Qua Patet Orbis

Roman Dutch Law in Dutch Brazil (1630–1654)

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1. Introduction

“As far as the world extends” was the motto of Johan Maurits van Nassau-Siegen. It was an appropriate maxim for the German Renaissance Count who was not only the Governor General of Dutch Brazil but also governed Cleves on behalf of the Elector of Brandenburg and built the Mauritshuis, his magnificent residence in The Hague.¹ “As far as the world extends” also applies to the influence of the Roman Dutch Law that today is still of relevance for the legal systems of for instance South Africa, Sri Lanka and Guyana.² All these territories were, for some time, ruled by Dutch trading companies that turned to the Roman Dutch Law as a source of law for the administration of justice. As both an author and supervisor, Eltjo Schrage has paid due attention to the legal systems in these countries.³

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1 Johan Maurits' motto was also the title of an important exhibition held in 1979 and 1980, commemorating the 300th anniversary of his death in the Mauritshuis. See E. van den Boogaart and F.J. Duparc (eds.), Zo wijl de wereld strekt: tentoonstelling naar aanleiding van de 300ste sterfdag van Johan Maurits van Nassau-Siegen op 20 december 1979: Koninklijk Kabinet van Schilderijen Mauritshuis, Den Haag, 21 december 1979 - 1 maart 1980, Den Haag 1979.


In our contribution to this Liber Amicorum we shall bring together the motto of Johan Maurits and the Roman Dutch Law by giving a brief outline of the law in Dutch Brazil or New Holland, as the colony was named. As yet, this subject has only been dealt with sketchily. There is no comprehensive survey, though Brazil was the first and most extensive colony of the Dutch West India Company (WIC) and the only territory of the WIC with an elaborate judicial organisation. During the existence of the Dutch West India company, there was no other colonial possession with more academically trained lawyers. What is more, the highly-praised tolerance of Johan Maurits suggests that the co-existence of different legal systems in the colony was an important issue. In this article both the legal organisation of the colony and the existing law will be outlined on the basis of the most important charters, rules and regulations. As the authors of this essay are lawyers and procurators, special attention will be paid to several guidelines for these professions.

2. The Charter of the WIC (1621)

The colony in the Northeast of Brazil existed from 1630 to 1654, however, it flourished mainly between 1634 and 1645. The other periods were dominated by conflicts with the Portuguese who controlled the territory before and after the Dutch occupation.

The WIC was responsible for the colonial government. Founded in 1621, this trading company was granted a Charter by the States General on 3 June, 1621, including administrative and political tasks. It had, for instance, the authority to enter into agreements and alliances with foreign sovereigns and, according to the second Article of the Charter, had the right to appoint governors, soldiers and judicial authorities. The Company is allowed to employ personnel for all other tasks necessary to protect the occupied places, to maintain public order, police, and justice, in order to promote free trade. The personnel can be employed, transferred or dismissed, if deemed necessary by the Company. Furthermore, the Company has the right to

found settlements in fertile and uninhabited territories and to do everything that serves national interests, and is necessary in order to gain profits and to promote trade.7

A sound legal system was thus considered vital in order to promote trade. The Charter does not contain any regulations as to how the legal system had to be established. As a matter of fact, the Charter primarily determined the organisation of the Company in the Dutch Republic. It established the rights and duties of the different officials and the regional departments or chambers of the Company, as well as the composition of the central executive board, referred to as Heren XIX.

Although the Charter of the WIC explicitly aimed at founding settlements in uninhabited territories, during the first few years of its existence the Company was chiefly an instrument in the war with Spain. The prosperous Portuguese sugarcane plantations in the Northeast of Brazil that had already been engaged in a flourishing contraband trade, became a particularly attractive object of desire. As Portugal had been annexed by the Spaniards in 1580, the Dutch hoped for sufficient resentment against this occupation in order to make the Portuguese their allies. The first success of the WIC consisted in the conquest of São Salvador da Bahia de Todos os Santos, or simply Bahia or Salvador, in 1624. In the following year, the city was re-taken by the Spaniards. As a result of Piet Heyn’s seizure of a Spanish treasure fleet in 1628, the WIC had sufficient funds at its disposal to try once again to gain a foothold in Brazil.

