at this local level, in some exceptional cases, the Crown appointed a law graduated official to conduct the tasks of imparting justice: the *juiz de fora.*[176]

Like the *cabildos* in Spanish domains and the townships in "New England", the *Câmara Municipal* (or *Senado da Câmara*, or *Conselho Municipal*, indistinctly) became the most relevant local administrative sub-division[177] in the Portuguese Empire overseas.[178] The *câmaras municipais* were the place par excellence where the power of the *vilas* was represented, and they had an important level of autonomy on the administrative and juridical field through two main tools: the jurisdiction over *juizos ordinaries do conselho* and the *posturas municipais*.[179]

[174] Many times, this tends to be seen as pure inefficiency of the instances of control by the crown, but they are actually expressions of corporate governance based on grace. The material limits placed on the government also play a role in this scheme, impeding many times a more extensive control from the royal administration, which then is forced to form pacts with other *corpora* to effectively maintain some kind of stability. These pacts entail the granting of privileges and grace from the monarchies to their subjects in exchange for obedience and allegiance, in a model that was already described as one of "gift economy" ("*economia do dom*").

[175] HESPANHA 1986, FONSECA 2011.

[176] Here, it must be noted that this practice was still rare during the 18th century. The first juiz de fora in Brazil was appointed in 1696 for Salvador, following struggles between royal administration and local authorities. After this experience, other royal officials were directly appointed by the crown to take charge of administration in some strategical colonial regions (SCHWARTZ, 2011, p. 210-218). For the region of Minas Gerais, Stuart Schwartz clearly noted: "In the gold mining district of Minas Gerais, royal magistrates took up office in four districts after 1714. There were Ouvidores in Vila Rica, Sabará, Rio das Mortes and Serro Frio. In addition, there was a *juiz de fora* in Ribeirão do Carmo and a royal magistrate served as intendant-general in the diamond mining region of western Minas Gerais and Mato Grosso" (idem, p. 210).

[177] RUSSELL WOOD, 2014, p. 304.

[178] MAXWELL, 2005; FONSECA, 2011; SCHWARTZ, 2002.

[179] At the jurisdictional level, the administration of the empire was marked by the delegation of powers of different natures (political-military, fiscal and judicial) with the *câmaras* functioning as a kind of court of first instance. On the other side, the municipal postures had the function of translation between the local logic/characteristics and the central powers that tried to conform them (ENES, 2019, pp. 18-19).

As space for local power, it was not unusual to observe overlapping of jurisdiction between the *câmeras* and royal authorities, or even with other local authorities[180] As some scholars remind us, the Portuguese overseas administrative web was built on the delicate balance between the interest of the crown and local interest trough the logic of the *economia do bem comum*,[181] In that way, if in the corporative paradigm to govern was also to impart justice, it was a proper territorial division that allowed the resolution of political conflicts through jurisdiction.[182]

3.2 The demarcation of the Diamond District as delimitation of jurisdiction

During the eighteenth century, the territorial division of space in the captaincy of Minas Gerais was largely conditioned by the structural-economic necessities of the royal administration. The collection of the *quintos d'ouro* on the mining regions forced the authorities to continuously think and rethink the urban settlements and their boundaries based on a more efficient collection of taxes.[183] After the discovery of gold in the region, the royal counselors confirmed the impossibility of organizing the justice and the collection of taxes without a subdivision of its territory. As such, one of the first goals of the metropolitan power was the creation of counties.[184] When D. João V was notified of the discovery of diamonds, four counties existed in Minas Gerais: Vila Rica, Rio das Velhas, Rio das Mortes, and Serro do Frio.

The Serro do Frio was the youngest *comarca* of the captaincy.[185] Created after the subdivision of the county of Rio das Velhas, this *conselho* encompassed different settlements such as the *arraial* do Tijuco, Milho Verde, among others. Roughly speaking, these different settlements were under the jurisdiction of the *ouvidor-geral* of the county,

[180] Ibid.

[181] FRAGOSO, GOUVEIA and BICALHO, 2009.

[182] In the context of the Early Modern Age, justice was strongly linked with the maintenance of the existing social and political order, in this sense it was a concept broad enough to intersect with other concepts such as administration, or even Law or legislation. LARA, 1999, p. 24.

[183] FONSECA, 2011, p. 142. In fact, as Claudia Damasceno points out, the frontiers in Minas Gerais, especially in the beginning, were "short-lived" as they were being modified as the colonization of the Hinterland expanded.

[184] Idem, p. 142.

[185] Ordem Régia de 16 de Março de 1720. (Sobre a divisão da Comarca do Rio das Velhas).

as was usual on the judicial administrative web of Brazilian colonial territories.[186] The administrative head of these territories was the *cabeça da comarca*, which in this case was the Vila do Principe.[187]

The *ouvidores-gerais* were appointed to be in charge of the counties with jurisdiction over all its territories. The *ouvidorias* were *lugares de letras, ergo,* judicial offices managed by lawyers graduated at the University of Coimbra (*letrados*).[188] After being appointed, the *ouvidores-gerais* received a regiment that regulated their function.[189] Also, they should follow the same norms of the *Ordenações* that the *corregedores do reino* were binded to as well.[190] Among its core competencies was the supervision of the activities of the *cameras* and carrying out of the *correições.*[191]

On the other hand, similar to what happened in the kingdom, the municipal councils represented the possibility of self-government by the locals in the overseas empire.[192] In this sense, the *câmera* of Vila do Principe administered fundamental areas of life in the colony such as commerce, the collection and determination of taxes, defense, hygiene, urban planning, weights and measures, etc. For which it had different officers selected by local election, such as *juizes ordinarios* (a laymen judge), *vereadores*, etc. Here it is clear how many of these matters of governance were, in fact, the ones considered to be "police" matters in the theorization of the 18th century.

Between 1730 and 1734, the administration of justice of the diamond lands was in the hands of the *Superintendente dos diamantes*. Since the crown initially decided to settle an administrative system akin to that of gold mining in the region, this official had a wide spectrum of functions. Indeed, in practice, his jurisdiction had been combined with

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[186] For a more detailed version of this administrative web, see CAMARINHAS, 2010.

[187] It should be noted that, for more than two decades, the *Vila do Príncipe* was the only town in the region, until it was incorporated into the "Minas Novas" region in 1757.

[188] "In principle, both the *ouvidores donatariais* and the ordinary judges did not possess university education. This feature was quite common in the 16th and first half of the 17th centuries. However, with the demographic and economic growth of America and the increase in the number of bachelors graduating from Coimbra in Brazil, it would not be uncommon to find them serving as ordinary judges, especially in the larger cities. However, less frequent was to see bachelors acting as *ouvidores donatariais*." PAIVA, 2017, p. 6.

[189] To see how this would happen in practice, see Ibid.

[190] As Pereira de Mello points out, the similarity between these two was such that the o*uvidores-gerais* in Portuguese America had to follow the same provisions of the Ordinances as the *Corregedores* of the kingdom. MELLO, 2014, p. 355.

[191] PAIVA, 2017.

[192] BICALHO, 1998.

the one of the *Superintendente do ouro*, an office title that was accumulated by the *ouvidor-geral* of the county. The Regiment of 1730 gave the *ouvidor* Antonio Ferreira do Valle e Mello discretion to sanction "all the form of mining diamonds" ("*toda a forma de mineirar os diamantes*"), to solve the juridical disputes, doubts and cases among the miners. This included the prerogative of collecting the *capitação* (head tax) and *tirar devassas*, that is, to arrange processes of prosecution whenever there was suspicion of misconduct.[193]

From a practical point of view, this portrait means that, despite this specific regulation, the overlapping of jurisdictions determined the day-to-day activity and calibrated local interests with those of the crown as well. This multi-jurisdiction was part of bringing justice to the king's domains: although conflicts were usual in the face of adverse conditions and considering the long-distance territories overseas, there was also a (more or less) harmonious coexistence of its different instances.

In fact, until 1734, the spheres of administration seemed to constantly overlap without issues in the diamond mining grounds. From the perspective of its inhabitants, the conflicts that involves the *lavras* were resolved with "*justiça*" and "*letras*" by the *ouvidor-geral* and the *corregedor* of the *comarca* indistinctly.[194] According to the officers of the *câmara da Vila do Principe*, this structure of different justices was the opposite of "despotism" and "abuses" that caused a major social rejection on the locals.[195]

This multicephalous web of governance posed various problems for the metropolis control in the mining activity. The exploration of the diamonds had some important differences in relation to that of gold: its price fluctuated easily in relation to the offer, and the smuggling had a direct impact in the international market. The slump of the price of the stones entailed high cost for colonial administration, forcing a restructuration of this arrangement. In 1734, the Portuguese crown created the diamond district, as a constructed space, and the *Intendência dos diamantes*. After that, the *arraial* of Tejuco would be the administrative center of the demarcation.

In his study on economic administration of the district, Carrara explains how the broad prerogatives that initially the *Superintendente dos diamantes* had were not a cause

[193] APM SC-27, fols. 72v-73v and APM SC-01, fols. 89-92.
[194] AHU, MG, Cx 33, doc 64.
[195] Idem.

for conflicts as long they were concentrated at the *ouvidor-geral* of Serro do Frio. The separation of functions in different officers caused reluctance among the locals, and the appointment and performance of Rafael Pires Pardinho as *Intendente dos Diamantes* triggered various conflicts of jurisdiction.[196]

On December 9 of 1737, the officers of the municipal council of Vila do Principe complained to the King that, after the demarcation of the district, the Intendant's power became "*despotico*". In their opinion, Pardinho used his decision-making prerrogative discretionarily, without direct involvement of other authorities in the resolution of conflicts. The agents were discontent with the constant challenge that Pardinho imposed to the authority of Martinho de Mendonça, the Governor of the captaincy.[197] Besides that, not only the Governor of Minas Gerais had jurisdictional disputes with the Intendant, but the *corregedor* José de Carvalho Alantes also lost the power to decide matters on the diamonds land.[198]

The actions of the *Intendente dos Diamantes* would become a constant target of complaints of the district's inhabitants, even when the policy of the central administration fluctuated according to local contingencies alternating periods of more and less rigidity by the *Intendência.*[199] The *alvará* of 2 of August of 1771 expanded the jurisdiction of the Intendant on the demarcation, in a clear attempt of centralization. However, even then, the conflicts and overlaps of jurisdiction among different authorities of the region were continuous in various areas regulated by the new Regiment.

The circulation of people, one of the greatest concerns of the Portuguese crown, was a constant subject of dispute. Since 1745, the "registration points" (*Registros*) had the goal of controlling anyone who intended to enter the district, and of collecting taxes on supplies as well. Six "*Registros*" were settled on the border of the demarcation: Caetê-Mirim, Rabello, Palheiro, Pé-do-Morro, Inhacica e Paraúno.[200]

The vigilance on the flow of people in these areas was in the hands of the *Destacamento de Dragões*. Apparently, the commander of the *destacamento*, Fernando

[196] CARRARA, 2022, p. 25

[197] On the original: "contestava poderes de Martinho de Mendonça e consequentemente de vossa magestade" (AHU, MG, Cx 33, doc 64).

[198] Ibid.

[199] FURTADO, 1996.

[200] FURTADO, n.d., p. 5.

de Vasconcellos Parados de Souza, regularly ignored the jurisdiction of the *Intendente* and acted as a direct subordinate of the Governor. In fact, Parados understood that the surveillance of the borders involved a sanction power to the authorization of entry in the diamond's lands, and, even more, the power to punish inside the region.

Even the soldiers of the *destacamento*, who should be subordinated to the *Intendente*, in practice only reported their actions after verifying it beforehand with their commander. Some documents show that in face of some accusations from the *Intendente* that the commander of the *destacamento* was overstepping his authority, the latter argued that he had the faculty of doing so because he received "secrets orders" ("*portarias secretas*") from the Governor.[201]

On the 20th of April of 1797, a *circular* by the *Intendente dos Diamantes* Jõao Inácio do Amaral Silveira (1795-1801) tried to put an end to this practice in order to assent its jurisdiction. Nevertheless, in the day-to-day of border control, his orders met with resistance. One of the most iconic conflicts of jurisdiction took place when the actions of a soldier constituted a violation of this *circular* and the *Intendente* ordered his prison.[202] While the commander claimed that, according to the military code, the *Intendente* didn't have the jurisdiction over the *destacamento*, João Inácio do Amaral Silveira used the §§ 14, 26, 27 and 41 of the Regiment of 1771 to base his exclusive jurisdiction on the demarcation.

Moreover, this dispute also involved the Governor of the captaincy. The commander of the *destacamento* complained first to the Governor, the *visconde de Barbacena*, and later to his successor, Bernardo José de Lorena, about the "arbitrary" decision of the *Intendente*.[203] When confronted by the Governor, Amaral Silveira defended himself by affirming that he was directly subordinated to Lisbon and his powers over the district did not depend on Bernardo José de Lorena. From the perspective of the *Intendente*, as long as his jurisdiction was respected, he would not have gone against the orders of the Governor of the captaincy. In this sense, the exclusive jurisdiction of the *Intendente* also supposed *harmonia*,[204] demonstrating the limits of attempts of

[201] SANTOS, 1868, p. 29. According to the same source, something similar happened to soldiers subordinated to the commander, who, before responding to the *Intendente*, went directly to their hierarchical superior.

[202] Ibid.

[203] According to Joaquim Felicio dos Santos, the commander was sent to Vila Rica to answer for his actions.

[204] Ibid, p. 32.

centralization at the time, which had to be discursively toned down with the addition of traditional *topoi* of order.

While some scholars conceptualized these jurisdictional conflicts as a materialization of the unsuccessful attempts by the Portuguese crown to control the region,[205] behind them lied a dispute over the concept of Law. The aim of the metropolitan power was to set up a new official with specific jurisdiction and different procedures distant from the ordinary jurisdiction, serving the function of operating Law as a tool to modify the social reality.

The demarcation of the district enabled the Portuguese crown to provide a specific procedure to solve conflicts which was more controllable, providing end-results that were a little closer to its own goals. In fact, various sources stressed how the historical agents experienced this process with resistence. Since the demarcation of the district took place, one of the reasons for the strong aversion of the locals to the new regulation was that the way in which the *Intendente* understood the Law seemed unfamiliar to them.

The ties that bounded the obedience of the vassals (i.e., the bounds of pacts and "gift economy" mentioned before) appeared to be weakened by the actions of the *Intendente dos Diamantes*. In fact, in 1739, some *ouvidores* from the municipal council of Vila do Principe conveyed their discontent about the "little observance" of the local customs ("*a pouca observancia do costume*") by the new royal officers ("*os Ministros que por V. Mag. são mandados*") through a petition to the king. The complaint was that the *intendente* had not presented himself to the municipal council, with the respective provisões and did not inform them of his jurisdiction. This omission was criticized since it depreciated the customs of the *câmera*, but also because it entailed a situation where Pires Pardinho could extend his jurisdiction unchecked: at the end, it was also a cry for laying some ground rules on the use of his authority.[206]

Although it is obvious that the locals defended their own particular interests (they had, effectively, lost the right to mine diamonds freely), which were more secured on the old administrative arrangement, the logic of the "*polícia*" provoked a frustration of their normative expectations.[207] The natural order, as they knew it, now seemed tampered with

[205] FURTADO, 1996.
[206] AHU, cx 33, doc 64, f. 2.
[207] AHU, cx 33, doc 64, f. 2.

or altered: the new *Ministro* was not guided by the virtues of *prudencia*,[208] and punished everyone without caring about distinction or even listening to the reasons of the accused.[209] This also had to do with the ceremonial structure and with values of honor: by not complying with the "local customs", the intendant was already signalizing his indisposition (and even disrespect) towards the *câmara* and his unwillingness to abide by the traditional way of doing things.

In the formal level, the Portuguese crown repeatedly reaffirmed the "*jurisdição privativa*" of the *Intendente*.[210] In this case, the *Conselho Ultramarino* decided that the local customs should be abandoned in face of the jurisdiction of the *intendente*. The local custom of new officers informing the municipal council of their prerogatives upon their arrival was simply not a priority, and it was even deemed as unecessary since the Governor was made aware of the new intendency and its functions through the exchange of letters with the crown.[211] The *Intendente* was seen as necessary piece of puzzle to minimize the problems on the mining activities, and, in this context, the corporative model of placing justice in hands of the *ouvidores* and *corregedores* was insufficient for the aspirations of the crown.[212] In fact, the perception was that these local officials tended to hinder or delay some decisions on matters that needed to be resolved urgently, and *police* enabled to bypass the path of ordinary justice.[213]

A conception of Law more abstract (i.e., not necessarily connected to local practices) in face of the claims of the vassals was more appropriate for the utility of the activity (*utilidade do serviço*).[214] Far from following a lineal movement, the legitimacy of this new jurisdiction appeared to be based on a fine balance between innovation and tradition: the logic of the *polícia* was tinged with the concept of *prudência*.[215] The demarcation of the district enabled the Portuguese crown to gradually centralize the administration of the region, first on the *Intendente* and, later, on the Royal Extraction.

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[208] For a deeper analysis of this source in the context of change in the concept of Law, see infra, *infra* chapter 4.

[209] AHU, cx 33, doc 64, f. 2.

[210] AHU, cx 38, doc 64.

[211] AHU, cx 38, doc 64.

[212] AHU, cx 38, doc 64.

[213] PT-TT-RED-A-001_m0014.TIF Carta de 22 de Agosto de 1771.

[214] PT-TT-RED-A-001_m0014.TIF

[215] Idem.

In fact, this movements shows how, more than directly trying to impose its command in the region by all means from the start, the crown tried to react to problems by adopting a strategy of creating a parallel administration that could compete with local authorities.[216] This strategy (namely, the creation of a proper intendency) was implemented in the diamond district in 1734 and started functioning in 1739, but it was gradually empowered later (in 1759 and in 1771). It could be questioned, in future research, how much did the experience of the intendency in Minas Gerais served as a laboratory for the General Intendency of Portugal years later. Although it seems to be clear that the power of the intendant of diamonds was more limited at first, and that the dispositions in the regiment of the Royal Extraction were more akin to the ones of the *alvará* that created the General Intendency than these are to the regiment of 1759, for example, it is still fruitful to see the parallels and how this new form of governing had some precedents in the colony.

3.3 The relevance of the word *arraial* and the legal construction of the Diamond District through *polícia*

The Tejuco's *arraial* was the administrative center of the diamantine demarcation. Located close to the *lavras* was also the residence of the *Intendente* and the seat of the *Intendência dos Diamantes* as well. In Portugal, the term *arraial* designated only military camps, or even fairs and street markets and therefore was not part of the urban lexicon. In the mining zone on the colony – in Minas Gerais, but also in Goiás and Mato Grosso – the places that depended on *cabeça da comarca* acquired this peculiar denomination.[217] Until the demarcation took place, the Tejuco was administrative and juridically subordinated to the *camera* of Vila do Principe (as were the rest of the settlements that composed the county of *Serro do Frio*). As Claudia Damasceno Fonseca adverts us, even though the diamantine demarcation didn't include the *Vila do Principe*, the district encompassed an important part of its old jurisdiction (*termo*), especially the sector with most natural richness.[218]

[216] For a broader view on the adoption of this system of intendencies and superintendencies all over Brazil and relating to structure of Portuguese empire, see CAMARINHAS, 2021.

[217] See FONSECA, p. 28-29.

[218] Idem.