3. The Order of Government (1629)

Before the colony was actually established, in 1629, the States General confirmed the Order of Government drawn up by the Heren XIX. The Order regulated the organization of the government and the administration of justice.8 A board consisting of nine councillors appointed by the different chambers of the WIC governed the colony. An assessor was assigned to the board who also had to act as a notary. The Council’s first task mentioned was to appoint ministers who were to hold church services according to the rules of the Dutch Reformed Church. At the same time, the non-Protestants were granted a certain degree of religious freedom:


The Spaniards, Portuguese and the Indians, whether Catholic or Jewish, shall keep their present freedom. They are granted liberty of conscience and may hold religious services in their own houses. Nobody may stop them and whoever bothers them in any way, or interrupts their services shall be sentenced by the judge. If necessary, his sentence shall be severe in order to set a daunting example. (Art. X)

Consequently, religious services in buildings distinguishable as places of worship were not permitted.9 Catholic priests were allowed to stay in the colony, however, monasteries or religious colleges were not permitted. Their possessions were confiscated (Art. XII and XVI). Jesuits were denied access to the colony. If they were discovered none the less, they had to be arrested and taken to the Netherlands (Art. XI).

The councillors’ main task was to maintain public order and harmony amongst the inhabitants of the colony. Special attention had to be paid to the safety of the “Spaniards, Portuguese and natives of the country”. The councillors were to punish those who attacked these groups “severely, applying corporal punishment to set an example, as to the merits of the case”. However, this protection only applied to people siding with the Company. The King of Spain and those who remained loyal to him lost their possessions and were excluded from succession.

Following a great number of practical regulations concerning the government, Articles XLVIII to LII contain provisions demarcating the jurisdictions of the civil justice and the courts-martial respectively. The department of public prosecution consisted of a judge advocate and a bailiff who could act as his substitute. The administration of justice was entrusted to the Council (Art. LI and LIII). The law of criminal procedure was based on the “legal customs of the United Provinces and the Ius Commune” (Art. LV). The legal customs referred to two different ordinances of Filips II, dated 5 and 9 July, 1570, with which he had attempted to unify the law of criminal procedure in the Netherlands. If these ordinances did not provide a definite answer, the Ius Commune had to be consulted.

The Order paid more attention to private law. At first, the law of civil procedure was regulated. Three members of the Council, taking turns every three months, were in charge of the administration of justice. The guideline for civil procedures was “the common Order of the United Provinces”.10 The councillors had to keep the procedures as short as the nature of the case and the interests of the parties allowed for. In matters involving an interest exceeding 25 guilders, verdicts as well as interlocutory injunctions could be

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9 This stipulation was taken from the “Concept of Regieringe” for Bahia laid down by the States General on 1 November, 1624. G.J. van Grol, De grondpolitiek in het West-Indische domein der Generaliteit, vol. II, Den Haag 1942, p. 22 and 23.
10 “Ordonnantie van de Justitie binnen den steden ende ten platten lande in Holland, 1 april 1580”, in: Cau (supra n. 8), vol. II, cols. 695–703; Schiltkamp (supra n. 8), p. 76.
appealed. The instance of appeal was the entire Council. Its verdict, *an bene*, *vel male*, could not be appealed (Art. LVI and LVII). The judges had to be impartial and had to swear the oath

to judge honestly in criminal and civil matters; not to be affected by hatred, sympathy, and disputes; to ignore rank and be impartial; not to distinguish between Spaniards, Portuguese and the other inhabitants, nor between the Dutch and other people. (Art. LVIII)

The provision of Article LIX read that the marriage law and the law of succession was based on the “Order of the States of Holland of 1582”\(^\text{11}\), complemented with “the general customs of South-Holland and Zeeland”. This implied, among other things, that Catholics had to marry before the magistrates (*schepenen*) before they were allowed to marry in church. The reference to the customs of South Holland\(^\text{12}\) and Zeeland was particularly significant with respect to the law of succession. In these areas the *schependomsrecht* prevailed, implying that if a person died intestate and without successors, his properties were left to his relatives: “the properties return to the line whence they came”. In North Holland the *aasdomsrecht* was in force, meaning “the next in blood inherits the properties”.\(^\text{13}\)

Article LX stipulated that a register of all transfers of real estate had to be kept, whereas Article LXI stated that with regard to the law of obligations the “general written law” had to be followed. By this, the *Ius Commune* was once more a significant source of law.