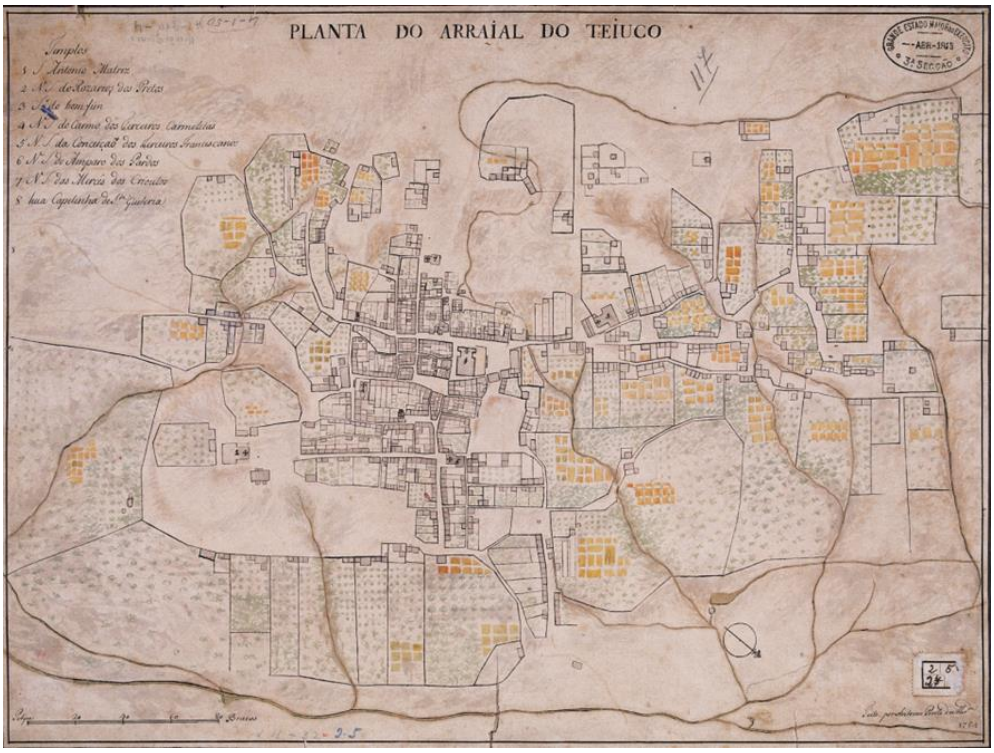

Figure 3: Blueprint of Tijuco's arraial, 1784[219]

The municipal council of Vila do Principe was the "natural reference" of the population of Tejuco when they needed to resolve issues of order and social wellbeing.[220] The metropolis concentrated its efforts in neutralizing the local power of this *camera*, by restricting its jurisdiction over juridical disputes, but also by taking over economic matters that traditionally were handled by the local administration. In fact, as soon as the district was demarcated, in 1734, a *portaria* determined that the *Intendencia* had the competence of collecting the "sale tax" (*contribuição*) from *fazenda seca*'s stores of the *arraial*.

Successively, the capacity of trading goods and collecting taxes of the *câmera* of the Vila do Principe was undermined by various royal measures. In 1745, the Portuguese

[219] António Pinto de Miranda. Planta do Arraial do Tejuco, 1784, aquarela colorida, 38,9x52cm, AHE/RJCOSTA, Antônio Gilberto at. al. Cartografia de Minas Gerais: da capitania à província. Belo Horizonte: Editora UFMG, 2002. (Coleção de Cartas, Plantas e Mapas).
[220] APM, SG-CX 67-DOC.34

crown also prohibited the entrance of *mascates* (pedlar) and the trade of enslaved people in the district. In the same year, merchants who were based in the region were expelled from the demarcation due to being suspects of trafficking diamonds.[221]

Apparently, these actions by the crown provoked reactions from the officers of the municipal council of Vila do Principe.[222] Some documents emphasize the strong interlinkage between commerce and smuggling, since the market was where not only legal trade took place, but usually also where the illegal sale of diamonds happened.[223]

The control over the prices, weights, and measures were also concentrated on the *Intendencia*.[224] The increasing of prices and the scarcity of products were problems for the administration that in different periods had to outline plans which would allow handling the situation without too much risk for the royal treasury.[225] Looking closely to this process, Quintão pointed out that, based on the concept of "common good" and on notions from moral economy, the problem of supplies on the region was one of the main subjects of the royal regulation.[226] In fact, some dispositions of the *alvará* of 1771 faced this situation by imposing the strict control of the Royal Extraction on these matters. With it, the Portuguese crown attempted to prevent revolts during the scarcity of food or other consumer goods.[227]

While the main goal of these measures was to control the smuggling and avoid disorder on the region, the intellectual background for it was a particular conception of the social order: the *polícia*. In fact, all matters that were under the jurisdiction of the *câmeras* and were then transferred to the administration of the Royal Extraction can be classified as police.[228]

In the colonial context, the novelty of these affairs appeared as the main challenge for administration. Situations as varied as the weather, the fauna, and even the different food that were available, generated doubts about how to *localize* different

[221] SANTOS, 1868, p. 73.
[222] Ibid.
[223] FONSECA, 2011.
[224] See *Regimento* of 2 of August of 1771.
[225] PT-TT-RED-A-001_m0016.TIF
[226] Nota sobre eso
[227] About the matter of supplies in the Diamond district, see QUINTÃO, 2016.
[228] For an analysis of the regiment of 1771 as police regulation, see chapter 4, infra.

normativities.[229] The framework of *police* (as well as that of the *Ius Commune*, to some extent) gave the legislator and the royal officials enough flexibility to quickly regulate essential issues to organize the social life at distance. On the other hand, the special features of the jurisdiction of *polícia* made it a little easier to control and punish through a summary judgment everyone who could interfere with the development of the activity.

In fact, the necessity to administrate the diamonds in Minas Gerais led to a paradigm shift in the administrative function of the government on the region. The Intendancy of diamond became more active than their counterparts of the seventeenth century (mainly the *Superintendências*), and even more than the Intendency of Gold that was created in the first half of the eighteenth century almost in the same region. Camarinhas reminds us that, still during the seventeenth century, the *Intendentes* incremented their powers according to the relevance of the resource (such as tobacco or salt). In the context of the Pombaline reforms, a different legitimacy was given to these officials: they were in charge of assuring the accomplishment of the crown's objectives. More than being simply a parallel jurisdiction, the new intendancies consolidated a new type of administration.[230]

The construction of the district as a legal space was fundamental to secure this new form of administration through *polícia*. Aside from being the headquarters of the diamond administration, the Tejuco *arraial* was the most populated settlement of the county of Serro do Frio, even more than Vila do [231] This economic and demographic relevance, according to some historians, led the *arraial* to compete with Vila [232]

Despite this, for a long time, Tejuco would remain an *arraial* until 1819, when it was granted with a status change to become a *sede da paroquia*. In the eariler periods, the Portuguese crown actively tried to impede the possible ecclesiastical influences in the

[229] The diversity of situations and conditions of life in the colony had the capacity to create problematic situations, or at least challenges, even in the most minimal matters of day-to-day life. These problems often mobilized not only the Law, but also other normative orders in charge of creating sovereignty in overseas spaces, such as the moral theology of the Jesuits. An emblematic case is the one illustrated by Gustavo Cabral for the Jesuits in the interior of Ceará, where, given the prohibition of eating red meat during Holy Week, the priests were forced to answer whether eating camaleon meat on those dates constituted or not sin. CABRAL, 2020 in Às vésperas do Leviathan https://open.spotify.com/episode/1HeVuM9KjFoSd4xwxyA3Vk. About the normative role of the jesuits see CABRAL, 2019.

[230] CAMARINHAS, 2021.

[231] FONSECA, 2011. For demographic features of the region, see chapter 3, infra.

[232] Ibid, p. 161.

district.[233] Moreover, the status of *vila* was only given in 1831, that is, over ten years after the independence of Brazil.[234] There were political interests involved in the reasons why Tejuco was never conceded this title before, in spite of its relevance in the region.

According to the Portuguese administrative system in America, the status of *vila* implied necessarily the establishment of a Municipal Council. Changing the status of the headquarters of the diamond district could have had various juridical and administrative consequences that would jeopardize the objectives of the metropolis. The creation of a new power pole would probably weaken the potentiality of control in face of the local influence. In fact, the creation of *vilas* was a problem for the authorities in Minas Gerais during the eighteenth century. A letter written in 1722 by D. Lourenço de Almeida, a jurist and Governor of Minas Gerais,[235] stresses this point. Almeida warned the king about the *vilas* and the operation of the officers of the *Câmeras*:

> "(…) due to the experience that I have in Minas, I informed Your Majesty by the fleet of Bahia, that by no means suits Your Majesty's real service to create more *vilas* again, **because all these peoples, as *arraiais*, live quietly, since they do not have the ambition to enter the governance, because being villages, soon enough, partialities are formed about who is to be the judge and councilors, and the worst thing is that, taking the pretext of the common good of the people, they do not want to consent to anything that is in convenience of the real service of Your Majesty and increase of your Royal Finance**."[236]

The description of the *arraiais* as groupings without conflict was an obvious exaggeration. What seems to weigh more here is the distrust in the locals' capacities of self-government: the choice of keeping Tejuco as an *arraial* intended to prevent more disputes with local powers, or at least to have more control over these disputes, according to the ideal of an efficient administration in an essential region for the empire's economy. In fact, the usual main reason (at least on paper) invoked for requesting the change of status was the administration of "good justice" (*boa justiça*), in a scenario where the

[233] SAINT-HILAIRE, 1941, p. 4.

[234] In fact, the Portuguese crown refused two times to transform the Tejuco into a *vila*.

[235] As Fonseca points out, from the second half of the 18th century onwards, the Portuguese Crown tended to restrict the granting of the title of Vila because the goals that justified their foundation before (conflicts between *paulistas* and *emboabas*, and the collection of fifths) could be largely considered to have been achieved. FONSECA, 2011, p. 178.

[236] In the original: "pela experiencia que tenho nas Minas, dei conta a Vossa Majestade pela frota da Bahia, que **por nenhum caso convém ao real serviço de Vossa Majestade que se criem de novo mais vilas, porque todos estes povos, enquanto arraiais, vivem sossegadamente, por não terem ambição de entrarem nas governanças, porque sendo vilas, logo, se formam parcialidades sobre quem há de ser juiz e vereadores, e o pior é que, tomando o pretexto de bem comum do povo, não querem consentir nada que seja em conveniência do real serviço de Vossa Majestade e aumento da sua Real Fazenda**" (AHU, MG, cx. 1, doc. 73).

distance, the difficulties of communication, and the scarce financial means could limit said justice.

On the 18th of August of 1800, José Joaquin Vieira Couto (*procurador do povo* of the county of Serro do Frio) claimed (*peticionou)* to the king for him to elevate Tejuco to the status of village, and to establish there the respective city council. The main reason of this petition was the hampered access to justice due to the "*aspereza dos caminhos, que atravessam a mata geral*", which connected the *arraial* with the Vila do Principe. These hurdles increased the cost of the officers of justices, in such a fashion that exceeded the budget of the locals.[237]

Some scholars pointed out that this argument was a "bad strategy" by José Joaquin Vieira Couto because in fact the access to justice in the diamond district was not conditioned by its distance to the Vila do Principe, since the region was under the jurisdiction of the Intendancy.[238] Not considering the accuracy or not of the argument, it seems that the conflict relied on the normative expectations that the local elites had about the administration, and their disconformity with the royal legislation that, in their eyes, plunged the district into misery. [239]

In fact, in the same document, the *procurador do povo* also asked for the revocation of the regiment of 1771.[240] The royal officials, however, seemed to have understood this legislation in a totally different way. The specialized administration and the exclusive jurisdiction were the best way to ensure the happiness of the subjects.[241] In a legal report of 30 of January of 1801, the *ouvidor* of Serro do Frio, Antonio Seabra da Mota e Silva, recommended to the king the rejection of the *petição* reaffirming the exclusive jurisdiction of the *Intendente dos Diamantes.*[242]

In her analysis of the administration of justice on the captaincy of Minas Gerais, Claudia Damasceno Fonseca points out that, during the second half of the eighteenth century, it was usual for petitions requesting the settlements' shift of status to rely on the lack of justice as their main argument. In turn, the Portuguese crown resolved these

[237] AHU, MG, Cx 153, doc 49, f. 2.
[238] FONSECA, 2011, p. 163.
[239] AHU, MG, Cx 153, doc. 49.
[240] AHU, MG, Cx 153, doc. 49.
[241] AHU, MG, Cx 156, doc. 25.
[242] AHU, MG, Cx 156, doc. 25.

petitions in two ways: either by elevating (*elevando*) the *arraiais* into *vilas* or by creating new officials of justice, such as *juizes de vintela* or *juizes dos orfãos*.[243]

In the case of Tejuco, the strategy of the crown was headed the other way, tending to create distance between their economic interest and the traditional justice. In fact, on data of 1771 an *alvará* forbade the presence of lawyers on the district, reaffirming the centrality of the *Intendência* and a new concept of law.

[243] FONSECA, 2011, p. 165.

CHAPTER 3

"Miners before everything": Population and social imaginary on the Diamantine Demarcation

1. Population and social imaginary on the Diamantine Demarcation

The local specificities of the Diamond District, that is, the daily life and tradition of its population, have been described, directly or indirectly, by different works.[244]

During the 18th century, travelers and naturalist engaged in the elaboration of geographical and economic descriptions of the captaincy of Minas Gerais dedicated words to the population of Serro do Frio. Such is the case of the "*Memória sobre a capitania de Minas Gerais: seu território, clima, e produções metálicas*" written by José de Vieira Couto in 1799.[245] In his work, Vieira Couto portrayed the population of the diamantine demarcation as "miners before everything".[246] Although brief, his description aimed to differentiate the people of Serro do Frio from others of Minas Gerais, emphasizing how the natural conditions and the mining determined the social life of this region.[247]

On a different take, in the 19th century, José Felicio dos Santos in his "*Memorias do Districto Diamantino da Comarca do Serro Frio*" characterized the people of the demarcation during the first half of the 18th century (especially during the third contract) as polite and civilized. He detailed how the women used local natural resources to emulate European fashion, for example, using the manioc gum to powder their hair.[248] According to Felicio dos Santos, good manners and etiquette were essential in the demarcation, and the study of the *politica* or *civilidade* was central to the social life on the district. This discipline was even lectured by "masters" who came from faraway places.[249]

[244] One of the most complete works is FURTADO, 2012.

[245] For a contextual analysis of this source, see FURTADO, 1994, p.12ss.

[246] COUTO, 1994 [1799], p. 47.

[247] On the same sense see PIJNING, 2008.

[248] SANTOS, 1868, p. 78.

[249] It has already been noted how the topic of civility and urbanity relates intimately with the concept of "police". See chapter 1 supra.

Nevertheless, at the same time, the population of the district enjoyed family meetings, where the dances were habitual, serving to relax a little the severe etiquette rituals.[250] In this sense, according to sources, this festivities continued to be crucial as a social ritual,[251] especially when commemorating economic and industrial prosperity.[252]

Some historians argue that, due to the abundance of natural resources, like gold and diamonds, the breaches in social hierarchy and possibilities for social mobility were greater in the captaincy of Minas Gerais in general and the district in particular[253]. In fact, on a symbolic level, the differences between the various social strata seemed to dissolve more easily: it is symptomatic that the jewelry made with the gold of the captaincy were used more by mulatto women than by white noblewomen.[254]

Beyond these points of view, an analysis of the documents shows us that the population of the Diamond District was complex and diverse, giving rise to a series of multifaceted interactions. Within these interactions, different social and normative expectations were continually and constantly opposed, overlapped, or complemented.

2. Normative expectations and foundation of Minas Gerais

Before jumping into an analysis of the specific population of the diamond district in the late half of the 18th century, it is fruitful to look at the historical background of the foundation of Minas Gerais and some relevant precedents of revolts. This will help understand some particularities of the population of Minas Gerais, and some documented patterns of how they processed their normative expectations.

First, the very foundation of the captaincy of Minas Gerais and its first years of settlement were engulfed in intricate dispute and violence. Thus, negotiations between

[250] SANTOS, 1868, p. 79.

[251] RAPM, 1902, Jan-Jun, p. 13-21.

[252] On the year 1815, for example, a three-day celebration took place in Tijuco, which included great dinners, dances, and fireworks, to celebrate the arrival of the first iron bars that were produced in a fabric founded by one of the Intendents of the diamonds, see RAPM, 1902, Jan-Jun, p. 14.

[253] FURTADO, 2017.

[254] "*O ouro convertia-se em cordões, arrecadas e outros brincos, dos quais se vem hoje carregadas as mulatas de mau viver e as negras muito mais do que as senhoras*". ANTONIL, 1974, p. 94-95.

local communities, Portuguese subjects and Portuguese crown were recurrent.[255] The *bandeirantes paulistas* were the ones who trailblazed their way to the region and discovered the first gold mines, driven by promises of reward from the crown (many which were not kept).[256] The *paulistas* from this period have already been described as an "ethnic group"[257], who had their fair share of past encounters with the crown for their services in Palmares and the *Guerra do Açú*. This experience consolidated a ruthless form of negotiating by this group, which would only be fueled by the memory of the ingratitude from the crown.[258]

After the discovery of the mines, many Portuguese and other men from the north migrated to the mining region to try their luck in the possibilities of enrichment. The struggles and quarrels quickly began between the different groups. The *paulistas* claimed their privilege in owning land, holding titles and in receiving permission for the extraction of gold in the region through the argument of their right of conquest.[259] The rivaling group, dubbed mockingly as *emboabas*, used the bad reputation of the *paulistas* to make a case for why they should be preferred in the graces of the king.[260] At the end, the *emboabas* were granted with the governorship of the region, but the semantics of resistance, insurgent tradition and negotiation of the *paulistas* would survive as a trademark of the *mineiros* later.

As Romeiro puts it, the *Guerra dos Emboabas* was more than a dispute over land and richness: it was above all a conflict between practices and political conceptions from two different groups, which happened to shape the context of Minas Gerais.[261] This conflict would mold arguments and practices that would later be reignited during revolts in Minas Gerais, when local groups rebelled against taxes and changes in institutional arrangements.

These revolts could be a fruitful focus of analysis for future research, if observed from the perspective of legal history – something that escapes the scopes of the present

[255] For this see, ANDRADE but essencially ROMEIRO, 2008.

[256] These rewards of privileges and office titles, of the possibility of enslaving the conquered Indians who rebelled in the way, and the possibility of land concessions (*sesmarias*).

[257] ROMEIRO, 2008, p. 231-237.

[258] Idem, p.240-249.

[259] idem, *passim*.

[260] idem. Romeiro also notices how the *emboabas* used a political grammar that referenced topoi from the *Restauração*.

[261] Idem, p. 30.

work. However, here we could at least mention the *Revolta da Vila Rica* and its important aftermaths in terms of politics writing, when thinking about the accounts that the *Conde de Assumar* left for his peers.

All these precedents and their accounts also shaped the way that the crown would react and act in the region: it must have been always in the mind and memory of the royal officials that they should not step out of bounds in this delicate relation with the *mineiros*. This explains why it is constantly remembered, by the side of the crown, that all their orders, statutes, instructions, and so on, should be applied while preserving the "*equidade dos mineiros*".

3. A photography of the population: the data of the census of 1776

The census of the captaincy of Minas Gerais for the year of 1776[262], the first one for the captaincy with characteristics of "*politic arithmetic*"[263], reveal that the total population of the Diamond District at the time was estimated to be of 58.788. Indeed, even if it was the less populated county in the region, it presented a constant growth of population since the beginning of the eighteenth century.[264]

This map of population was sent by D. Antonio de Noronha, governor of Minas Gerais, to Martinho de Melo e Castro, *Secretário de Estado da Marinha e Domínios Ultramarinos,* of the Portuguese crown. Differently from another maps of population that were divided in very diverse criteria (many of these inherited from classifications made by the parishes, as was customary during the *Ancien Régime*), the census of 1776 divided the population in "classes", age, sex, and race. According to Roberta Stumpf, this singularity made this demographic source the most relevant for the colonial period in Minas Gerais.[265]

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[262] AHU, MG, Cx 112, doc 11. See *appendix 1*.

[263] Composed of five population maps, the 1776 census is one of the most relevant sources for the demographic analysis of the Minas Gerais captaincy during the colonial period. According to Roberta Stumpf, the division of these maps by region probably obeys the way in which the data was collected, by each *ouvidor*. STUMPF, 2017, p. 533.

[264] FURTADO, 1996, p. 44-45. In the same sense, Furtado points out that the region of Serro do Frio had a constant growth during the period of the Royal Extraction. According to the numbers she presents, the *comarca* went from 9 thousand inhabitants in 1738 to almost 60 thousand in 1776 (idem, p. 45-6).

[265] STUMPF, 2017, p. 533.

Moreover, this census has another feature, which distincts it from other populational registrations. This is the systematization and organization of the data in a table, a practice that became more and more important during the second half of the eighteenth century, following the statistics idealized by the cameralist and police sciences. In the intellectual context of rationalization of the administration of the State – and this included quantfying and describing the characteristics of the subjects or "*vasalhos do Rei*"[266] – the elaboration of tables was conceived as a fundamental tool. They made it possible for the Royal administration to observe the complex (and distant) reality through simplified registries of data (typical in the practice and science of "police"). These observations and information would ideally later be used to formulate rational parameters for regulations.

In the table below, we can observe that 39.389 men and 19.399 women lived in the county of Serro do Frio. In other words, the demarcation had a predominance of male population (57%), specifically, black and *crioulos* with the age between fifteen and sixty years old. This morphology of the population, with its male majority, was directly related to the way in which the captaincy was populated and the activities that were carried out in it.

	White		Brown *cabras*, and *mestiços*	Black and *crioulos*
First class	From zero to seven years old	1.471	1.747	1.823
Second class	From seven years old to fifteen years old	1.436	1.704	1.929
Third class	From fifteen years old to sixty years old	4.992	4.306	17.212
Fourth class	From sixty years old to ninety years old	918	423	1.324

[266] This point was already elaborated in chapter 1, infra. What is crucial here is how this disposition of information is also evidence of how a fundamental change in social perception: the core contraposition here is between the State and the population (seen as an ensemble of individuals, not so much as corporal entities with autonomy). The privileged corporations are not considered in this scheme, and therefore it is both evidence of them losing social relevance and impulsion for their losing even more.

	More than ninety years old	30	6	16
	Unknow age	58		
	Total number of men's	8.889	8.186	22.304
Fifth class	From zero to seven years old	1.194	1.950	1.028
Sixth class	From seven to fourteen years old	1.284	1.540	1.091
Seventh class	From fourteen to forty years old	1.584	2.771	3.815
Eighth class	From forty to ninety years old	625	804	1.540
	More than ninety years old	57	38	62
	Unknow age	16		
Nineth class	Births this year	473	719	544
Tenth class	Deaths this year	246	239	596
	Total number of women's	4.760	7.103	7.536

Table 1: Population of Serro do Frio on the year of 1776

Since the discovery of gold in the region of Serro do Frio, at the end of the sixteenth century, adventurers and *bandeirantes* migrated to it from different places.[267] These contingents were primarily male in the working age group (not differently from other captaincies in the colony). Moreover, most part of these migrants came from the north of Portugal (especially, the Minho region). As it can be seen, this region had a tendency of male migration during the 18th century.[268]

Similarly, the black majority of the male population is not surprising if we consider that this group mainly represented the enslaved labor destined for mining. Most

[267] DA MATA, 1980, p. 9-15.
[268] RAMOS, 2008, p.135 [Eng. 1996]; also PIJNING, 2008, p. 228.

of the enslaved people involved in mining came from "Costa da Mina", in Northeast Africa. They were called with the ethnonym of "mina" because of the name of the region where the slave ship set sale (where many of them were already engaged in mining).[269]

Further, when comparing the three racial categories that composed the male population in the "third class" (males between fifteen years old to sixty years old), it is noticeable that the second racial majority in the region corresponded to white men, but closely followed by the group of "brown people", *cabras* and *mestiços*. In fact, the difference among these "classes" is less than 700, suggesting a change in the composition with the increasingly mixed race, something that can be seen in the following lines. In the female group, the number of *mestiços* had vastly surpassed that of whites.

If the beginning of the populational process in the mining regions was characterized by Portuguese migration and the presence of enslaved people that were used in the extraction of gold and diamonds, during the second half of the 18th century it is possible to observe the results of the miscegenation process. On her analyses about the demography of colonial Minas Gerais, Roberta Stumpf traces the tendencies of populational development from 1776 until 1821. She explains how the populational numbers of this captaincy reveal a steady advance of the so-called *mestiços*, and a stagnation of the migratory waves composed principally by black and white people that wished to explore the mines.

According to Stumpf, this change on the population was caused by a natural upgrowth that also impacted the numbers of women in this racial category, since the migration of white woman was unusual in this period.[270] Even if her analysis refer to the captaincy of Minas Gerais in general, and the counties that composed it had differences amongst themselves, some common guidelines can be found. One of the main ones here is the natural increase of the "brown" people's group, *cabras* and *mestiços*.[271]

After the settlement of the diamond district, the Portuguese crown expanded the control over migration, not just from Portugal and other parts of the colony, but also attempting to control the number of "slaves" in the region. The reason for this being the

[269] FURTADO, 2016, p. 2.
[270] STUMPF, 2017.
[271] STUMPF, 2017.

fear of scarcity of enslaved labor in other regions, namely, the loss of said labor for sugar plantation in the north.

The legislation that was enacted then had the goal to manage the population in a comprehensive way that demanded the knowledge of aspects such as the quantity and type of subjects who lived in a particular place on the colony – in this case on the diamantine demarcation. In the social and legal imaginary of early modernity, these affairs were fundamental for State administration, since the population was observed as the basis of the power and richness of the kingdom.[272]

In this sense, it was necessary to have knowledge about these matters to expand the power and scope of action of the crown over diverse spheres of the social life, such as: controlling labor and extraction; fighting idleness, gambling, and vagrancy; inspecting those who transited the region; evicting (*despejando*) *forros* and smugglers; prohibiting "*negas de tabuleiro*" etc.. In short, disciplining subjects. In this way, the King performed his functions as a *paterfamilias* within the great family of the kingdom, following the principles of the good *Policey*. But this traditional view also had to share room with attempts to present the royal administration as rational and efficient, because with the exhaustive control over the population of the district – at least in theory – the promise was that the crown would effectively combat smuggling and rationally manage the extraction of the stones, which was the main concern of the Portuguese crown in this region.[273]

In the case of the Diamond District, the hypothesis of the rise of process of miscegenation is possible to sustain also observing the number of births. As the table 2 details, the total number of births for this year was 1.736, of which 719 were "brown people", *mestiços* and *cabras*, *ergo* a 41,44% of the total of births. In this point, it is necessary to be careful because we don't know which parameters were applied to define who belonged to this group, and probably the variation *case in case* would be relevant. In any case, it is viable to conclude that there was a tendency towards miscegenation of the population. In fact, the diamond district had a diverse composition when we observe the classification by races, where both, the black and "brown" population were more

[272] This, as it is widely known, is one of the fundamental ideas of cameralism and police sciences, for examples, see SEELAENDER, 2009, p. 77; STOLLEIS, 2008. For more, see chapter 1, supra.

[273] These topics are developed infra.

numerous than the white population, and added they formed the 56,77% of the complete male population. Figure 1 illustrates this reality.

	White	Brown, *cabras* and *mestiços*	Black and *crioulos*
Births	473	719	544

Table 2: Births during the year of 1776 on the county of Serro do Frio[274]

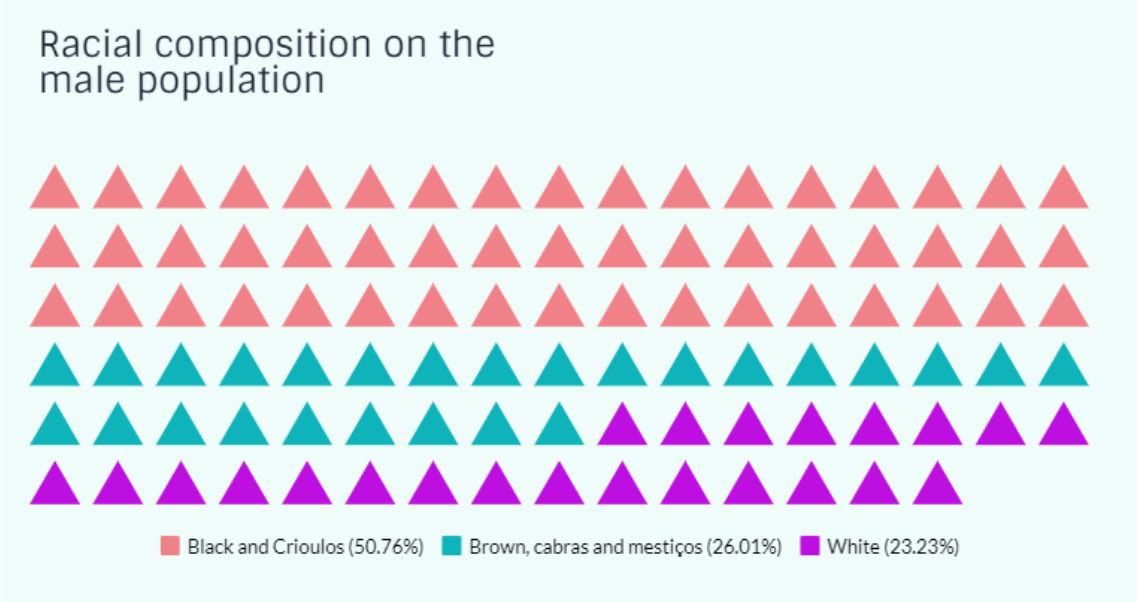

Figure 4: Racial composition on the male population

About the sex composition of the county population, just as the figure above points to, in the year of 1776, the male population reached 39.389 while the female counted 19.399. According to these numbers, the proportion of men was much higher, close to 67% upon the female population that had only 33%.

[274] Carta de D. Antonio de Noronha, governador de Minas, informando a Martinho de Melo e Castro, entre outros assuntos, sobre a remessa do mapa relativo aos habitantes da referida capitania. AHU, MG, Cx 112, doc. 11.

It seems that this reality remained without major modifications,[275] even when it is possible to observe an endogenous increase of the female population in the captaincy of Minas Gerais as we get closer to the year of 1821.[276] Nevertheless, when crossing the analysis of the data between gender and race, and if we focus especially on the female group, it is possible to identify a solid predominance of black and *mestiços*. This category represented 75,46% of the female population. At the same time, when we consider the total number of the female population and examine these groups individually, it is noted that women that belonged to the category of black and *mestiços* were, respectively 38% and 36% of the total of the female population. These data show a proportion where for each 10 women more than 7 (7,5) were either black or *mestiças*, and of those 10 more than 3 (3,5) belonged to the latter classification (figure 2).

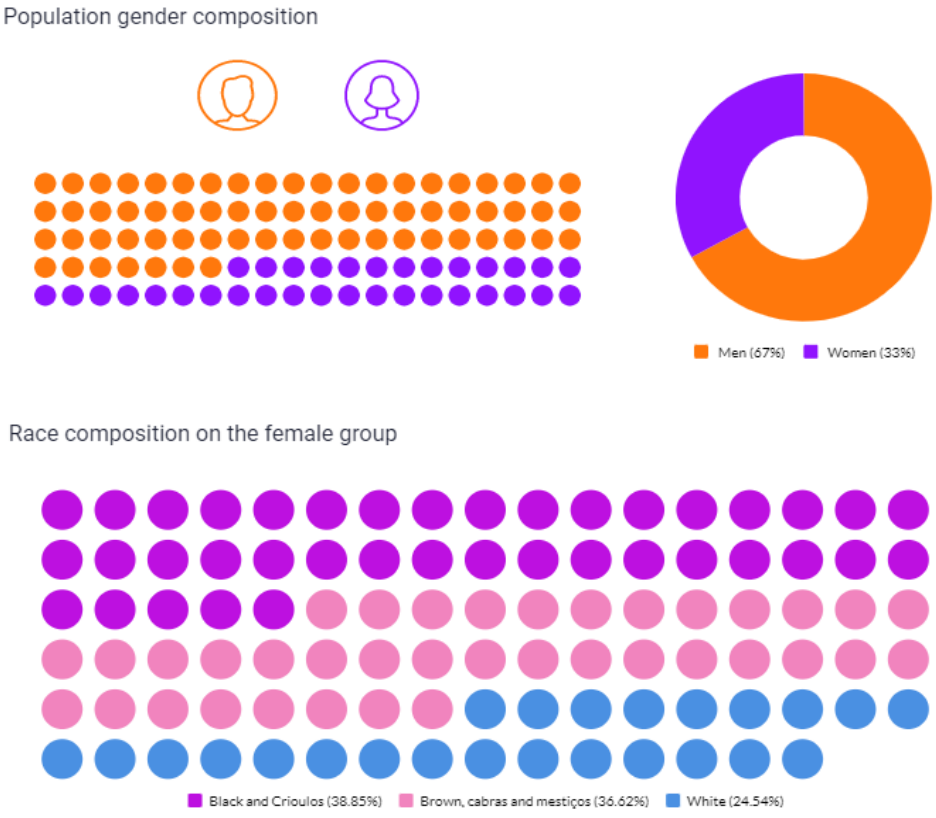

Figure 5: Population gender composition

[275] FURTADO, 2016, p. 46.
[276] STUMPF, 2017, p. 535.

The examination of only one census of the county of Serro do Frio clearly has several limitations, such as not being able to make an accurate temporal projection of the data that is presented in the document. And that was not in the aims when this population registry was prepared. However, the census may offer us data with enough density to open some paths of analysis.

4. The diversity of the population as a diversity of normative expectations

We need to unfold this source, keeping in mind two main questions. First, to use it as a guideline, while complementing and contrasting it with another sources. That way we can try to reconstruct the morphology of the social life in the diamond district in this specific period. In this sense, the document is a possibility of knowing what types of historical agents existed, coexisted, and interacted in a time and space, and what kind of normative expectations they probably had and articulated in their social interaction, including the legal field.

Second, this census is a reservoir of observations by the crown, of its officials, etc. It makes possible to observe what, and more important, how these observers observed the population, and how they used it as information that should be processed to handle or reduce the complexity overseas. Censuses, along with other documents such as maps, were instruments through which the crown imagined and projected its own power in its domains: by means of them, it was able to shape diverse communities, applying relevant categories for a proper reading of social reality in the colonies. This logic allowed royal officials to frame the colonial backdrop in an understandable manner (not important here its verisimilitude with the actual state of affairs) and at the same time control it.

On certain opportunities these documents make this social semantic evident. The letter (*oficio*) sent by the *Intendente Geral dos Diamantes*, João da Rocha Dantas e Mendonça, to Martinho de Melo e Castro in the year 1775, is a privileged source in this sense. The letter is a Map of Population that provides detailed information of the people of the Diamantine Demarcation using the parameters of "political arithmetic" as the

Intendente mentions.[277] In his own words, the purpose of the map was to enlighten the sovereign about his "domains and its utilities; the number of individuals, their customs and industries, which forms the most nervous strengths of the States" ("*dominios e suas utilidades; o numero dos individuos, seus costumes e industrias, que formao as mais nervozas forcas dos Estados*").[278]

From the point of view of these documents themselves, the social reality in the Diamond District was a kaleidoscope[279] where the diversity of the population made possible the rise of a multifaceted web of normativities, and each of them was triggered in different spaces of interaction. In the same way that the kaleidoscope creates an infinite mix of images with different formats and colors, the diversity of agents and their preconceived normative notions (about Law, nature, order, justice, etc.) led to a complex social imaginary where social and normative expectations of varied sorts were articulated (sometimes in a complementary way, but many others in an oppositional or overlapping manner).

This diverse morphology of the county's population also generated a universe of situations that represented the life in the colony. In this sense, it created more fluid borders among what was usual or unusual, and acceptable or not in social and legal terms, something that forced the Portuguese crown to deal with greater complexity than they were used to in Portugal. The greater the (normative) diversity, the greater the (normative) complexity.

The social morality linked with the family structure was one of these spheres where it is possible to clearly observe this. As pointed above, the population of the diamond demarcation was primarily male, and mostly composed by migrants from Portugal coming from the Minho region, which, according to social historians, had some specificities when compared to the rest of Portugal.

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[277] On the original "*para junto ao Reino sustentarem o decoro da Monarchia, e distribuírem o governo deste Reino não podem ignorar a extenção dos domínios e suas utilidades, o numero dos indivíduos seus costumes e instrias que os formão as mais nervosas forças dos Estados. Este utilíssimo sistema de Aritmetica Politica que eu tive a honra de ouvir oidos vem a V.Ex. tem a também praticar, me succitou a lembrança e me conduzio a obrigação de levar a Prezensa de V.Ex a relação de todos os habitantes desta Demarcação Diamantina*". AHU, MG, Cx 108, doc. 9.

[278] Idem.

[279] The image of the kaleidoscope for describing the society of the *Ancien Régime* was already employed by Hespanha, from whom we borrowed the metaphor; see HESPANHA, 2014.

In his study about the Portuguese migration to Minas Gerais, Ramos pointed the existence of entangled dynamics between Minas Gerais and Minho, and the reproduction of some models of family organization on both. The migrants brought with them an experience and vision of family that flourished in Minas Gerais. Because of the migration of male population to the colony (and other places in Portugal), this Portuguese region was characterized for the female demographic predominance, which had relevant effects on family structures, but also in other broader social dynamics. [280]

In the *sociedade minhota*, the organization of the family was essentially dominated by females. The existence of extended families, and family groups where there was no kinship was common as well. In addition, the social imaginary about marriage, celibacy, birth of illegitimate children – according to some data analyzed by Ramos –, was quite diverse from other regions of Portugal. In this regard, for example, the number of married women in the north of Portugal was significantly lower than the number of married women in the central regions. Also, the women from the north generally married at older age than the female population in other places of Portugal, and even if compared to the male population of the Minho (on average, women married for the first time six years older than men did). Finally, the proportion of women that remained single was higher than on the rest of Portugal.[281]

Different areas were also shaped by this phenomenon: low rates of marriage in the total population, high rates of illegitimate children and abandonment, etc., and the parallel made by Ramos in relation to the captaincy of Minas Gerais exposes some similar tendencies.[282] At this point it is necessary to be careful, because a careless look can mislead us on some fundamental questions. It is not the goal here to simply point out that both regions had a similar demographic structure (something that according to Ramos happened only in the late nineteenth century),[283] but to show that it is possible to observe a shared worldview between these migrants. This worldview was reproduced in the colony but then related to new circumstances and other inputs. All of this, at the end, amplified, at the same time, the social complexity.

[280] RAMOS, 2008.
[281] RAMOS, 2008, p. 137.
[282] RAMOS, 2008, p. 139.
[283] RAMOS, 2008, p. 144

In this matter, this population tended to migrate a lot, which affected the relationships that took place in both regions. The cases of bigamy analyzed by Ramos illustrate well this situation.[284] In a *mobile population*, individuals were more likely to marry one or more times as they changed places.[285] In the same way, when we considerate the morphology of the population of the Diamond District, i.e., the predominance of male population and the preponderance of *mestiças* and black people in the female population, concubinage and cohabitation (*amancebamento*) appeared as common practices among the population and were not entirely outside the law.

Marriage in colonial Brazil was mainly endogamous,[286] and the diamond district did not escape this reality.[287] An important reason for this was the social expectation of men on the context of a stratified society. Most of them expected to marry women who were in the same social group or superiors.[288] In a context in which social inclusion was given by strata, marriage became a matter not only of economic interest, but also represented the possibility of accessing relevant social and political leadership.

Moreover, marriage was – in general – less important in lower strata of society. Usually, this sacrament involved a large expenditure of money that the poorest did not have, and it entailed a whole bunch of bureaucratic issues that were difficult for the illiterate to access. Different studies show that the prevalence of concubinage in the lower social strata and the restriction of marriage to an elite in colonial Brazil was strongly conditioned by these economic and social reasons. In this sense, concubinage was presented as a functional equivalent of marriage in lower social segments, which through it could organize their affective, economic, and family relationships in a stable and lasting way.[289]

An episcopal visit before the census analyzed above occurred on the *arraial* of Tijuco on the year of 1750. The documents on the book of lawsuits (*termos da devassa*) of this visit confirm that concubinage was the most recurrent crime in the seat of

[284] RAMOS, 2008.