The Council could provide complementary law, as it had the authority to issue “various statutes and by-laws concerning markets, trades, and the keeping of inns, necessary for the upkeep of law and order”. This authority was restricted to violations not exceeding a fine of 10 guilders and the statutes had to be approved of subsequently by the *Heren XIX* (Art. LXII).

In 1630, the WIC succeeded in gaining a foothold in Brazil. Recife and Olinda, a nearby town, were captured. At first, the Company did not manage to lay their hands on the valuable sugarcane plantations in the hinterland. Not until 1634 did they break through the Portuguese encirclement. Thereafter a truce was reached and the colony began to flourish.

Johan Maurits van Nassau who arrived in 1637 as Governor General of Dutch Brazil, became the symbol for the palmy days of Dutch Brazil. Under his rule, Recife, which used to be no more than a village, became a fortified seaport with a classic grid-iron ground plan. The rise of Recife was at the

\(^{11}\) This decree dates from 1580, not from 1582. “Politique Ordonnantie van de Heeren Staten van Holland, geemaneert in den Jare 1582”, in: Cau (*supra* n. 8), vol. III, col. 502; Schiltkamp (*supra* n. 8), p. 76.

\(^{12}\) The territory south of the Hollandse IJssel.

\(^{13}\) Schiltkamp (*supra* n. 8), p. 76–78. S. Perrick, *Mr. C. Asser’s handleiding tot de beoefening van het Nederlands burgerlijk recht*, vol. 4* Erfrecht en schenking*, Deventer 2009, nrs. 39 and 44.
expense of the Portuguese town Olinda that was largely demolished and provided building material for the new houses. On the nearby island of Antonio Vaz, Johan Maurits founded the new town Mauritsstad.\textsuperscript{11} The count built two palaces for himself, \textit{Huis Vrijburgh} and the countryhouse \textit{Slot Schoonzicht} (Boa Vista). He surrounded himself with an entourage of scholars and artists. The paintings of Frans Post and Albert Eckhout remain as a lasting memorial to the humanist ruler.\textsuperscript{15}

4. Instruction (1636)

The appointment of Johan Maurits as Governor General changed the governmental organisation of the colony drastically. Therefore, the States General set up a new instruction for the administrators of Brazil on 23 August, 1636.\textsuperscript{16} In this instruction the experience gathered in previous years is assimilated. As a result, the instruction is a lot more detailed than the Order of 1629.

Three Supreme and Privy Councillors were appointed in addition to the Governor General. Together they constituted the supreme governing body of the colony (Art. i). It controlled the Political Council consisting of nine members, who were appointed by the different chambers of the WIC according to provisions of the Order of 1629 (Art. XXIII). The Political Council obtained the key position in the judicial procedure. Five members had to stay in the capital to take care of the daily legal routines, whereas the other four were stationed at different posts. They had to change places on an annual basis (Art. XXVII).

In the \textit{capitanias} and towns boards for criminal cases had to be established, each board consisting of at least five members appointed by the political councillors (Art. XLII). Civil cases in towns and market places also had to be dealt with by a board consisting of at least five members (Art. XLVIII). In this manner, the administration of justice by the supreme governmental board was delegated to the local magistrates’ courts.