[285] Ibid.

[286] NAZZARI, 1996, p. 107.

[287] RUSSEL-WOOD, 1982, p. 576. "Concubinage was a way of life in the mining regions" and to some extent, even when there was numerical equality between white and black women, "white men continued to prefer black concubines".

[288] NAZZARI, 1991.

[289] RAMOS, 2008; METCALF, 2005.

ecclesiastical justice: of 45 *devasas de culpa*, 42 were for concubinage, 2 for a crime related with concubinage, and 1 for not going to mass on Sundays. On these lawsuits, most of the defendants were enslaved (men and women), former enslaved and white people without instruction or illiterate whites with mechanical crafts (*ofícios mecânicos*). For example, the case of José Ribeiro, a cobbler for the Tijuco´s *arraial*, accused of concubinage with the enslaved Tereza de Jezus; or Leanor Teixeira de Souza, a former slave (*preta forra*) that lived in concubinage with Domingo Gonçalves (whose craft was unknown).[290]

This portrait shown by the visit is relevant not only numerically, but also because of the nature of the inquires. During the *Ancien Régime*, the ecclesiastical justices were fundamental for the *Policey* enforcement, through the disciplining of the subjects. On the case of the Portuguese overseas administration, this was necessary, given the great extension of the territory. Furthermore, the very process of colonization needed the ecclesiastical justice for its maintenance, since with these institutions it was possible to reach the peripheries with flexibility, in the territorial scope.[291]

Another episcopal visit reinforces this idea. The *visita* of the year of 1777 on Serro do Frio disclosed the heterogenic society of the county, [292] with some customs that could be considered as immoral, like concubinage.[293] On this subject, Furtado´s work highlights that of a universe of 25 defendants, 14 of them were charged of being in *amancebamento*, and 2 to live in concubinage.[294]

Regarding the demographic composition of the county where the women were scarce (especially white women), it was a logical consequence that most part of these non-marital relationships were among inter-racial couples, involving white gentlemen and black or *mestiças* slave women.[295] As Pijning explains in his work, the wills of Serro

[290] AMAD, Cx 402, Bl A. f. 1. The access to this source would be impossible without the help of Andrea Lopes Viana. For an analysis in-depth analysis on this matter, see VIANA, 2016.

[291] RODRIGUES, 2015, p.1.

[292] FURTADO, 1996; 1777, nota sobre como na foi possivel accesar pela pandemia.

[293] FURTADO, 1996, p. 56.

[294] Ibid.

[295] Probably the most emblematic case is that of Chica da Silva. Born at an uncertain date (probably between 1731 and 1735), Chica da Silva was born a slave but had her *alforria* granted by the Contratador João Fernandes de Oliveira in 1753. As the Contractor's concubine, she not only accumulated considerable personal wealth, but also exercised a relevant social influence within the *arraial*. FURTADO, 2017; PIJNING, 2008; FURTADO, 2016, p. 183.

do Frio's population reveal the existence of these extra marital relationships, and these documents also included children from inter-racial couples.[296] In this context, both the concubinage and the *amancebamento* appeared as legitimate alternatives to have a relationship with women that were black, brown or that belonged to the lower strata of society; with which the white elite couldn't marry. These adaptations to circumstances beyond sea allowed that many single men lived together with these women without suffering the "shame of having wives with infamous blood, skin or social condition".[297]

Even if the Portuguese crown and the church forbade concubinage, it represented an important way to organize the social life and family relations.[298] Going beyond the affections involved, these social forms of relationship ramified into a series of legal relations.

The cases of some inhabitants of the diamond district documented by Pijning, such as Ignacia Alvez Maciel and António Rodrigues e Faria, reveal the porosity of social and legal relations in the demarcation. António Rodrigues e Faria had a son with his "slave" named Teresa. He wasn't married and, in his will, Antonio declared as a legitimate heir his only son (whom Faria also dubbed as his own "soul").[299] On the other hand, Ignacia Alvez Maciel, that was an inhabitant of Vila do Principe (as stated in his will) never married but had three sons and two daughters. Apparently, she would define herself as a *mater familia* and marriage did not sound desirable nor fundamental in her normative horizon.[300]

Many researches on the district documented that this scenario was usual in the region.[301] The historiography has pointed how it was a natural expectation, or a social consensus, that made this acceptable in the demarcation.[302] In her article "Honor and Dishonor in the Slavery of Colonial Brazil", Furtado points out that the concubinage was

[296] PIJNING, 2008, p. 229.

[297] VAINFAS, 2014, p. 111. On the same way Nazzari 1996. According with Nazzari "The seeming exceptions to this rule were cases of penniless European men who, in the seventeenth and early eighteenth century, married women of the Sao Paulo elite who were of mixed white/Indian heritage and who had substantial dowries that included real estate and slaves."

[298] "Concubinage, despite being considered a crime by the State and the Church, was another form of family organization that envolved children, solidarities, companionships, jealousy, arguments and affections." CERCEAU NETTO, 2008, p. 27.

[299] PIJNING, 2008, p. 228.

[300] Idem.

[301] Among others, FURTADO, 2016.

[302] PIJNING, 2008.

a common way for a female slave to earn her freedom. In Furtado's point of view, this had a direct impact on the emergence of a mixed and free population in Minas Gerais.[303]

The relationships revolving around enslavement, alongside all the violence that this process implied, were often built outside the so-called "reification of the slave".[304] Complex social (and affective) relationships were woven in the district, with consequences at different social levels, producing diverse normative situations – such as inheritance cases, illegitimate children, manumission letters, access of enslaved people to sacraments, rites, or religious places exclusives for white people, etc.

In this context, as mentioned before, enslaved women could obtain advantages from these relationships, which was the case of the "slaves" who managed to gather the patrimony necessary for manumission.[305] Further still, the complexity of these kinds of interactions transcended the path to manumission. It was not unusual that the enslaved people on the demarcation stipulated in their wills that their funeral should be held in the chapel of Tijuco (*Igreja de São Francisco de Assis*). In theory, this rite was forbidden to them, but in practice, they could access it.[306]

There was no homogeneity in the region. On the one hand, there were the Portuguese immigrants, who had a nomadic life. Several of them were not migrants for the first time – plus, they were not only dedicated to mining (an activity that was already itinerant by nature), but also to trade. On the other, the enslaved population was also multifaceted, and carried with them diverse social imaginaries that became entangled in social life in the demarcation.

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[303] FURTADO, 2016, p.183 "A slave concubine was generally granted manumission upon her master's death, though usually only after buying her liberty at a price stipulated in the will of the deceased or after providing a certain number of extra years of service to his heirs, who were sometimes the slave's own children. There were some cases, however rare, in which no compensation, whether in specie or service, was demanded of the slave. Rarer still was for manumission to be granted during the master's lifetime, though there were some cases. The generalization of concubinage between whites (mostly men) and "coloreds" (mostly female) had a significant impact on the mining society, which became considerably diverse and miscegenated. It was thus, as the eighteenth century wore on, that a growing class of freedmen and women emerged in the captaincy (Russell-Wood 1982) The fact that this social segment was predominantly female indicates that the mining society afforded slave women more opportunities to earn their freedom than it did their male counterparts".

[304] Idem.

[305] Ibid.

[306] As the Pijning´s work reveals, they leave mark of this in their will, PIJNING, 2008.

In her study about slavery in the mining activity during the eighteenth century in Brazil, Junia Furtado has characterized this group of slaves as heterogenic in different manners. The dismembering of the kingdoms of the region and the expansion of the Axati empire triggered an extension of the group that was part of the slave trade, beginning to include people captured during these conflicts. In this sense, since the last part of the 17th century, the enslaved people from this region had a big diversity of ethnicity, customs, religion, and languages.[307] The different worldview and expectations of these people became relevant in various fields, including in the mining practice.

For example, according to Furtado, on the early years of the mining lands in Brazil, there was a superstition that "there was no hope of finding gold unless there was a Mina woman on the crew".[308] This point is relevant if we consider that superstitions emanated from the social imaginary,[309] they played an important role in stabilizing social knowledge and its circulation before the appearance of printing press. In this sense, following Paiva´s work, this superstition was related to the traditional knowledge of people of the Coast of Mina, where the women knew how to identify the richest alluvium.[310]

Situations like these are evidence that the social life in the Diamond District was composed of a variety of interactions, that built circuits which became more complex as the various expectations of the actors came into contact and clash.

A precipitated perspective of this point can lead us to the mistake of considering that a high occurrence of this type of cases undoubtedly shows the non-enforcement of the royal regulation (when the latter is disregarded in face of the many normativities in operation). Undoubtedly, this is a point that cannot be neglected, above all, as we will see, since the repetition of rules in royal legislation, in certain matters, is evidence of a certain lack of enforceability. However, the focus here must be the complexity of the social relations established both individually and collectively in the county. In other words, the diversity of normative expectations of a multifaceted population, that

[307] FURTADO, 2016, p. 3.
[308] FURTADO, 2016, p. 182.
[309] SWANSON, 1971.
[310] PAIVA, 2002, p. 187.

configured a highly complex social coexistence, with which the administration had to deal with in different manners.[311]

If we turn our eyes to royal legislation and for the governor's *bandos*, then we will see how these authorities tried to cope with some of these complex social situations. First, it is clear that the *negras de tabuleiro* were, from the very start, a matter of preoccupation. *Bandos* trying to control their activities have been enacted at least since 1710.

The biggest apprehension externalized by these authorities was that the informal sale of *quitutes* (delicacies, such as cakes, pastry, liquor, etc.) by the *negras de tabuleiro* would divert part of the wealth from the extraction of gold and diamonds that was supposed to go the tax. They also became increasingly suspicious that the *negras de tabuleiro* were deeply involved in smuggling. Underlying these suspicions, there was also accusation of prostitution by the *negras*, in a discourse embedded with moral and christian values. If we relate the social panorama presented before with these externalizations, then we might be able to better understand the core issue behind it: the fear was partially economically based, but mostly based on notions of good order. The *negras de tabuleiro* were considered to be too much of an instable piece to be kept in that society.

The tolerance regarding this informal selling of goods has also varied in time and depended on which region of Minas Gerais it was taking place. At some point, in the Tejuco, it was envisioned that the *negras de tabuleiro* would have one designated place (a street, to be exact) to be active, not being allowed to work anywhere else.

With the regiment of 1771, the prohibition of the activity of the *negras de tabuleiro* was once again reiterated in disposition XII (but then the trade of the *negras* was restricted alongside with any market dealt by "*negros*"). The text of said regiment alludes to an earlier *regimento* from D. Lourenço de Almeida, and to a *bando* from Gomes Freire de Andrada of 1739. This "legislative memory" has performative purposes. With it, the royal legislation was reinforcing the application of written laws coming from previous governors. More than that, by indicating precedents, the royal legislation

[311] On this matter, Pijning describes these acts that contradicted the law or even social norms as "an act of reassertion of the local population's norms and values, that did not contest colonial or religious authorities, but asserted their own position of the newly forming society in and around Brazil's Diamond District".

inscribed itself in a legal chain of norms, originally coming from authorities accepted by the locals and previously existing in time.

However, there was a significant change in the institutional arrangement: the regiment of 1771 placed these matters in the hand of the *Intendente*, who could evict anyone from the district through summary processes. Also, by this period, the moral connotation and accusations of prostitution seemed to have ceased in the arguments: all that mattered was their supposed involvement in the smuggling of diamonds. These points permit to observe different layers (of old and new) of meaning being activated in the legislative charters, showing how this communicative process was being stitched together.

CHAPTER 4

The crown as an apprentice: *polícia*, colonial administration and new meanings of law on the Diamond District

1. The Portuguese Empire as an "informational Empire"

For decades now, the theme of Empire and Communication has been a topic of interest in academic community. From many examples of these interpretations, Arndt Brendecke's characterization of the Spanish Empire as an "informational Empire" is synthetic and useful here also for the Portuguese Empire.[312]

The Iberian empires were undoubtedly empires of letters. It is in the context of colonial administration that the epistolary reached a perhaps unsurpassed prominence as a form of political communication and expression. In the age of absolutist pretensions, a kingdom like Portugal should govern its overseas territories by demanding much more feedback and information, being aware of its own fragile institutional backbones. The information, communication, representation, and performance were vital links in the dense network that shaped the empire.

The regiments directed to the Governors of Brazil, for example, contained instructions on the obligation of sending letters to the kingdom to inform the situation of the colonial administration.[313] Not only that, but they also regulated the manner the circulation of the information and orders should occur.[314] In the same way, Pedro Cardim

[312]For this, see BRENDECKE, 2012. For similar and complementary ideas, see BIEDERMANN, 2018 and LANGFUR, 2014. It is also noteworthy the relevance that Hespanha gave to the subject in 2017, p. 9-11.

[313]COSENTINO, CUNHA, NUNES, and RAMINELLI, 2017, p. 300-302.

[314]For example, the regiments given to Gaspar de Sousa and to Diego de Mendonça Furtado, included instructions to take the "*despachos*" from the kingdom with the "*mestres de navios*".

noticed that the correspondence used by diplomats to inform the "state of affairs" had also an important role as a decisive space for configuring "politics" (sometimes, to the detriment of other media, such as books).[315]

But if letters had relevance on the conformation of politics and government in the Portuguese Empire, what about their relevance for the normative production? If we agree with Antonio M. Hespanha that it is possible to consider Law in the *Ancien Régime* as a "set of related communicative systems", which is shaped in the continuity and discontinuity of its own communication, then the letters are one of the windows to observe how this process results in a web of normativity.

2. Policey as colonial law

The expansion of the Portuguese seaborne Empire also meant the spread of the legal tradition that the agents of the Empire carried with them. However, this does not mean that it was a peaceful or even one-way movement. The normative production that this expansion entailed was not only a "westernalization"[316] of Law, but also a decentralized process in which colonial institutions and the normativities of the colony had a relevant role.

As pointed out by António Manuel Hespanha, if we analyze the complex flux of this bidirectionality, it is possible to notice that, more than an imposition from "above", legal transactions took place. They may be described as translations where each part uses the Law of the other according to their own cultural models (and interests). In this context, the conditions, and models of the political domain needed to be flexible enough according to the social reality that was extremely multifaceted.[317]

In other words, there was no unified colonial legal construction associated with a possible "imperial project".[318] The configuration of Law itself during early modernity made this unfeasible. The legal pluralism of the *Ancien Régime*, and the coexistence of

[315] CARDIM, 2005.
[316] PIHLAJAMAKI, 2015.
[317] HESPANHA, 2012; DUVE, 2021.
[318] HESPANHA, 2001.

various normative orders that it enticed, made it impossible for the written law/statute (*lei*) to be unequivocally applied in the kingdom, much less in the colony.[319] Even more, the very structure of some of these normative orders (e.g., the *ius commune*) facilitated their *localization*.[320]

In this scenario, the various localities and their normative expectations were extremely relevant in terms of creating Law if compared to the figure of the prince, who had a primarily jurisdictional function.[321] On the other hand, at a political level, relations were not built radially either: material conditions, distance, communication channels, etc., made establishing decision-making centers a complex task. Rather, what existed were multiple centers connected between themselves and the king.[322]

In this context, to speak of a colonial law means not being enchanted by the mistaken (and anachronistic) idea of the existence of a unified normative body of laws enacted, consistently, by the Crown for its overseas domains – in this case, for the Portuguese America.[323] However, in most cases of urbanized settlements, the law applied overseas was the Portuguese law. In this sense, colonial law and European law are inseparable.[324] This situation cannot be confused with the colonial law from the 19th century[325] that attends to different political structures from those of the *Ancien Régime*, because it is fundamentally anchored in the national State.[326]

Moving away from these perspectives, it is possible to speak of "colonial law" during early modernity, in two senses. Both, albeit in different ways, are connected to the eminently pragmatical nature of Law during that period. The first of them refers to the capacity of local regulations (for example, local customs) to fill legal gaps, which is typical of *ius commune*. This direction, developed by Antonio Manuel Hespanha in his already classic text "*porque é que existe e em que é que consiste um direito colonial brasileiro*", emphasizes how practices (mainly those occurring at border areas, such as

[319] HESPANHA, 2006.
[320] AGUERO, 2006; BENTON, 1999.
[321] GROSSI, 2014.
[322] The concept of polycentric monarchy is especially useful here to describe this picture, see CARDIM et. al. 2012.
[323] CABRAL, 2015, 2021.
[324] Among others, HESPANHA, 2006; CABRAL, 2021; CAMARINHAS, 2009.
[325] PIHLAJAMAKI, 2020, on press.
[326] For the case of the African colonies from Portugal of the 19th century, see NOGUEIRA DA SILVA, 2015.

colonies) that are divergent or even contrary to the statutes of the kingdom become nonetheless part of the Law.[327]

The second sense refers to the use of *policey* ordinances as a colonial law. In this case, the emphasis is placed on the use of a legislative tool as a way of coping with the needs of the administration to continuously and quickly adapt itself to a social reality that was considerably unfamiliar to royal officials and that was changing rapidly.[328] Although at first glance they may seem like two ideas that oppose each other, a careful look shows that both are intertwined through their casuistic nature.

In his work "*El jurista en el nuevo mundo*", Víctor Tau Anzoategui draws attention to how precisely the variety of situations is the support of the legal conception. In fact, when analyzing Solórzano's work "*Política Indiana*", Tau highlights what the legislator's role should be in the face of this variety that "sprouted from indian reality"[329]. In this sense, the "good legislator" should have the ability to adapt his precepts to the "regions and peoples" to whom they are directed.[330] This virtue of the legislator would be related to the *prudence* of respecting the nature of things.[331]

In the lines that follow, I want to focus on the argument that colonial law could be conceptualized as a type of "police" regulation.[332] First, many of the matters regulated in the colonies are essentially matters that would be framed as police matters (this is valid not only for Portuguese, but also for the British colonies and other colonies).[333] Second, the awareness on the discussion about "police" and police science had expanded in the second half of the 18th century in Portugal – therefore, the royal officials were much more inclined to frame economic and social issues as "police matters".[334] Third, even the

[327]CARDIM et al., 2015; HESPANHA, 2006.

[328] PIHLAJAMAKI, 2015.

[329] TAU ANZOATEGUI, 2016, p. 219. Although Anzoategui is analyzing the context of the so-called "Indian law" (understood here casuistically and not as a monolithic body of laws) in regards to variety as a condition for the impossibility of creating laws with a claim to universality, it is equally applicable to Portuguese America. Regarding this last point, it is important to draw attention to the expression "salvo ordenação em contrario", that was used to characterize exceptional treatment, or so that the norm would not be followed in a particular case without affecting its valitidy for all others. WEHLING, 2012, p. 40.

[330] Ibid.

[331] TAU ANZOATEGUI, 2016, p. 220.

[332] This idea was proposed by PIHLAJAMÄKI, 2015.

[333] Idem.

[334] See chapter 1, *supra*.

institutional design of "police" started to be used in the colony, as is seen in the figure of the intendant.

The argument here is that "police" is a useful category to analyze the colonial normative production, namely because it pushes the perspective towards a comparative dimension.[335] *Polícia* was, no doubt, an essential device to manage the colonial administration on a "new world" with "new problems" because it offered sufficient flexibility in the attempts of understanding, processing, and reducing the complexity that the colonial world represented within the normative framework of the Ancient Regime.[336]

3. The Types of Regulation Between 1730 and 1771

In the Portuguese legal tradition, the discovery, demarcation, exploration, and the granting of *mercês* (privileges) associated with the mines, was regulated by two titles of the book II of the *Ordenações Filipinas*: the *Título XXVI "Dos Direitos Reais"* and *the Título XXXIV "Das Minas e dos Metais".* Nevertheless, the *Ordenações* and the structure of Law in the Portuguese overseas Empire was extremely casuistic. This not only implied an eminently jurisdictional nature, but also the relevance of the *diplomas* for the local authorities. These normative tools had the objective to manage the diverse and specific situations of daily life in the different places that composed the Portuguese overseas Empire.