The appointment of the magistrates was rather time-consuming. The political councillors chose an electoral college from “the most qualified, most honest and most loyal inhabitants, both Dutch and Portuguese, either


\textsuperscript{16} “Instructie, vande Ho: Mo: Heeren Staten Generael deser Vereenighde Nederlanen, voor de hooge ende lage Regieringe der Geoctroyeerde West-Indische Compagnie, naer de welcke voorts aen beleyt ene gederigeert sullen worden, alle het bewint ende saecken, met den aenkleven van dien, vervallende, ende noch voor te vallen inde geconquesteerde Capitanien, Steden, Forten ende Plaetsen in Brazijl, ende die noch naemaels geconquesteer sullen worden”, in: Cau (\textit{supra} n. 8), vol. II, cols. 1247–1264.
servants of the Company or not”. It consisted of 20 to 30 members who kept their posts for life. The college can be compared to the town councils in the towns of the Dutch Republic. Every year, the electoral college recommended three times the number of magistrates needed. From this list the Governor General and the privy councillors chose the magistrates. Jews, an important minority in the colony, were not mentioned explicitly in the Article and it turned out they were not desired members of the election board. When one was appointed as member of the election board in Olinda, an objection was lodged and he retired immediately.\(^{17}\)

A judgment of a magistrates’ court could be appealed in the Political Council, seated in Recife. Since Recife had no magistrates’ court, the Political Council was also the court of first instance in the town, much to the displeasure of the magistrates’ court in Olinda that considered this a violation of its jurisdiction. However, its protest before the Supreme and Privy Council was not successful. The Political Council was indeed no longer permitted to act as court of first instance for the inhabitants, but due to the establishment of a magistrates’ court in Recife, the town remained outside the jurisdiction of Olinda. The situation of the magistrates in Olinda even changed for the worse. Due to the depopulation of the town, the magistrates’ court was moved to Antonio Vaz in 1639, to the building of the Supreme and Privy Council. At the same time, the Portuguese domination in the magistrates’ court was brought to an end, when the total number of magistrates was increased from 5 to 9. The number of Portuguese magistrates was merely increased from 3 to 4, whereas the number of the Dutch was increased from 2 to 5.\(^{18}\)

The already limited religious freedom permitted by the Order was further restricted. Catholic priests and friars were allowed to stay in the colony only if that was specified in an existing agreement (Art. XXIII). The prohibition to disturb private Catholic and Jewish services was balanced by the condition that

the Catholics and the Jews had to refrain from public scandals and from dishonouring the holy name of the Lord our Saviour. (Art. XXXII)

On the other hand, it was confirmed that the properties and the revenue of monasteries and religious colleges would not be confiscated if they “had submitted themselves to the authority of the States General and the Company or by contract and consent had agreed upon otherwise” (Art. LXXVIII).

\(^{17}\) Gonsalves de Mello (supra n. 6), p. 256–257. Gonsalves de Mello wrongly identifies “electors” as candidates for the post of magistrate, yet, the term means “members of the election board”.

\(^{18}\) Gonsalves de Mello (supra n. 6), p. 59–60 and 110–112 note 105.
The provision of Article III stipulated that the Instruction had to be the new law of Brazil, yet it also left some space for the rules and regulations already existing in the colony unless they clearly contradict this ordinance. In this case the ordinance has to be followed.

After all, the Order of 1629 had granted the Political Council the authority to issue by-laws and ordinances. Portuguese law was basically excluded as a source of law. However, local customs and practices could eventually become statutory law, subsequent to the approval of the Heren XIX:

If the Portuguese living under the rule of the States General and the WIC wish to confirm their own customs and practices, they have to notify the Heren XIX and ask for their approval. (Art. LVI)

The situation of the slaves was regulated by two different articles called, tellingly, “Of negroes or slaves”.