On 27 of July of 1727, the governor of the captaincy of Minas Gerais D. Lourenço de Almeida sent to D. Jõao V, the King of Portugal, the official notification of a fact that by then was already an "open secret" in the Portuguese court: that diamonds were discovered on the Region of Serro do Frio.[337] This piece of news was the concretization

[335]The circulation of normative information that the concept of "police" entailed was already addressed in this dissertation, see chapter 1, infra. The fact that "police" circulated all around Europe and beyond, even the northern and eastern corners, considered as distant in a central European perspective, was already duly noticed, see KOTKAS, 2014; RAEFF, 1983.

[336]PIHLAJAMÄKI, 2015.

[337] BNP Cód. 1612, 113v-114. "Foi me presente a vossa carta de 22 de julho passado em que me dais conta do descobrimento que se fez na Comarca do Serro do Frio, de umas pedras brancas de que remeteis amostras, referindo a opinião que corre de serem diamantes, e as razões, porque até agora, não me participastes esta notícia, e porque sou informado, que ela se divulgou nessas minas há alguns anos e que há já dois, que nas frotas se remetem várias pedras semelhantes com a certeza de serem diamantes vos estranho muito a indesculpável omissão que tivestes em não averiguar logo no seu princípio uma novidade de tanta importância."

of an old goal for the Portuguese: finding "precious stones" in America. The royal authorities quickly advanced to set up and adapt a judicial, administrative, military and economic structure destined to obtain the benefits of this resource. In the pursue of this goal, this institutional structure would also need to deal with the local circumstances and practices.

Instructed to do so, the governor of Minas Gerais took the first measure on the 2nd of December of 1729: through a *portaria*, he annulled all the *cartas de data* granted by *Guardas-Mores* that allowed their holders to mine on rivers where diamonds were found. Later, the Royal Decree (*carta régia*) of 8 of February of 1730 declared the Crown's control over the exploration of diamonds but provided D. Lourenço de Almeida full powers to regulate such matter.[338]

Subsequently, a series of *cartas, bandos* and *portarias*, were issued, intending to settle the normative shape of the administration of the activity in the region. Shortly after, on 25 of June of 1730, the first Regiment for "*desbravar as minas de diamantes inteiramente*" by D. Lourenço de Almeida was enacted, and the land sales and provisions of *cartas de datas* were restricted.

Between 1730 and 1771, it is possible to distinguish two periods regarding the regulation of the diamond exploitation in the Diamond District.[339] The first one was a short-lived experience, lasting only until 1734, initiated by the Regiment of June 26 of 1730. This regiment determined that the exploitation was liberated to anyone who wished to dedicate themselves to it, granted that they paid a tax (the Royal fifth) and got a permission.

The regiment of 1730 appointed two officers to be mainly in charge of the new activity: the "*Doutor*" *Superintendente* (in this case, the *Ouvidor Geral* of the *comarca* of Serro do Frio, Antonio Ferreira do Valle e Mello, was nominated as Superintendant) and the *Guarda-Mor*. They should summarily deliver sentences to all the disputes

[338] ANTT, Cod. Manuscritos do Brasil.

[339] The exact date of discovery of the diamonds is uncertain. The official date is the year 1729, when the then governor of the captaincy of Minas, Lourenço de Almeida, informed the Crown of the discovery of "a few white pebbles that are understood to be diamonds" (Ordinance December 2, 1729 Arquivo Nacional Torre do Tombo). Historiographical research points out, however, that already in 1714 there was awareness of the existence of the stones in the region of Serro do Frio. For an in-depth view on this point see *supra* chapter 2.

"between the miners", with the possibility of appeal to the *Superintendente*. Also, the *Superintendente* was to be responsible for overseeing the allocation of the permissions of land use, which would then be registered by the *Guarda-Mor*. The regiment's provisions should be implemented "guarding all the equity of the miners; and making them observe the proper way in which their royal fifths should be paid" ("*guardando toda equidade dos mineiros")*. [340]

The meager income obtained in these circumstances, in addition to the high evasion of the tax, forced the crown to change the strategy of administration. In 1734, the Intendancy of Diamonds was established. Meanwhile, to put order in the region, all the exploration was brought to a halt until 1739.[341]

In essence, the new Intendant of diamonds absorbed all the competences of the former Superintendent of diamonds, with the addition of a couple of functions more. But the real difference was that the Intendant was nominated directly by the crown, while the Superintendent was just a local judge (an *Ouvidor*) that accumulated functions.

Once the quantity of stones circulating in the market was fairly controlled, the crown ordered the Governor José Gomes Freire de Andrada[342] to reopen the mines with "prudence and zeal"[343]. The new method of administration was based on contracts firmed between one or more individuals and the Portuguese crown, intensifying the monopoly of the services in a way that the crown could in theory better oversee.[344]

This model of contracts lasted until 1771. By then, the administrative irregularities of the contracts were considered to be so many "that they could not fit into any paper,"[345]. In order to put an end both to the "scandalous and excessive loss of diamonds" and to

[340] ANTT, Cod. Manuscritos do Brasil, f. 8.

[341]"BNL, seção de reservados. Avulsos, Códice 7167, f. 10

[342]The appointment of Gomes Freire de Andrada (1733) as governor and captain-general of the captaincy of Rio de Janeiro and of the captaincy of Minas Gerais is part of an attempt to integrate the mining region in the center-south axis in which Rio was the core. The union of the two areas through the same Governor shows also efforts of implementing greater administrative rationality and cohesiveness in the Portuguese institutional actions in America, even before the time of Pombal (RIBEIRO, 2015, p. 97).

[343]Noticias das Minas de Diamantes. BNL, seção de reservados. Avulsos, Códice 7167, f. 11.

[344]The option for the monopoly was justified by the fact that the other "mercantile nations of Europe" had also adopted this for the case of diamonds: "Conhecido, que, as Naçoes mercantis da Europa tinhão absorvido em si, e feito monopólio dos Diamantes Occidentais, por serem fechada a fonte de donde emanarão a espalhar esos q' erão os milhores do Universo" (Idem., f. 11).

[345]Carta do Intendente Tomás Robi de Barros Barreto dirigida ao secretário de Estado em 25 de abril de 1755 (AHU. Cx 67, Doc. 43, f. 1).

"the big disorder" caused by "the unlimited amount in leased black (slaves)"[346], the *Alvará* and *Regimento* from 12 of August of 1771 was enacted. According to it, the contractor's system should be ceased and the extraction would be transferred to the exclusive hands of the Royal Treasury.

The *Alvará* of August 2, 1771, established a new administration system named "Royal Extraction". With that, the crown resumed the production of diamonds, leaving it in the hands of royal institutions and their officials, with the aim of rationalizing the activity. It sought to control and increase production, while at the same time minimizing its time and costs. The new model had as its primary goal the implementation of an efficient organization for augmenting revenue. Accounting methods capable of ensuring greater control over the accounts, collections, frauds (contraband) were put into practice. It was determined, for example, as an accounting method, the use of "double entries" and annual balances which should be forwarded to the directors in Lisbon.[347]

The crown's greater control over the general direction of activities meant, at the same time, an expansion of the powers of the Intendency of diamonds. The *Alvará* granted even more specialization to the police procedures: all matters in the district were supposed to be tried through a summary judgment, while the appeal was only possible to be made for the king himself. This is expressly stated in the § XV of the *Alvará*:

> The General Intendant, and the administrators, who ocularly testify the facts, which constitute the causes of evictions, are the ones who can judge them more competently: I determine, that the jurisdiction of the same Intendant is in these cases of evictions, private, and exclusive of any and all other jurisdictions. And that everything that he decides for these suspects together with the aforementioned administrators, be executed without appeal, aggravation, or any recourse, that is not for My Real Person immediately.[348]

Thus, according to the *Alvará* of 1771, the Royal Extraction should be composed by one Intendant, acting as its main figure, and, serving directly under him, one *fiscal* and 3 *caixas*. Meanwhile, this institution was subordinated to a parallel directive

[346] *Alvará* and *Regimento* of 12 of August of 1771.

[347] Since its foundation in 1759, the Pombaline "*Aula de Comércio*" also imposed "double entries" and rational accounting on the country's commercial elite. This method was also adopted in the *Erário Régio* (Royal Treasury) in 1761.

[348] "[s]endo certo, o Intendente Geral, e os administradores, que presenceão occularmente os factos, que constituem as causas dos despejos, são os que delas podem julgar mais competentemente: Determino, que a jurisdição do mesmo Intendente seja nestes casos de despejos, privativa, e exclusiva de toda, e qualquer outra jurisdição. E que tudo o que Elle a estes suspeitos decidir em Junta com os sobreditos Administradores, se execute sem appellação, aggravo, ou recurso algum, que não seja para a Minha Real Pessoa inmediatamente.

institutional board (*Junta*) with seat in Lisbon, headed by the president of the Royal Treasury.

It is also relevant to note that, a couple of months after the enactment of the regiment of 1771, the crown, "attending the information that it would be useful", applied a minor modification in the Royal Extraction that would also be quite revealing of its whole intention.[349] In February of 1772, the king would establish that the *Fiscal* of the Royal Extraction should not be a "layman, of private appointment by the Governors of the mines", but a "Minister of letters appointed by Me" ("*Ministro de Letras por Mim nomeado*"). This change would tighten the grip of the royal authority in the region, by controlling the nomination of the Royal Extraction officials in command. It would also create the possibility of adding a couple of steps in the career of royal officials that went through the Royal Extraction: some *Fiscals* became intendants later on, proving that this could be a position to acquire experience with less risks of being coopted by the local authorities.

5. The Crown as an apprentice: local problems and the regiment of 1771 against the grain

In his study about fiscality and administration in the diamantine demarcation, Angelo Carrara has characterized the years between 1729-1734 as a period of "hesitancy" from the crown's side. The inexperience of the royal administration in diamond mining motivated a succession of different *diplomas* with the goal of controlling the exploration, which gradually replaced the overall standard applied in the rest of captaincy.[350]

The dense network of norms intended to regulate the administration of the region might be observed as impregnated by inexperience, but one of another sort: the inexperience in front of the complexity, particularity and plurality of the region of Minas Gerais and its population. These new local problems had a normative dimension that cannot be ignored: they enticed reactions and normative repercussions of their own. They

[349] *Decreto* of 17 of February of 1772.
[350] CARRARA, 2005.

also demanded the flexibility of different tools, which paved the paths of new meanings of Law.

As legally mediated communication, the *leis, decretos, ordens regias, bandos, portarias, editais* and *regimentos* had a procedural role in shifting or translating the local complexity into normative information that could be processed by the crown. Focusing on the problems that these rules were trying to solve and contrasting these documents with other sources such as the letters, the legal historians can reconstruct – even if only partially – the normative expectations that were involved in their creation. This section, thus, explores the norms, institutions and actors that intervened on this process in the period of the Royal Extraction (1771-1808).

It is no coincidence that the crown attempted three distinct systems of administration in the region between 1730 and 1845. The administration of the diamond lands represented a constant challenge for the metropolitan power. Although the Portuguese Empire had experience with the diamond trade and extraction in the West Indies and the East of Golconda, the exploration of this resource by their "own hands" was a complete novelty.[351] This was one of the first problems that the Crown had to handle: to create a system capable of having sufficient control over the production, and that respected the *direitos adquiridos* of the miners at the same time.

Indeed, D. Lourenço de Almeida had sufficient knowledge about how the activity was carried out in the *Estado da India*, after all, it was precisely there where he made his fortune with the diamond trade, while serving as an official of the Crown for seventeen years.[352] Nonetheless, in this case, instead of imitating the system of the *Estado da India*, the governor of Minas Gerais decided to replicate a system that was already in practice in the region: that of gold extraction.

After the advice of people whom he "trusted", that had "the knowledge of the form in which the diamonds were taken"[353], Almeida decided upon the provisions of the Regiment of 1730, destined to regulate diamond extraction, in agreement with the "*Ouvidores Gerais desta Comarca e mais algumas pessoas, que pudessem informar toda a verdade nesta matéria*". Here, we may already start to notice how the first regulations

[351] MCPHERSON, 1996.

[352] ROMEIRO, 2015.

[353]The original: "*as pessoas, de que [eu] fizesse mais confiança, e que tivessem conhecimento da forma, com que se tiravam estes diamantes*".

on diamond mining were fabricated through negotiations and dialogues between the Governor and the local authorities. Given this arrangement, it may not come as a surprise that, at the end, the power of decision on the matter was placed in the hands of the usual, deeply rooted, local authorities. The "*Regimento da Mineração dos Diamantes*" determined, as already mentioned, that the *Ouvidor* of Vila do Principe would simultaneously be the superintendent of the diamond lands of the county. Besides that, for the exploration, a "head tax" (*capitação*) should be collected; and the "slaves" should be registered in the book of the Intendency.[354]

Despite some scholars pointing out, correctly so, that this decision by the governor was motivated by personal interest and beneficial to the interest of the local elites as well, it is also true that this measure was agreed upon according to a political imaginary well diffused in corporative monarchies during early modernity.[355] In the context of an Empire whose extension presented difficulties in facing a highly multifaceted social reality, the Portuguese deployed strategies of governance that were often passive and decentralized. On many occasions, due to the limitation of material conditions, the best strategy was to take advantage of the existing structures on the local places (in some cases, this included adopting native institutions and rules of resolving conflicts or of regulating social life).[356]

By replicating the regulation of gold mining, D. Lourenço de Almeida could use an administrative apparatus already established in the region, with officials and a tax system that was familiar for both the royal officials and the local population as well. Through this perspective, the problem was being resolved (at least so far) attending the "*equidade dos mineiros*" and considering the various normative expectations at stake.

Beyond being very diverse, the population of the district had various expectations connected with the mining, mainly of gold. Although, as some recent research suggests, there was economic diversity in the region,[357] in addition to being the main activity, the mining of gold gave birth to a *modus vivendi* of its own. In this sense, the mineralogist José de Vieira Couto defined the spirit of the population as "miners before everything".[358]

[354]At that time, the administration was that of "gold and diamonds" as we will see, the Intendency solely dedicated to the diamond extraction administration was created in 1734.
[355] CARDIM, 2011; HESPANHA, 2011.
[356] HESPANHA, 2019.
[357] QUINTÃO, 2016a
[358] COUTO, 1994 [1799].

Initially populated by *bandeirantes* which were chasing gold deposits, the society of what would later be the diamond district was also made up of Portuguese who had migrated from the Minho in search of wealth, and enslaved people that were used as labor in mining.[359] Many of the *bandeirantes* carried with them specific practices and knowledge about mining, which they had acquired in other places or through contact with "slaves" who had experience with the activity on the African coast.

It is not a far-fetch consideration that many of them had a pretty good notion of how the relationship with the Portuguese crown could be beneficial to them, and how to operate to get what they wanted. Many of these individuals wished to ascend socially and economically, be it by winning *ofícios*, privileges, land-tenure, or favors from the crown.

In this sense, the very own demographic characteristics of the region triggered a multiplicity of normative expectations that were entangled around the activity, which the crown had to harmonize *amorosamente* with its own expectations.[360] The conflict and overlapping between the expectations of the gold miners and the crown's economic interest in the diamonds were causes of continued tensions throughout the period of Portuguese rule in the region.[361] This mishmash of different representations about what was fair or unfair, and the normative notions that shaped it, was relevant when the crown had to decide or legislate about matters of the region.[362]

The royal officials were aware of the difficulties that had to be handled in everyday life of the administration. On December 19 of 1731, José Rodrigues de Oliveira, a former *capitão de dragões* in the county of Serro do Frio, summarized the portrait of the activity to the cardinal da Mota (counselour of D. João V). According to Rodrigues, it was necessary to pay more attention to the abandonment of some economic activities in the region – and, among them, the mining of gold was mentioned. The carelessness with this activity could result in scarcity of coins and paralyze the trade of other products.

From the same perspective, the migration of gold miners to the diamond mining could entail other problems as well, such as: a) the size of the stones (small by nature) made them easier to hide and avoid the payment of the *quintos*; b) the lack of miners

[359] For an in-depth analysis, see Chapter 3, p. 80 ss
[360] HESPANHA, 2011; CARDIM, 2011.
[361] ANTT, Manuscritos do Brasil, f. 7.
[362] BNP - Pba-691 70-73.

overall, which would end up diminish the collection of the *quintos do ouro*; and c) private individuals preferred to sell the diamonds to foreigners, even at a lower price, rather than making them arrive at their destination in Portugal.[363]

The local conditions presented obstacles to the ruling desires of the metropolis. If we think about Law as a field permanently in dispute, the diversity of situations and agents could discourage or even obliterate those desires.[364] When we think about the materiality of documents, said conditions also could directly interfere in the time it would take for royal regulations to reach the intended place. More importantly, they forced a permanent adaptation of the legislation to the emerging needs.[365]

As someone acquainted with the complexity of the Brazilian *Hinterland*, Rodrigues de Oliveira had some ideas about how the Law ought to be in such circumstances. From his point of view, Law should be flexible: "because, as Solorzano wrote, according to the varieties and alterations of businesses and trades, the Monarchies and their decrees will vary" ("*porque conforme escreveu Solorzano, segundo as variedades e alteracões dos negocios e dos comercios, variarão as Monarchias e seus decretos*"). This piece of wisdom was even more applicable to the specific case, becaise the mining of diamonds was a "business whose knowledge depends more on experience than on reason" ("n*egocio cujo connhecimento depende maes da experiencia que da razão*").[366] The reference to Juan de Solórzano Pereira, taken from his *Politica Indiana*, also attests some degree of self-reflection about the particularities of the colonies by the part of royal officials.[367]

Insofar that experience revealed new problems, the royal agents in the colony were also trying to adjust their regulation. In this sense, the *Bandos* of 7.1.1732 replaced the "head-tax" by a system of renting of the *lavras* – which was the same system that the Portuguese had in India. It also established the condition that the diamonds over 20 carats

[363] AHU, MG, Cx 19, doc. 52.

[364] HESPANHA, 2013; THOMPSON, 1975, p. 258ss.

[365] MONTEIRO, 2017.

[366] AHU, MG, Cx 19, doc. 52.

[367] It seems that Rodriguez is making a paraphrase of the Libro V, Cap. XIII, p. 451 of La Política Indiana, in which Solórzano is discussing the warnings to the Audiencias, he stresses that "nunca pudo ser loable en varones aventajados en el gobierno de las Repúblicas, estarse siempre firmes en un parecer, porque en uno mismo negocio es lícito mudarle, si se varían los tiempos, y las razones, y aunque no se varíen, reformando en nuestro propio dictamen". SOLORZANO PEREIRA, 1703 [Esp].

would be reserved for the crown. This *Bando* was repeated on 9 of January of 1732. This attempt of adjustment failed since there was little interest in the purchase of lands from the region. As some sources show, the miners considered land investment a "high risk business" when there was no exact certainty whether the acquired land possessed diamonds or not.[368]

Shortly after, on the 2nd of December of 1733, the *Bando* of the governor André de Melo e Castro, *Conde das Galveias*, modified again the "head-tax". This time around, it was established a tax of 40,000 *reis* per "slave" for the owners; and the punishment against smugglers and "*negas de tabuleiro*" was reiterated. Both the increasingly assertive mechanisms to collect taxes and to control the smuggling would generate permanent problems for the metropolitan power.[369]

Moreover, the biggest obstacle that the diamond administration dealt with between 1729-1734 was of economic nature, related to the efficiency of the extraction and the way that the diamonds operated in the international market. The main issue was the rationalization of the activity: i.e., finding the best means to achieve the highest results possible in the extraction. But the urgency and priority of rationalization and control of this activity had to do with how the diamonds generated specific problems in the economy.

Differently than with gold, for example, the quantity of diamonds in the market influenced its price: the higher the amount of this commodity in circulation, the lower its value. Because of this, it was almost impossible for a system that followed the example of gold activities in the region to be successful.[370] The abundance of *lavras*, the illegal *garimpo*, and the traffic provoked an accelerated increase of diamonds available in the

[368]RAPM, v. 7, 1902. pp. 251-355.