The negroes and slaves have to be treated well by their masters. They have to be sent to the church services on time and may not be burdened by work on days of rest. (Art. LXXXV)
All the laws and constitutions laid down in the Ius Commune regarding slaves and the unfree will apply to them, as well as the decrees the Heren XIX will specify and issue. (Art. LXXXVI)

Apart from the fact that negroes are put on a par with slaves, it is noticeable, that the first provision is that they have to be treated well. In the Instruction this is mainly specified as care for their religious welfare. The requirement of good care was in keeping with the norm applied by the Dutch Reformed Church in Brazil. Cruel behaviour of slave owners was not tolerated. In 1635, the minister Osterdag and the mayor of Paraíba, Jacques van der Neusen, filed a complaint at the local church board. A certain Captain Day had impregnated the captured black slave Francisca shortly after the conquest of Olinda. Six months after the rape he put her on board of a ship “against her will”. Francisca hid, however, later she suggested to leave for the island of Fernando de Noronha. It was all the same to the captain: “You may go to hell if you want to. And do not tell that I am the father of the child.” Francisca gave birth to a daughter in the military hospital of Fernando de Noronha and gave her the African name Elunam. This girl was baptized as a toddler in 1632, the first negro child to be baptized in the colony.19

19 H.C. van Nederveen Meerkerk, Indian tales. Relationship between Indians and the Dutch in
The *Ius Commune* was named as a source of law for the legal status of the slaves, as medieval customary law did not include regulations with respect to slavery, although it did contain regulations on certain types of restricted freedom, for example serfdom. The *Ius Romanum* did treat the subject of slavery, notwithstanding Florentinus’ proposition that men are free by nature, to be found in the *Pandects*.\(^20\)

What kinds of punishment the owners were permitted to inflict on slaves and what kinds of punishment were reserved to the government was specified by regulations. Private persons were permitted to inflict corporal punishment, they were entitled to chain and to confine slaves, however, branding and mutilating slaves, as well as death sentences were reserved for the magistrates.\(^21\) These regulations did not differ much from those of the Cape Colony, where slaves were granted specific rights based on the stipulations of the *Corpus Iuris Civilis*. In case of serious violations, slaves had to be handed over to the magistrate who had to take care of the appropriate punishment. If this decree was violated by the owner, he could not only lose the ownership of the slave but also be punished for maltreatment. Officially, the owner could even receive a death sentence, in practice this sanction was never imposed. Slaves also had the right to file complaints against their masters and they could give evidence in court.\(^22\)

The Amerindians, “the Brazilians and the natives of the country”, could not be turned into slaves (Art. LXXXVII). They became the object of vigorous assimilation politics, involving the conversion to Christianity as well as the adoption of Western culture (“civile conversatien”). Education and the attendance of church services were important instruments of this policy (Art. lxxxviii). Moreover, the Indians of Brazil had to be “cured” of their “Barbaric manners” and encouraged “to cultivate the soil and to exercise other professions according to their capacities” (Art. LXXXIX).\(^23\)

The Roman Dutch Law was not part of these assimilation politics: The Indians “[…] will be governed according to their own laws apart from the other inhabitants, not only in administrative but also in civil matters” (Art.

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In practice, the Indian villages (aldeias) received an administrative system along the lines of that of the other inhabitants of the colony. Next to the Indian chiefs, the WIC appointed European captains, mostly low-ranking Dutch soldiers. They were liaison officers and had to provide sufficient Indian auxiliary troops and, at times, workers for the plantations. Prior to appointing the captains, the post of “Commander of the Brazilians” was created in 1635. He had to carry out the policy of the Company with respect to the Tupí people, the most prominent allies of the WIC. Later on, the Commander of the Brazilians also had the command over the captains.\(^{24}\)

In 1644, a delegation of the Tupí people managed to obtain the consent of the Heren XIX to appoint their own judges and officials, in addition to the magistrates’ courts, as long as they remained loyal allies and followed the existing rules and ordinances. The attempt of Tupí leader Paraupaba to be recognized as king of the Tupí people was quickly frustrated. However, the establishment of Indian magistrates’ courts continued, with Paraupaba being one of their leaders. The procedure of appointment was similar to the one of the other magistrates’ courts. The Supreme Council elected the magistrates from a group nominated by the Tupí. Apart from the magistrates, regidors were appointed who represented the Tupí at the Director of Brazilians.\(^{25}\)

5. Regulations for lawyers and procurators (1640 and 164)

Detailed information on the law of civil procedure can be found in two different draft regulations for lawyers and procurators. On 2 November, 1640, the Supreme and Privy Council determined the salary for different legal officials, subject to the approval of the Heren XIX.\(^{26}\) The reason was “the dear prices of goods at the present time”. Apart from the fees, clerks, secretaries, notaries, auctioneers, and messengers were entitled to, a list of charges for lawyers and procurators was drawn up. This resulted in a kind of point-based system *avant la lettre*, specifying a maximum price for each (procedural) act.

The price list gives a detailed description of the daily activities of lawyers and procurators. The similarity with the activities of contemporary lawyers and procurators is striking. The activities mentioned include general legal advice, perusal and correspondence, drafting memorandums, or inven-

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26 Notulen Hoge en Secrete Raad van Brazilië (Minutes Supreme and Privy Council of Brazil), 2 November, 1640, Nationaal Archief, Archief Oude WIC inv.nr. 68. See also Schiltkamp (supra n. 4), p. 293–294. The full text of the draft regulation can be found in the Dutch version of this article on www.russell.nl.
ories of cases (“Callandrier”). Furthermore, the elements of the legal procedure are described. All procedural acts are mentioned, be it filing claims, the appearance of parties before court, instituting bankruptcy proceedings, or the filing of a request for judgement. Typical billing items, such as the first advance (“retenue”) and travel expenses (with or without use of one’s own horse) are not missing on the list either.

In October 1644, the Supreme and Privy Council drew up a concept ordinance for procurators to ensure that legal proceedings were treated in a more efficient manner so that more people would make use of them to get due justice. The concept consisted of 38 articles and included many practical guidelines, giving not much rise to the idea that the legal profession was a “free profession”. The government wished to interfere in such things as the style of the inventory of a case file, the minimum number of lines on a page of a legal document (“20 lines per page written closely”, Art. XXIII), and a lawyer’s conduct while the counterparty read their plea: he was not allowed to applaud, interrupt or tear his opponent’s pleadings to pieces. He was not permitted to leave his place of residence without the consent of the Court and he had to provide a substitute for the time of his absence. Breaches of these rules were subject to sanctions, ranging from fines to a “hippocras” for the judge. The latter was – to the disappointment of the judges – applied only twice. In both cases the sanction concerned a time-consuming violation, namely the absence at a meeting of the parties (Art. XV) and raising objections without considering the principal case. The objections allowed for were restricted to the exceptio fori incompetentis, the exceptio litis pendenti, and the exceptio litis finitae (Art. XXXIII).

6. Instruction (1645)

Because of the departure of Johan Maurits in 1644, the old Instruction of 1636 was partly outdated. On 6 November, 1645, the States General gave their approval to a new instruction for “the Supreme Government of Brazil which they shall have to follow”. Religion was as significant a feature of the new instruction as it had been of the Order of 1629: “The President and the Councillors will first and foremost ensure that the Lord God will be honoured, feared and served according to his holy Word and the constitution of the Dutch Reformed Church in the Republic, and will suppress all things

27 Nationaal Archief, Archief Oude West-Indische Compagnie, inv.nr. 59 number 17. The full text of the concept ordinance can be found in the Dutch version of this article on www.russell.nl.
29 Hippocras was a spiced and sweetened wine, or cinnamon wine, popular at weddings.
30 Cau (supra n. 8), Vol. II, cols. 1263–1268.
causing scandals or giving offence” (Art. III). With respect to the legal organisation little had been changed. The most important alteration consisted in the Political Council being specified as Council of Justice, and thus being named according to its competence. The appointment of the councilors of justice was still reserved to the Heren XIX (Art. VIII).