[369]As Carrara pointed out this fact also explains the composition of the group of sources that we have of the zone in this period. CARRARA, 2005.

[370] CARRARA 2005; FURTADO, 1999, p. 301.

international trade[371] and the price collapsed.[372] Attentive to this issue, in addition to noticing the "rare" payment of the taxes (*quintos*), the crown suspended the *lavras* of diamonds on the county between 1734 and 1739.

Alongside the suspension of the *lavras*, formalised by the edict of 19 of July of 1734, the Portuguese crown created the *Intendencia dos Diamantes* in the same year. Meanwhile, it also ordered the demarcation of the district, whose center of operation would become the *Arraial do Tijuco*. This was not only to have greater control over the flow of people who could be involved in diamond trafficking, but also to define an exclusive jurisdiction.[373] Finally, the system of the contractors, already explained, was implemented.

In these contracts, some obligations for the "good administration" were established – for example, a specific delimitation of the mining areas, and a limitation imposed on the number of slaves used for the activity (none of which were respected in practice). There was also the obligation to cast out of the demarcation every person without occupation, office, or who had charges, especially of smuggling. And finally, there was the obligation to send to Portugal a determined amount of Diamonds.[374]

According to the instructions given to the first Intendant of Diamonds appointed for the district, Rafael Pires Pardinho,[375] the control of the contract's obligations was in

[371]"But Europe overwhelmed with Diamonds, due to the immensity through which it would spread everywhere, and very rare those who would pay the tax, so that there was almost no consideration for what it yielded, forced the Court to appoint the title of General Intendant of Diamonds to Judge Rafael Pires Pardinho, who immediately transferred to Brazil, taking the orders from the Conde das Galveas to have the Mines closed entirely, not allowing the extraction of that precious genre anymore". The original: "Mas a Europa aterrada com Diamantes, pela immencidade, que por todas as partes se espalharão, e raríssimos os que pagarão o tributo, de forma q' era quazi nenhuma consideração o que Rendia, obrigou a Corte a nomear Intendente Geral dos Diamantes ao Dezembargador Rafael Pires Pardinho, e fazendo o passar imediatamente ao Brasil, levou as ordens do Conde das Galveas para que fizesse cerrar inteiramente aquella Mina não permitindo mais a extração daquele perciozo gênero" (Noticias das Minas de Diamantes. BNL, seção de reservados. Avulsos, Códice 7167, f. 10).

[372] FURTADO, 1997, among others.

[373] See *supra* chapter 2.

[374]In practice, the contractors proved to be ingenious in finding different strategies to avoid these rules.

[375]Rafael Pires Pardinho accumulated then the offices of *Intendente dos Diamantes* and *Juíz Extravagante da Casa da Suplicação*. Described as a highly respected, upright, inflexible and zealous jurist, his determination to show service to the King and to enforce the law, alienated him not only from the village population but also from the governor D. Lourenço de Almeida (Da Mata, 1980, p.58). In fact, it is stated in the Memorial of Ministers that Pardinho was not appointed to the *Desembargo do Paço* because of some complaints that D. Lourenço de Almeida had made "in detail" against him. Nonetheless, he was appointed to the Overseas Council (*Conselho Ultramarino*) and received praise for his services. (https://memorialdeministers.weebly.com/ consultation of November 20, 2019). For his part, D. Lourenço de Almeida is remembered as someone who guaranteed the Crown "peace and profit" (cf.

his hands (something that later would be reiterated in the contracts themselves).[376] In case of suspicion of someone being a buyer or "extractor" of diamonds, the Intendent had to "take information" from him and, if "found guilty by the testimony", sentence him. The Intendant became also the private judge of matters that concerned the extraction. Finally, he oversaw the annual investigation "not only in this region but in the other demarcated lands as well", where he still had to inquire the habitants about the extraction and possible frauds that caused "damage" to the Royal Treasury.

The six contracts signed throughout this period established – with few changes – the following main obligations: i) conclude the extraction, in principle, within four years (in practice, however, some contracts were renewed or granted for a longer period); ii) resume mining with the limit number of 600 slaves, (if any more were found, they should be confiscated, and if a captured slave ran away or died, the administrators and overseers should notify the *Intendente* within forty-eight hours); iii) respect the frontiers of the demarcation where the stones could be extracted; iv) it was ordered that any person who had no trade or position in the land, alongside with the smugglers, should leave the district within a period of two months (If they were seen again in the demarcation, they would be compelled to pay one hundred octaves of gold, and if they were repeat offenders in this act, they would be assigned to *Nova Colônia*, to *Rio Grande* or to the *Ilha de Santa Catarina*); and v) all the diamonds and gold extracted in the services ought to be collected in a company safe, which would be in the *Real Fazenda* in the *Intendência dos Diamantes*, and, later, in the *Casa dos Contos* in Rio de Janeiro, where they would be delivered in

Boxer, 2000) after the crisis generated in the context of the sedition of 1720. The appreciation of the two careers, and the conflict between both authorities, outlines the deep intertwining of different regulations, and the importance of maintaining the balance between them, as a fundamental structure of an estate-based society. Legitimized in nature and tradition, the social amalgamation of the *Ancien Régime* was deeply permeated by the idea that "each one should bow before a previously established natural order" (Hespanha, 2010, p. 87). The legal correlate of this was a normative universe of broad contours where *iustitia*, *prudentia*, afections (such as love), and virtue, were central in the grammatic of governing – dominated by jurists – in which doing justice was the core (see Hespanha 2010, 2012, among others). From this, the tension between Pardinho, impetuous in enforcing the law, and the population and the governor D. Lourenço de Almeida, who, in addition to their own personal interests, also supported the cosmovision described above, is not strange. In this sense, the Crown seems to have acted trying to balance both points of tension, not downgrading Pardinho's career, taking care of its own administrative staff (recognizing his work in the service of his majesty), on the one hand; on the other hand, valuing the action of the governor, who, taking care to "keep the peace", was able to establish the Foundry House (reason for the revolt against the Count of Assumar) and increase the collection of fifths of gold (cf. Boxer, 2000, Azeredo, 2016).

[376]BNL, seção de reservados. Avulsos, Códice 7167, f. 11.

small boxes to the officers and commanders of warships to be delivered to the elected attorneys at the Court of Lisbon.[377]

The problems related to this system of contractors were "so many that it is impossible to put in a paper"[378]. For example, the administration of the *contratadores* did not stop the traffic of diamonds, even worse, some contractors were proved to be involved in it. The inobservance of the rules of the contracts was frequent, and it resulted in less profit for the mining activity.[379] In order to put an end to both the "scandalous and excessive embezzlement of diamonds"[380] and the "great disorder of the unlimited quantity of rented negroes", the Decree of July 2, of 1771, established the cessation of exploitation by private individuals.[381] From this year on, the activity would be in the hands of the Royal Treasury (*Fazenda Real*). On the same year, the crown implemented the *Real Extração dos Diamantes*. This institution would act as a direct hand of the Crown overseas, having the *Intendente* as its head in Brazil, while functioning together with a corresponding institution in Portugal.

In this way, the *Alvará* of 2 of August of 1771 established mining as a complete and direct royal monopoly. But, more importantly, it concentrated even more administrative and judicial powers on the *Intendente dos Diamantes*, who now directed a larger institution, the *Real Extração.* Some of these powers were previously in the hands of the *cameras* or even of the governor of captaincy.[382]

After the regiment of 1771, The *Intendente* was empowered with the exclusive jurisdiction on the demarcation to decide on evictions and with the entry control of the general population and registry of slaves. Concerning the evictions, he could judge them "summarily" (an oral procedure, in which he could be both witness and accuser, without the possibility of appeal for the defendant).

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[377] Códice Costa Matoso, p. 634.

[378] On the original "tantas que não cabem em nenhum papel" AHU, cx 67, doc 43. f. 1.

[379] WEHLING, 1986, p. 111.

[380] D. 12 de julho de 1771, ANTT, Coleção Documentos do Brasil.

[381] There, the Crown manifested its discontent with the "harmful and intolerable abuses" introduced in the mining of diamonds. The "disorder" in ploughing the land, which was causing the clogging of the rivers, and the "exorbitant and superfluous number of slaves (...) employed in the mining services" were outlined as being the "evils" to cope with. For them, the norm attested that the "particulars" lacked within their strengths the remedies to deal with, therefore "indispensably" demanding the actions of the "Royal Arm" (*Regimento* of 2 of July of 1771).

[382] For a deeper analysis, see *supra* chapter 2.

The *Real Extração* centralized all the control of matters that could influence directly or indirectly the mining activities[383], such as supplies, weights and measures, control of prices, commerce, etc. It was not rare that this situation created an overlapping of jurisdictions and political conflicts with other local authorities. For example, for the *câmera* of *Vila do Príncipe*, which lost control of trade over the *Vila*, this meant the loss of one of the main sources of income, which came from the taxes that the establishments had to pay to be able to sell their products.[384]

This institutional and legal change was both ignited by the intellectual shifts around the concept of "police" (also with the emergence of the *Policeywissenschaft* and the cameral sciences), and by the necessity of economical control of the prices of the diamonds in the international market. But most of all, it was the aftermath of a series of trials and errors of the Portuguese royal administration in attempting to deal with the complexity of the colonies.

From the point of view of the crown, one of the main failures in the administration of the contracts was the informational confusion it produced. A more rational administration, therefore, required a systematization of how the institutions kept their papers and communicated with the center. In fact, after establishing the new system, one of the first orders was to practice the *escripturação.*[385] To control the information was also to govern; that is why the crown demanded from this new institution a detailed day-to-day record of the situation in the district, the periodic update of the record books (in a way that was way more sophisticated than in previous periods)[386], the presentation of yearly balances, and a continuous correspondence with the *Junta da Real Extração in Lisbon*.[387]

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[383] WEHLING, 1986, p. 111.

[384] For a deeper analysis on this, see chapter 2.

[385] PT-TT-RED-A-001_m0012-13TIF Em 12 de julho de 1771.

[386] See *appendix 2*

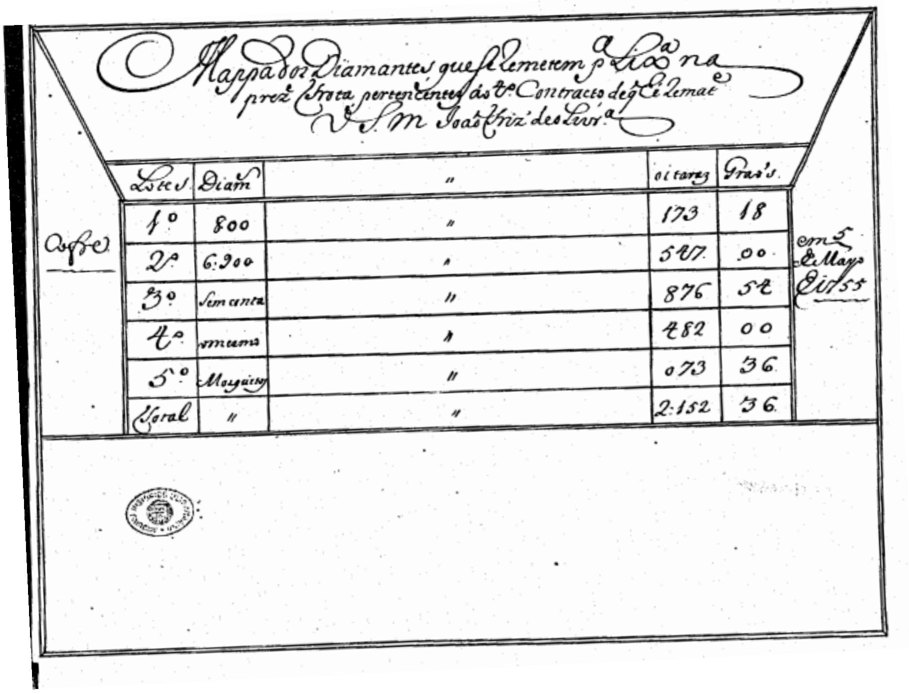
[387] "Dentro dos primeiros seis Meses de cada Anno se lhe aprezentara huma Conta final do Anno proximo precedente feita por orçamento: no fim de cada semestre selhedaria hum rezumo do estado, em que estiver o mesmo Negocio, para semore se achar calcullado o estado desta Administração e me ser prezente tudo o que for a ella concernente. As cartas de Ordens, que se expedirem para as Minas, serão todas registradas pela ordem chronologica em hum livro intitulado Copiador. O qual com o jogo dos outros livros Auxiliares, que necessarios forem estarão sempre escripturados em dia com as Cartas e Papeis, que se receberem collegidos em termos tao exatos, que a toda hora se achem promptos para Eu os mandar ver, quando me parecer justo, ou julgar necessario, e as existencias para elle feitas serão sempre pagos, e pagos no Meu Real Erário, como os Contratadores particulares o practicarão até agora: para assim se conhecerem melhor as utilidades rezultantes desta Administração. Os livros della serão guardados na Caixa da mesma

Administração até serem por mim aplicados, como entender, que há de mais conveniente. As commas de dinheiro, que necessarias forem para se comprarem no Contrato que acacaba, as Fabricas que deixa: e para satisfação das Letras de Costeamento, serão supridas por emprestimo pelos cabedaes do Meu Real Erário, debaixo dos recibos dos trez Directores assima nomeados: para reporem os mesmos dinheiros nos Cofres donde sahirem pelos productos da sua Administração depois de liquidados." PT-TT-RED-A-001_m0012-13TIF Em 12 de julho de 1771. Also PT-TT-RED-A-001_m0013.TIF, among others.

Figure 6: Table of accountability of the Royal Extraction on the year of 1788.[388]

[388] AUH cx 115, doc 15, f. 5.

The crown urged the officers to follow the *boa fe mercantil*[389] meanwhile imposing the elaboration and delivery of tables, records, and the application of the double entry method.[390] Even though often with tardiness,[391] the officials of the Royal Extraction seemed to have fulfilled their duties. The intermittent correspondence was many times filled with tables, each time more detailed, about the shipment of diamonds. Although the elaboration of maps with information on the precious stones and the organization of the extraction were within the tasks of the contractors, they tended to be very broad and general. From 1771 on, the structure of the tables changed, being added specific columns not only about the oitavas (the weight), but about the provenience of the diamonds as well - which were then divided as extracted diamonds (*diamantes explorados*) and confiscated diamonds (*diamantes confiscados*). Likewise, the practice of elaborating tables destined to organize the expenses (of the most varied sort) that the administration incurred in order to maintain the continuity of its services was instated.[392]



Mappa dos Diamantes que se remetem p.a Lix.a na prez.e Frota pertencentes ao 1.o Contracto de q' he Caixa S. M. Joaõ Frz' de Oliv.a

Cofre

Lotes	Diam.s	"	oitavas	Graõs
1.º	800	"	173	18
2.º	6:900	"	547	00
3.º	Sem conta	"	876	54
4.º	mesmos	"	482	00
5.º	Mosquitos	"	073	36
Geral	"	"	2:152	36

em 5 de Mayo de 1755

Figure 7: 'Mapa' of the diamonds by the Intendente Tomas Roby de Barros Barreto for the Marquis of Pombal on 4 of April of 1755.[393]

389 PT-TT-RED-A-001_m0012-13TIF Em 12 de julho de.

390 AHU, MG, Cx 110, doc. 33;

391 TCP, Liv. 4088, f, 167..

392 QUINTÃO, 2018.

393 AUH cx 67, doc 31, f. 3.

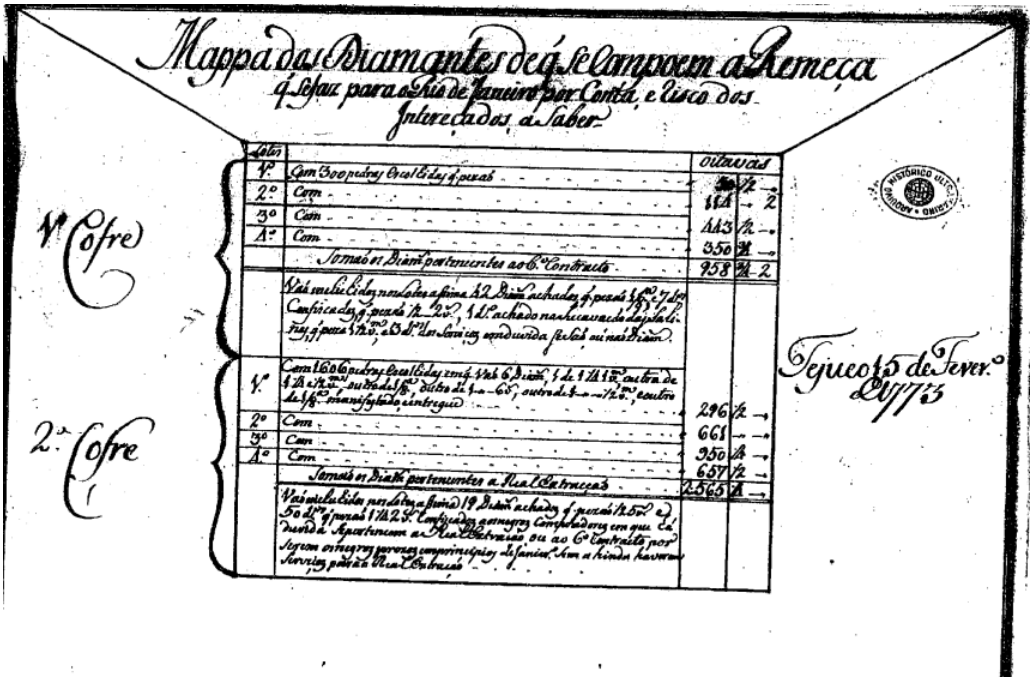


Figure 8: 'Mapa' of the diamonds by the Intendente Jõao da Rocha Dantas e Mendonça for Martinho de Melo e Castro on 15 of February of 1773.[394]

In the discourse, the concept of "utility" of the service acquired more relevance than in the earlier period, or at least it was considerably more emphasized in the orders given to the officials. Even some traditional meanings are combined with new logics: the good order was presented as necessary for the "best economy possible" ("*a maior economía possivel*").[395]

The control over the population continued to be one of the most essential topics. The surveillance and inspection of those who circulated in the region, alongside the record of their occupations, and the eviction of smugglers and vagrants, which were matters already regulated, were reiterated by the regiment. In the use of these powers, it is still not possible to affirm a radical change. Some documents show us how they were still used to avoid the subversion of the "natural order", sanctioning luxury and the extravagant use

[394] AUH cx 104, doc 35, f. 4.

[395] PT-TT-RED-A-001_m0014.TIF Carta de 22 de Agosto de 1771.

of ornaments or clothes that tended to blur social distinctions.[396] The case of the *cabra* Francisco Gonçalves may be one of the most illustrative ones. In 1777, he was arrested for disorder under the argument of wearing unsuited clothes when he paraded through the center of the *Tejuco* with the uniform of the *destacamento de dragões*.[397]

Moreover, both the concepts of "utility" and "good order" not only implied the disciplining of the population in general, but especially of the officers themselves.[398] Indeed, the problems with the administration of the *contratadores* revealed the need for more control and professionalization of the officers. After acknowledging the actual state of affairs of the business, the diamond administration in Lisbon decided to divide and specify the functions of the ones in charge of the extraction. With the objective of putting an end to quarrels over delimitation of activities, the crown determined that each service would be under the care of a specific administrator and his troops. It also tried to establish a hierarchical chain in case the service covered an extended piece of land and demanded more than one administrator. In said case, it was also contemplated that these administrators might be subordinated to a general one.[399]

The attempt to discipline the officials did not end there. As Quintão clearly shows in his investigation about the corruption in the diamond district, the Regiment of 1771 brought about a change regarding the application of sanctions to officers who deviated from the obligations of their position. This would lead to the appearance of the crime

[396] For an extensive review of the *alvarás* on this matter, see SEELAENDER, 2003, 2007.

[397] APM, SC, 240, f. 62v. From another perspective, dwelling on the same source, Junia Furtado analyzes this case to exemplify the little effectiveness of the Regiment of 1771. The Gonçalves case would show how the social order in the district was not far from what prevailed anywhere else in colonial Brazil, every time that the law would be applied in a marginal way against the lower layers of society and in the practically insignificant cases (like this one), while the local elites would remain unscathed. Observing this case through the lenses of police shows exactly the opposite. The logic of the sanctions were the social disciplining of the lower layers of society in order to not alter the harmony of a natural order that, while divine, was perfectly harmonious and immutable. Among others, HESPANHA, 2005.

[398] For more on this, see *supra* chapter 1.

[399] In the original "Em quanto à disciplina da gente empregada nos serviços parece conveniente o metodo que VM aponta de encarregar o governo principal de cada serviço ha um só administrador para por este meio evitar não só as competencias de Jurisdicções que costuma haver entre as diverssas pessoas empregadas com igual authoridade mas também as multiplicadas despezas que se seguem de haver varias tropas em hum mesmo serviço, nomeandose alguns outros administradores que ajudem e servão de conselho ao primeiro mas sempre a elle saber a elle subordinadas naquellas serviços os quais pela sua distancia grandeza e maior numero de escravos não se poderiao bem governar por hum so Administrador." T-TT-RED-A-001_m0014.TIF.

typification of prevarication and even to convictions of some officials of the Royal Extraction.[400]

Although the problems that occurred in the "bureau" of the administration occupied a considerable part of the concerns of the metropolis, the functioning of the Royal Extraction would also show that the biggest problems also occurred in the day-to-day activity, that is, in the *lavras.*[401] The centralization of the administration and extraction of the diamonds in a single institution forced it to handle with problems that were previously externalized to the contractors. Consequently, even though there were strong bounds between the Royal Extraction and the central power, the former was also an eminently local institution, permeable to local specificities and had a relevant role in *localizing* the Law.

Different letters contain advises for the officials of the *Real Extração* about the necessity of considering the local conditions, and their differences with Portugal. On March of 1772, for example, the *Direção do negócio dos Diamantes* in Lisbon instructed Caetano José de Sousa, one of the administrators in the district about the prices and supplies of the region. The instruction was twofold. First, the local administrator should regulate the prices and supplies in accordance with the needs of consumption. Second, he should also take advantage of the local circumstances: due to the heat, it was harder to produce scarcity in the Tejuco because the conservation of groceries was not possible for more than one year; with no possibility of speculation of the price, the Crown could acquire them for smaller amounts of money.[402] The reason for that was to maintain "*good order*", but also because of the "*utility*" of the service.[403]

Weather conditions also posed problems for the administration, which had to act quickly while also anticipating future situations. The §§ II, III, IV, of the Regiment of 1771, established the forms in which the plough and extraction should be executed and

[400] QUINTÃO, 2022, p. 59.

[401] COSTA MATOSO, f. 325.

[402] TT, RED, A001, m0015.

[403] The instruction, related to the prices and supplies of the region, was twofold. First, the local administrator should regulate the prices and supplies in accordance with the needs of consumption. Second, he should also take advantage of the local circumstances, with the fact that in the Tijuco it was more difficult to produce the scarcity since the conservation of groceries was not possible for more than one year (with this, there was no possibility of speculation of the price, and the Crown could buy them for smaller amounts of money). Ibid.

in which periods of the year. Although mining was previously prioritized during dry periods, the Regiment established that it should also occur during rainy periods as well, trying to increase the "utility" of the service. Likewise, there was an order of calculating the amount of diamonds that could be extracted taking the observations of the administrators who were in the district into consideration.[404] In fact, the planning of the services seems to have been a matter of priority for the administrators, who, in trying to extract diamonds in rainy periods, start using "*grupiarias*"[405] and "*tabuleiros*" that could be employed during the wet season.[406] Through said planning, they also sought to lower costs of slave rental in times of lower extraction, as well as to optimize the quality of labor.[407] It was in the constant flow of communication between the Royal Extraction and the director board in Lisbon that some of the devices of the Regiment were taking shape.[408]

Even if the institution was established with centralizing purposes, this informational circuit allowed it not only to respond to local complexities, but also to deal with and adapt to the diverse expectations of the district's inhabitants. The Law was constantly calibrated in face of such expectations, either by considering them or by setting them aside. In fact, in June of 1755, after an exchange of letters with the Intendant João Rocha Dantas e Mendonça, the Marquis of Pombal asked the official to be especially careful not to apply excessive taxes on the population, which were only people who "had their work" ("*tem o seu trabalho*).[409] This recommendation was also generated by fear that local discontent could turn into revolts. Aware of the dangers that the discontent of the population in the Minas Gerais region could cause,[410] he could not completely

[404] In the same way, for example, it was discussed how the scarcity of wood could affect the production of stones. Memorias economicas da Academia real das sciencias de Lisboa, Volume 1, p. 204.

[405] Name that is given to gravel stone on the ground.

[406] TCP, Liv. 4099, f. 148. TCP Liv. 4089, f. 41.

[407] AHU, CX, 167, f. 55.

[408] TCP, Liv. 4088, 139; TCP, Liv 4088, 133; TT, RED, A001.

[409] TCP, Liv. 4088, f.171.

[410] The revolt of Vila Rica from 1720, perhaps not a distant memory to the agents of the crown, surely serves as example here. There, a group of influential men insufflated the population against the measures of the Governor. The revindications were to lower the taxes, to diminish judicial costs, and to abolish the monopolies and the *casas de fundição*. At first, dom Pedro Miguel de Almeida Portugal e Vasconcelos, the *Conde de Assumar*, yield to the demands of the crowd. But later executed some involved in the conspiracy and went reinstated the measures. The conde de Assumar would produce a text reflecting on the events of the revolt.

disregard the *modus vivendi* of the miners even when trying to foster the "utility" of mining.

When we observe the regiment of 1771 as a type of police ordinance, then we may improve our understanding on said regulation through the logic of its own time. In this way, it makes it easier for us not to fall into hasty judgments about its "effectiveness". Sure, this is a widely discussed topic within social history, oscillating between a narrative of despotic rule of the region and other of total ineffectiveness of the regiment in the face of the impossibility of controlling the diamond traffic.[411] However, I maintain that its relevance should be evaluated in relation to the normative expectations that it was able to mobilize on the part of the various historical agents. In this sense, even when the implementation of the new regime faced a series of obstacles,[412] it is undeniable that it mobilized disputes around a much more instrumental vision of Law.

[411]See *supra* chapter 2 and chapter 3.

[412] This even produces doubt in the opinions of the officials themselves about the proposed utility of the institution. In 1794, a report (*parecer*) of the Intendant Luis Beltrão de Gouveia de Almeida plans a reform of the Real Extraction basing itself in that "it is currently onerous to the Royal Treasury", although not due to the smuggling, but because there was too much expenditure with the "payment of labor and supplies to feed the slaves".

5. From "Justice" to "Utility": new meanings of law on the administration of the Diamond Demarcation

5.1 Paths of normative change: the increase of the legislative activity by the crown and the flexibilization on the use of the charters (*diplomas*)

To reflect on the transformation of Law in early modernity is also to reflect about the changes that society was experiencing. If, in *Ancien Régime*, Law played a central role in articulating and transcending a large part (or all) of social relations,[413] then, the intellectual constructions of the jurists are like "paintings" of the functioning of the societies of the time. They illustrate the logic with which the images of that world were constructed.[414]

The conceptual transformation of the crown into a pole of normative production during the second half of the eighteenth century is an example of this. During the first decades of the eighteenth century, the King as a "lawgiver" still took a secondary place, being commonly praised by his passive stance.[415] Since the Law was conceived as an expression of a natural and harmonic order, its alteration meant the subversion of this order as well. In this sense, the Law was *unavailable* for the King.[416] The role of the ruler was to enforce Law by dispensing justice. In fact, in the scholastic tradition, *Iustitia* was the main virtue of the Prince,[417] and the most important political power. By the influence

[413] Thus, for example, it was usual for legal disputes to arouse great interest on the part of the population, not being restricted to the "parties" involved in it. HESPANHA, 2012, p. 37.

[414] HESPANHA 2015, p. 2

[415] SEELAENDER, 2007, p. 96. When dealing with the author Diogo Guerreiro C. de Aboym (1663-1709), Seelaender notices this tendency in his quotes: for Aboym, the king was essentially a "benign star", who would dispense grace and justice, "dissipating the clouds of pleas". Also, because the "preexistent statutes" ("*leis preexistentes*") were "*santíssimas, puríssimas, justíssimas*", and "the purer the more ancient", as stated by the *Desembargador* Joao Pinto Ribeiro (+1649), the king should not innovate but preserve the given order.

[416] Among others, see HESPANHA, 2005.

[417].As António Manuel Hespanha points out, "There was an essential relation between *imperio* and *iurisdictio*", which "made that the acts of power, even the ones that were comprehended in the sphere of mere *imperio*, were subjected to the minimum requirements of *iustum iudicum*, namely, a previous hearing of the interested parties (*citatio* [*late suptma*]). And that was valid even in the center of the <<political>> matters." HESPANHA, HISPANIA, p. 139. On the other hand, according to the same author, during the 17th century in Portugal, even when what was at stake was public utility, the power did not cease to be limited by the jurisdictional nature of its prerrogatives, and the King was obliged to exercise them according to the typical manners of the judiciary order. This essential link between *iurisdictio* and *imperium* will only became controversial in the 17th century and their separation will be more radical in the context of Portuguese Enlightenment. HESPANHA, 2005, p.139.

of moral theology, this conception would be sustained until the end of the *Ancien Régime*.[418]

As the Portuguese empire expanded its knowledge of the colonial world, at the same time its ability to control overseas domains increased, the Law itself acquired new tonalities.[419] During the second half of the eighteenth century, the colonial administration, the problems it generated, and the wealth derived from it, played a fundamental role in the transformation of the monarch's function from a Judge-King to a Lawgiver-King, gradually more active.[420] Some legal historians highlighted the function that police ordinances had in this transition, and consequently for the transformation of the concept of Law itself.[421] In fact, since police ordinances were pragmatic orders with the goal to have a direct and immediate effect, they were a useful tool to (attempt to) transform the behavior patterns and the social order.[422] Beyond the effectivity of these attempts, the failure of them triggered some shifts in the concept of Law as well, at least in the case of the colonial administration. As Raeff remind us, the role of the "colonial experience" was fundamental to the innovation of the art of politics and consequently, it had normative implications as well.[423] Some documents from the *distrito diamantino* show how the need to adapt to the diverse circumstances of the colony led to "creative legal solutions", even more considering that diamond trade was fundamental for the crown's economy.

Examples of those we may encounter in the patterns and types of legislation. Certain charters (*diplomas*) gained greater relevance over others for solving problems, be it inland or overseas. This was the case of the *alvará*, a diploma of lesser hierarchy than *Cartas* or *Leis Régias*, which normally had a validity of one year, according to the Ord. Filipinas, II, XL.[424] Since in the Portuguese context there were no proper police ordinances until 1749 the so-called police norms appeared commonly as pragmatics

[418] Ibid.
[419] CARDIM and BALTAZAR, 2017.
[420] SEELAENDER, 2009, p. 95.
[421] SEELAENDER 2003; KOTKAS 2013.
[422] As we saw in the first chapter, this implied a transformation in the concept of *policey* as well. For more, see chapter 1, supra.
[423] RAEFF, 1986, p. 23. P. 30-32. Although Raeff concentrates on the jesuit experience of governance, it is still inticing that his intuition was not yet explored in depth.
[424] In formal terms, this type of diploma normally began with the expression "*Eu el-Rey*". CARDIM, 2017.

(*pragmáticas*).[425] As the legislative action of the king was reaching its climax during the second half of the 18th century, the *alvará* became the tool par excellence of legislative action on the polices matters in this period.[426] As Seelaender remind us, important innovations were made in matters relevant to the strengthening of the crown via *alvarás* and *alvará com força de lei*. Examples are changes in colonial policy, reforms of the Portuguese administration, new urban design for Lisbon, etc.[427]

For the region of the Diamond District, this shift towards the use of the *alvará* was also essential. In fact, during the first decade of the 18th century, the *Bandos* from the Governor of the captaincy were the prevailing form of regulation.[428] Starting from 1750, following the crown's efforts to centralize the control over the diamond extraction, the local matters began to increasingly be regulated by *alvarás*. In another words, the *bandos*, which were a decentralized way of regulation started to lose space to the *alvarás*, which were direct instruments of legislation from the crown. As the table below systematizes, between 1729 until 1739, five *bandos* were published by the governors of the Captaincy of Minas Gerais with the purpose of regulating the exploration of diamonds in the region. In turn, between 1752 and 1808, seven *alvarás* formed part of the body of legislation for said purpose.

Date	Tipe of diplom	Subject	Details
22.7.1729	Carta	D. Lourenço de Almeida, Governor of Minas Gerais, sent to the King D. Jõao V, the official	

[425] According with Seelaender, a diferencia das pragmaticas alemãs e francesas, no Portugal dos séculos XVII e XVIII estes diplomas tratavam sobretudo de matérias de polícia. SEELAENDER, 2003, p. 102.

[426] For an extensive analysis on this, see SEELAENDER, 2003; and for the core of these arguments see SEELAENDER, 2008, p. 102-105. the present paragraph and the next are heavily based in these findings.

[427] SEELAENDER, 2008, p. 105.

[428] As Curvelo explains: "As comunicações dirigidas pelos governadores ao coletivo da sociedade eram veiculadas por meio de bandos ou de editais. A principal diferença entre estes dois suportes comunicacionais reside na forma de publicação e no impacto político de cada um. Os bandos são proclamações públicas feitas em voz alta, acompanhadas do rufar de caixas, nos lugares mais frequentados das vilas, sendo, com isso, revestidas de certos elementos rituais, enquanto a divulgação dos editais consistia na mera afixação do papel manuscrito em lugares de visibilidade mais garantida como nas portas das igrejas ou das câmaras. O conteúdo dos bandos, assim como de alguns editais, está sempre associado ao cumprimento de uma determinação ou proibição e prescreve, necessariamente, penas aplicáveis em caso de descumprimento, variando desde multas em dinheiro, prisão, perda de bens móveis ou, em casos extremos, açoite, polé e degredo. Se os editais poderiam ser lançados por basicamente qualquer autoridade, a publicação dos bandos figura como mais restritiva, de modo que os governadores arrogavam a exclusividade de seu uso de forma frequente." CURVELO, 2022, p. 19.

		notification of the discovery of the diamonds in the region of Serro do Frio.	
2.12.1729	Portaria	Portaria of de D. Lourenço de Almeida, with the derogation of the *datas* to mining gold on the rivers of diamonds	"suspender toda a mineração do ouro nas terras diamantinas e anulando todas as cartas de datas expedidas pelo guarda-mor"
8.2.1730	Carta Régia	States the Crown's monopoly for the exploitation of diamonds and provides D. Lourenço de Almeida full powers to regulate and provide for such matter.	
11.06.1730	Carta	Carta by D. Lourenço de Almeida to the King D. Jõao V about the details of the rivers and places where the extraction will be happened, the taxes, measures of social control, etc.	
24.6.1730	Portaria	*Portaria* of D. Lourenço de Almeida that established the *capitação* (head tax) as tax for the exploration of diamonds.	
26.6.1730	Regimento	First Regiment to regulate the activity: "Regimento para desbravar as minas de diamantes inteiramente de 25 de junho de 1730"	Determined that the *ouvidor* of *the vilha do Príncipe* would be the superintendent of the diamond lands of the county: the register of the slaves on the book of the *Intendecia dos Diamantes*, and the rules and restriction to sale the lands and provision of *cartas de datas*
7.1.1732	Bando	This *bando* replaced the head-tax system on the rent of the *lavras*, for the payment of 60.000 *reis*	

		per *braça* of ten square palms per year. Also established the condition that the diamonds over 20 carats would be reserved for the Crown.	
9.1.1732	Bando	Ibid.	
2.12.1733	Bando	Established a head-tax of 40.000 *reis* per slave and reiterated the punishment against smugglers and "negas de tabuleiro"	
19.7.1734	Bando	Prohibition of mining on the territory of the Diamond District after its demarcation	"proibir toda a mineração no distrito antes demarcado, que nenhum dos habitantes de dito distrito possa ter batêa, almocrafe, alavanca ou qualquer outro instrumento"
24.12.1734	Portaria	Punishment against *garimpeiros* and *faiscadores*, instructions to Intendent of Diamonds Rafael Pires Pardinho about these matters	
6.1.1735	Bando	Regulation of the circulation of the stones after the prohibition of mining	
11.8.1752	Lei (?)	Trade and sale of diamonds	
11.9.1752	Alvará	Payment of the contracts	"Regulamentava a forma de pagamentos dos contratos reais de minas e, especificamente para a exploração de diamantes, como resultado do direcionamento que tomou a terceira arrematação, entre 1749 a 1752. Apresentava as desconfianças de como estava sendo feito o pagamento das dívidas

			dos moradores das Minas e, portanto, ordenava cumprir com os compromissos”
2.1753	Aviso		
15.7.1753	Aviso	To publish and observe the law of 11.8.1752 about trade and sale of diamonds	“Se determina que os ministros darão cara a S. Magestade de tudo o que obrarem nesta matéria pela secretaria de Estado do Sr. Sebastião José de Carvalho, a quem o dito Sr. encarregou de tudo o que for concernente a ao sobredito contracto, e comercio com copia dos dittos dos testemunhas, que continuem a culpa de cada hum dos trangressores da sobredita lei, sem que por isso suspendão as pronuncias, razões, elementos, a os que os deve obrigar com apellacão e agravo para a Relacão do Territorio, qualquer forem os crimes cometidos na forma da Ordenacao do Reino, que S. Magestade não alterou a respeito do modo de proceder nestes crimes, e somente reservou a protecão do comércio, e contrato do Diamantes, e a dar providencias que lhe parecem”
15.7.1753	Carta Régia		
11.9.1753	Alvará	Regulation about the trade of the stones	
28.7.1753	Alvará	Change of conditions of the contract of João Fernandes de Oliveira	
13.8.1760	Aviso	Gubernator and Intendent	“Para que o governador conde de Bobadela passe a clareza a intendencia dos diamantes da aquellas providencias, que ao seu acertado e judicioso arbitrio

			parecerem apportunos, e necessarias informando a S. Magestade”
16.8.1760	Aviso	Administration of the company of diamonds.	“Para que o governo das Minas deixe os trabalhando os administradores da companhia de diamantes, debaixo da lata recondução do seu contracto, enquanto não ouver Ordem que altere esta”.
25.6.1763	Aviso	Enforcement of the contract of diamonds	“Para o governador de Minas Gerais fazer observar as condicões di contrato dos diamantes pertencente a Jõao Fernandes de Oliveira, pai e filho, e dar aos dittos todo o auxilio, o favor que lhe for pedido por elle, em beneficio do referido contacto”
26.2.1765	Carta Régia	Budget of the contract of João Fernandes de Oliveira	“Se ordena ao governador de Minas, mande entregar anualmente nos procuradores de Jão Fernandes de Oliveira contratador dos diamantes para o costeamento do mesmo contracto, duzentos contos de rei pelo rendimento da provedora fazenda e quando não chegue este rendimento, que se entere a dita quantia pelos dos quinto passando os mesmos procuradores recibos, e letras, que se remeterão ao Real Erario.”
17.4.1766	Aviso	Vault of diamonds	“Para o governador de Minas em qualquer ocassião que for requerido pelo

			Administrador do Contracto dos diamantes, faza logo remeter para o Rio de Janeiro com as segurancas necessarias os cofres dos Diamantes, que o mesmo administrador levar para mandar."
12.7.1771	Alvará	Terminate the system of contracts	
2.8.1771	Alvará	New system of administration – Royal Extraction of Diamonds	
10.8.1772	Alvará	The *fiscal* of the Royal Extraction should be a graduated in law	

Table 3: Legislation about Diamond District between 1729 and 1808

The change does not stop there. The *alvarás* had at least two formal requirements of validity that began to be relativized to better suit their ends. One of them was the requirement that the proposal of charter should go through chancery inspections, and the second is the temporal limitation of validity for just one year. The relativization of these requirements was an important step to try to guarantee the solution of problems as quickly as possible, at a time when the dissemination of royal legislation depended on innumerable material circumstances.[429]

Some sources show how already during the 17th century, although not in a generalized way, some *alvarás* destined to regulate colonial spaces of great importance for the Portuguese Empire (e.g., in the case of Goa) had their duration extended beyond one year.[430] Notwithstanding that, it is after 1750 that we notice a multiplication of *alvarás* and the extension of their temporal validity. This is followed by a "growing disregard for formal criteria", like the textual inclusion of a warning that said charter did not pass through the chancery.[431] Beyond the practical effects of granting the Legislator-king the prerogative to decide and intervene directly over Law (without the interference of counselors or within a council) this measure also effected how the legal order was

[429] CARDIM and BALTAZAR, 2017.
[430] *Alvará* of 26 of March of 1631, *alvará* of 20 of January of 1646.
[431] SEELAENDER, 2007, p. 103.

conceived. In the Portuguese institutional architecture, the *Chanceler-mor* was considered to be the "guardian of the coherence of the legal order"[432]: by downplaying his function, little by little a trend is set towards redefining the normative chain, in which the sovereign gains preeminence.[433]

Both the *alvará* of 1753 and the *alvará* (also called regiment) of 1771 had temporal validity that far exceed a year. In addition to these changes, the regiment of 1771is accompanied by two important innovations: a) it systematizes previous norms in one sole *diploma*[434]; and, at the same time, b) after it, there is no further repetition of the rules regulated in said *alvará*, but rather (as we will see in the following lines) they stick to the guidelines on its interpretation contained in the normative text.

5.2 From "Justice" to "Utility": new meanings of law on the administration of the Diamond Demarcation

However, to only analyze the text of these norms while attempting to describe the potential changes that they were intended to entail, is still an insufficient historical exercise. The reason for that is that legislation of this period was hardly understood as an imperative command to be applied every time, regardless the situation or the involved. Even if the objective of the crown was to increase the collection of diamonds by guarantying the observance of orders from the kingdom and the application of the penalties, the measures should be applied "*com vagar e sossego*"[435] ("slowly and with

[432] S. PAIO, 1793, p. 75 e ss. For a similar reading of this and other sources, see SEELAENDER, 2003.

[433] Sirve de ejemplo aquí la separación que hace Melo Freire entre gobierno y justicia, vinculando el primero al arbitrio. En este sentido senhala que "*jus actiones suborditorum pro arbítrio dirigendis"* (MELO FREIRE, Inst. Civ. I, 1.2;

[434] The disposition XI of the *Regimento* states: "Mando que na conformidade do Capitulo II do Regimento do Governador D. Lourenço de Almeida, do Bando do outro Governador Gomes Freire de Andrade, publicado em: 26 de agosto de 1739 e das penas acima estabelecidas, fiquem proibidos em todos os arraiais diamantinos assim as negras de tabuleiro, como no Tijuco, as vendas por casas das negras e dos negros dentros das vendas e lojas ou a comprar ou a vender"; XXXII "Os caixas administradores pagarão pontualmente e sem demora a parte que tocar aos denunciantes ou às pessoas que fizeram as tomadias na forma determinada pela minha Lei de 11 de agosto de 1753 (...)".

[435] This "vagar e sossego" was also a way to understand the government and the funtion of sanction in the Ancien Régime, where the symbolic function of Law as a form of social harmonization had precedence over the effective appliance of a punishment (HESPANHA, 1984, p. 494). Besides, as already mentioned, the passive administration was the standard (HESPANHA, 2012b, p. 12.). All of this is perceptible in a letter by Alexandre de Gusmão sent in 1745 to Inácio da Costa Quintela, Desembargador and corregedor do Crime da Corte e Casa: "Sua Majestade me manda advertir a V. M. que as leis costumam ser feitas com muito vagar e sossego; e que nunca devem ser executadas com aceleração; e que nos casos crimes sempre ameaçam mais do que na realidade mandam, devendo os ministros executores delas modificá-las

ease"). In the logic of early modernity, "police" was still invariably intertwined with the notions of *prudentia*, *iustitia*, and *aequitas*. The regulations, measures and official correspondence of the royal authorities usually exhorted officials to act "according to equity",[436] and to "be just"[437] and "particularly careful",[438].

This paradigm of "justice" in the interpretation of law will never be completely surpassed in this period. What is remarkable in the passage to the second half of 18th century, though, is that this paradigm of "justice" starts to appear overlapped with that of "utility" in the normative communication.

The values of justice and equity are not completely abandoned, they are presented either in a tension or in harmony with those of "utility". But it is clear that the paradigm of "utility" subverts the logic of legal interpretation: the ends acquire more relevance than tradition or custom, and legislation starts to be regarded more and more as an *imposing command of a rational authority striving for common wellbeing*. The compliance to the norm becomes necessary for the achievement of the imagined ends and a generically conceived "Common wellbeing". In this sense, the norm should not merely be applied whenever it maintains the balance of equity and justice, avoiding breaks in the preexisting order, rather it should be always enforced regardless of said order.

This shift is perceivable in the exchange of official letters between the diamond district and the Portuguese empire. At first, the focus of these letters was entirely on "justice". The communication based itself in this concept, while at the same time maintaining values of honor and of the ceremonial structure very vividly. But after 1750 and especially after the establishment of the Royal Extraction in 1771, the communication starts to revolve more and more around the concept of "utility". The agents also start incorporating notions of specialized "polices" and cameralistic ideas in their discourses.

In this shift, three movements are noticeable. First, the growth in the number of letters and the influx of communication from both sides, from Crown to local authorities

em tudo o que lhes for possível, principalmente com os réus que não tiverem partes, porque o Legislador é mais empenhado na conservação dos vassalos do que nos castigos da Justiça; e não quer que os ministros procurem achar nas leis mais rigor do que elas impõem, como V. M. costuma praticar".

[436]Regimento ou instrução que trouxe Martinho de Mendonça e Pina e de Proença. Códice Costa Matoso, p. 297.

[437]Ibidem.

[438]Portaria de 8 de Novembro de 1734. ANTT, (Col.) Manuscritos do Brasil, I. 32.

and vice versa. For perspective, the letters increased in more than two times when comparing with the previous period.

The second movement is that this increase of quantity was followed by a change of information contained in the letters, a change in the interests in matters or themes of regulation. The main subject of the letters was not a detailed description of the daily life in the district anymore, they started to focus their attention on the problems that needed to be solved – in this case, "police" was the main tool for solving them. The matters ranged from Orphans, Smuggling, Prizes in the market, the Supply of food to the region, slavery and vagrancy regulation, and so on. The localization of the law is much easier perceived by focusing on the local circumstances described by the letters.

The application of the regiment's rules about countability and food supply was mediated by the exchange of letters. For example, in an epistolary exchange between the intendent and the president of the Junta da *Real Extracão* in Lisbon, it was instructed to the local authorities to consider the influence of the weather in the food stockage by the merchants. The Crown advised local authorities to not buy food at a higher price, waiting it to be devaluated due to the impossibility of stocking them under a hot weather.

The third movement is that more and more these letters are discussing how to apply the Law and how the Law should be understood. This last movement could be described as an increase of normative content in the official communication.

At this point, the first period may be illustrated by two documents. The first one is the regiment or instruction brought by Martinho de Mendonça de Pina e Proença, dated October 30, 1733, redacted by Alexandre de Gusmão. It stated that the officer should inform the Governor of "the different judgments and opinions that have taken place regarding the collection of fifths" and "on the means of preserving the reputation of diamonds", so that the best way to use the Royal Treasury to "facilitate the collection" of taxes could be chosen. However, it was emphasized that this decision should be "fair and in accordance with the rules of equity" and the one that caused the "least possible vexation".

The second document is the *Portaria* of November 8, 1734. According to it, "being convenient to the service of His Majesty that in the diamond district of the comarca of Serro do Frio all occasions of fraud be avoided", the entrance "of people and slaves" in the district "after the discovery of diamonds" should be prevented. But, once again, the

normative text remarks that the *Desembargador Intendente* Rafael Pires Pardinho should be "particularly careful in proceeding against blacks from any other district and their lords with the penalties of my *Bando*". Pires Pardinho was also requested to send a report of all the *lavras* to determine which ones could continue with their old permission.

In controlling the activity of the contractors, the distinction between fair/unfair was not subject to strict compliance with the clauses stablished in the contracts. Justice and equity limited the excessive burden (potentially seen as despotism) that could fall upon the subjects stemming from the strict observance of the clauses.

With the letters from 1771 onwards, the situation changes. Labels that came from tradition, such as "justice", were then refunctionalized. The official letter issued in April 1787 by the Auditor of Diamonds, Luis Beltran de Gouveia e Almeida, in April 1787, to the Secretary of State for the Navy and Overseas' Dominions, Martinho de Melo e Castro portrays this:

> When laws lose their force and ordinary remedies lose their force, there is no other recourse more than representation to the supreme legislator who can enforce the transgressed law or save the obligation of the one in charge to promote its execution; this is the object of this official letter aimed solely at knowing but by charging the enormous and useless expense that this administration is making by the inconsiderate term that I granted with the mining, the royal farm had been emptied by despotism or the fear that their leadership is in charge of, they do not dare to confront a power armed. In my official letter, Your Excellency is aware of the disorders practiced in the demarcation of the Serra de S. Antonio de Itacambira Sul either due to the laxity or bad faith of any of the employees in those diamond services; as well as by the hidden intelligence of the Military Troop deployed in that place, as of strays and smugglers as far as the former are concerned, as the remedy depended of myself in the expulsion of some and in the charge of others I cut short the evil as much as possible: by effect of my zeal I have The satisfaction in showing that certificate at which your Excellence will see what having been the yield of the previous three months of 73 octaves of diamonds in the immediate following my reform the 106 with which it is well proven the damage that the royal farm suffered for some years in which mining will continue in that state: with regard to the military corps that is not embarrassment with §27 of the regiment of August 1771 has not changed the system in which it was when I visited those services It is what already per via in prevalence in your Excellence at the referred. I thus also will resume any execution of §11, 12, 18 and 23 because the overseers I dismissed; you striking or dealers or comboyeiros, to the black in board It is women yet there find help It is Front desk.
>
> Of all that I name in the presence of Your Excellency, I will be determined whichever is more useful than according to Royal Service.

For another example, in a dialogue between José Antonio de Meireles Freire, then serving as Intendant, and D. Pedro José de Noronha Camões de Albuquerque Moniz e Sousa, the then *Marquês de Angeja*, the Intendant questioned about the interpretation of the nineth paragraph of the regiment. This paragraph concerned how to proceed with "slaves" that were possibly involved in the traffic of diamonds within the demarcation. The intendant was unsure on how to deal with those that were caught outside the demarcation. The marquis answered that indeed the rule was only applicable to those who were found inside the demarcation, but that it was possible to punish them if they were caught with diamonds or mining.

> Em quanto á duvida que entrou o dito Intendente, se a disposição do parágrafo 9 do dito Regimento se deve entender com aquelles, que fora da demarcação das referidas Terras porem encontrados somente com instrumentos de mineração: Como aquella disposição se limita aos Escravos, que forem achados com estes instrumentos dentro da dita demarcação e fora dela há outro ministério para que podem servir; só devem ser punidos os que se acharem ou com Diamantes ou no acto de mineração deles em qualquer lugar, ou ainda com os ditos instrumentos naquele em que serão permitir aos particulares fazerem alguma Lavra ou serviço.[439]

But not only specific dispositions were discussed. The letters were not only means to demand enforcement of the regiment or to question about how to apply it specifically. They were the *media* through which these interactions shaped a network of normativity, which in its turn acted to communicate the self-description of the law and its functions. For example, in the same letter we can observe the shift from a jurisdictional paradigm of Law, more centered in equity, to other that aims to prevent violations of the norm by applying the Law in an abstract way: "that the greatest diligence and care must be taken in repressing the smugglers who infest the Diamantina Lands, as determined by the Regulation of August 2, 1771, since prompt punishment is the means of curbing crimes".[440]

When it came to a fundamental economic resource for the Portuguese empire, and when the contingency of local affairs seemed too fast and much to handle, a departure from the paths of the traditional justice was fundamental. Resolving these matters

[439] TCP, Liv 4088, f 171.

[440] In the original: "*que deve ter a mayor aplicação e cuidado em reprimir os contrabandistas que infestão as Terras Diamantina, como determinado o Regimento de 2 de agosto de 1771, por ser o prompto castigo o meyo de cohibir os delictos*". TCP, Liv. 4089, f. 66

"judicially" only left the interests of the crown adrift, and potentially lost, among the traditional tricks of rhetoric that jurists practiced when deciding.[441]

This bypass of contentious jurisdiction was conceived not only with the creation of a parallel jurisdiction of the intendency, and its supportive institutional structure, but also through strict prohibitions of interpretation of the new laws concerning police matters.[442] Dispositions prohibiting legal interpretation are present at the *alvará* of 1760 that created the *Intendência Geral de Polícia* in Lisbon. But directly interesting to the present research, is the presence of the same disposition in the last paragraph of the regiment of 1771. There, it was demanded that the regiment should be "executed literally, and in the exact form in which it is written, without interpretation or intelligence of any kind". The reasoning presented for that is that, whenever necessary, the interpretation and understanding of the Laws of the king should fall upon himself, and no one else. The disposition also highlights how the prohibition is directed to every person, of any status and "dignity", whichever that be; and prescribes sanctions for those who disobey it – such as losing their office titles, payment for losses and damages following the violation, nullification of all acts caused by said violation, and the suspension of magistrates involved.[443]

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[441] "E como huma Administração tao laborioza e de tão importantes consequencias e implicancias necessariamente hao de occorrer novos acontecimentos cujo remedio não esteja totalmente prevenido, esperamos que VM de acordo com o Administrador Geral fazao toda a necessaria dispozição como entenderem ser mais justo ao Serviço do Rey e do publico, obrando em algum acontecimento como o pedir a razao ate que deca va(?) a approvação ou a reprovação necessaria sendo alias certo que nesta qualidade de governo há muitas occazioens em que he precizo deliberar neste sistema fugindo algumas vezes das ambages judiciais e dos Termos forences, que servem de sucitar questoes e animar o terror panico para não buscar a verdade sabida num deliberar sobre ella como he da mente do rey e do ministerio." PT-TT-RED-A-001_m0013.TIF

[442] "LIV. *Tudo o que tenho ordenado por este Regimento será executado literal, e exatamente na mesma forma, em que fica escrito, sem interpretação, ou inteligência alguma, qualquer que ella seja. Porque nos casos, em que venhão a parecer necessarias, se deve recorrer a Mim, a quem só toca entender, e interpretar as Minhas Leis: Proibindo a todas as Pessoas, ainda de qualquer gráo, e dignidade, por maior que seja, que as entendão, ou interpretem, debaixo das penas de privação dos seus cargos; de pagarem pelos seus bens os damnos, que desta causa se seguirem; de nullidade de tudo o que pelas suas ordens se obrar; e de suspensão de todos os Magistrados, que cumprirem ordens contrarias ao que assima deixo determinado*." (Regimento 1771).

[443] It would be wrong to think of this provision as a total prohibition on interpretation, not only because total control over this activity would be materially impossible, but also because during early modernity interpretive activity was deeply linked to the legitimization of the crown itself, be it in a first moment indirectly through the delegation of the power to judge, or in a second moment as a way of ensuring one's own sovereignty (STOLLEIS, 2011). Considering the latter, the question that gains relevance is: what type of interpretation is the one that seeks to control? In the context of the Portuguese Enlightenment, the idea that prevailed was that the traditional structure of *ius commune* became an impediment to the proper functioning of the State (BRAVO LIRA, 2010 p.77). Therefore, restricting jurisdictional hermeneutics was

In the same direction, an *alvará* from 1772 quickly adjusted one detail from the institutional structure of the Royal Extraction: it created the requirement of possessing a degree in law for all those appointed to the office of *fiscal*. The intention was clearly to increase control over the choice of personnel in charge of the administration of the district. The students of law could be sent directly to the district after finishing the course and their classes of *direito pátrio,* and there in Brazil stay under the guidance of the intendant. This also created possibilities of a quasi-professional career: some *fiscais* became intendants in the next step of their professional path.[444] Aside from this example, there was even an attempt to expel all the *letrados* of the district.

The process that is being observed here is only clearly noticeable in the long duration and can be described as one of legal change. But the legal innovation does not arise from great leaps or ruptures, rather it is an innovation that is gradually woven through the continuous communication between different agents. [445]

Even though the implementation of the new form of administration faced a series of obstacles, it is undeniable that it mobilized disputes around the concept of Law. Moreover, at the beginning of the nineteenth century, the jurisdiction of the Intendent was extended outside the boundaries of the district, and with it the instrumentalized vision of Law expanded.

essential. In this sense, the application of *direito pátrio* could only be guaranteed by removing the possibility of these matters being decided by the more traditional offices, because the "*vereadores e almottacés regularmente são homens rústicos, sem ideias alguma, nem conhecimento de que é policia e economia da cidade*". REIS, p. 354.

[444] Nombrar intendentes.

[445] Although from another perspective, Koselleck draws attention to the impacts and relationship between linguistic changes and social changes. They may or may not converge in the same temporal register, i.e., one may precede the other. For Koselleck, however, it is undeniable that when changing the "way of speaking" one changes *eo ipso* also the behavior itself, and, with it, the interpersonal communicational space. KOSELLECK, 2020, p. 309. In this sense, when the ways of talking about the Law change, then Law itself and the normative expectations of the various agents change as well.

Final Remarks

This thesis had the purpose to analyze the implementation of the Royal Extraction in the diamond district from the perspective of legal history. This means to explore the normative framework and background that gave form to this institution and its written regulation, as well as looking at the functioning of it and its consequences from the legal perspective.

The first proposition was that this institution and regulation could be seen as police regulation, and this would permit gains in explanation. This seems to have been confirmed: many methodological remarks from the German studies proved to be useful for the analysis of our particular case of the regiment of 1771 and the royal legislation regarding the diamond district in general. Not only the content of said legislation matches the preferred and recurrent topics touched by police regulation, but its form follows the same patterns. For example, the repetition of norms; the disregard for privileges; the attempts to contour contentious jurisdiction; etc. But mainly it was the possibility to read this source as a construction of communication which most seems to be fruitful.

When we perceive that these norms were not envisioned to be commands from top-down, not even from the side of the crown that enacted them, then it is most possible to see what agents are involved in the normative production and the social impact of said norms.

These norms were the product of an active dialogue between the many *pouvoir intermédiaire* that composed the society of the *Ancien Régime*. And this was not different for the colonies. The royal authorities were in intense communication with the colonies, and they enacted laws in accordance with the information that received. Also, there was an effort to conform the regulation with the normative expectations of the addressees, especially when it came to “miners”.

Second, it is relevant to take into account that the problems of the colony were propelling normative changes. The complexity of the unfamiliar problems (like the weather, the fauna, the *sertão*, etc.) and the diversity of the population, with its array of normative expectations, posed obstacles that the crown thought not likely to be surpassed using the traditional legal forms. But the rupture with tradition did not come at once: what happened was the overlapping of old and new, in which the latter aspect started to gradually gain ground with time.

Third, it was not so much a great increase in their application that made these statutes matter for posterity, but rather the fact that they modulated Law by establishing firmer rules of interpretation and that they carried with them different understandings on Law. Their symbolic effect was not to be disregarded, and the fact that the population of the district burned the book of the regiment during a revolt is evidence that they perceived it as a profound infringement of the natural order of things. The capability of effectivity of Law in this context must not be measured according to enforceability or coercibility of Law, but rather according to its capability of mobilizing normative expectations and to build a web of normativity around it.

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