7. Versuymt Brasil

There was little opportunity to put the new instruction into practice. In 1640, Portugal had regained its independence from Spain and had concluded a peace treaty with the Dutch Republic. Nevertheless, in 1645, the Portuguese organized a revolt in Dutch Brazil as Brazil was more important to Portugal than it had been to Spain. It may be considered an example of historical irony that the Company’s financial support of the Portuguese planters was another factor bringing forth the revolt. During the battles in the early years, the sugarcane plantations had been largely destroyed and many Portuguese planters had left their property. Those who stayed needed financial support to re-establish their plantations. By 1645, the WIC had claims on the planters amounting to 2,125,807 guilders. Some plantation owners were indebted to such an extent that they considered the removal of their creditors the best way of debt relief. The revolt was a great, if not perfect success. The Dutch authority was limited to Recife and its surroundings and to some more distant areas with little sugarcane cultivation, such as Ceará at the North coast of Brazil. The most profitable part of the colony was again under Portuguese control.

In 1654, the days of the colony were definitely over. Portugal took advantage of the first Anglo-Dutch war, during which the fleet of the States General was involved in actions in the North Sea, and succeeded in conquering Recife. The provisions of the treaty included that the Dutch who wished to leave were given three months to settle their affairs. Only during this period the Roman Dutch Law could still be applied to all disputes between Dutchmen. Thus, it cannot be presumed that it had an immediate effect on the Brazilian *ius hodiernum*.

Most of the Dutch and Jewish people left the colony. The Indian allies had to fend for the most part for themselves. Some Dutchmen remained in Brazil with their Portuguese wives, among them the debt-ridden plantation owner Gaspar van der Ley, whose descendants became well-known as

31 Johan Nieuhof, *Gedenkweerdige Brasiliaanse Zee- en Lantreize*, Amsterdam, 1682 p. 51. Nieuhof’s details are taken from contracts concerning debts and repayment the local administration had concluded with the plantation owners and other debtors following the departure of Johan Maurits. In 2008, the debts would have amounted to € 22,175,721.62. (http://www.iisg.nl/hpw/calculate-nl.php. Consulted 29 September, 2009). Dr. Hanne dea C. van Nederveen Meerkerk drew our attention to this passage.
32 Boxer (supra n. 6), p. 287.
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Wanderley. Up until the 1690s, priests complained about the texts of the Dutch Reformed Church circulating among certain groups of Indians who had fled to the inland country.

Although it was debated in the United Provinces whether the “versuymt Brasil” had to be recaptured, no such attempts were made. Merchants from Amsterdam and elsewhere had resumed the contraband trade in old style and their ships still carried vast amounts of Brazilian sugar. Yet, they had to pay no longer for an expensive administrative and military system. Even an urgent appeal of the former Indian allies Paraupaba and Carapeba to help them fight the Portuguese did not bring a change, all the more as in 1661, it was agreed upon that Portugal had to pay 4 million cruzados in damages, among other things for the conquest of Brazil. The entire sum was never paid and negotiations about due instalments still went on in the 18th century.³³

Conclusion

The famous tolerance in Dutch Brazil was – just as in the Dutch Republic – mostly a strategic choice and not so much based on principle. What is more, in 1636, with the accession of Johan Maurits van Nassau as Governor General, the religious tolerance was restricted if compared to the regulations of 1629. The broad-mindedness attributed to him was in fact based on the regulations of the WIC and the States General. The chief purpose of these regulations was to seek allies in order to reduce the costs of establishing the Company’s authority. Thus the well-known tolerance was rather an example of pragmatic “mercantile law” than a manifestation of the ideals of an enlightened humanistic leader. As the interests of the Portuguese contradicted those of the Jews and the Indians, it turned out that a policy of tolerance and the forming of alliances were not sufficient to keep the colony safe. Moreover, the allies were mainly interested in the support by the WIC to increase their own power.³⁴

Formally, the status of the Roman Dutch Law was stronger in Brazil than in the territories of the VOC – the Dutch East India Company – where it was considered to be complementary law. Due to the war the existing Spanish and Portuguese law was officially suspended, however, in practice this restriction turned out to be less severe than expected. The capitulation treaty of 1630 provided some space for the existing law against the will of the WIC officials in the Netherlands. Though later undone by the Instruction of 1636, Portuguese law retained some influence. The Portuguese were

members of the local magistrates’ courts where they maintained a strong position (especially outside Recife), whereas part of the customary law could remain effective, if approved by the *Heren XIX*. Eventually, the WIC was not powerful enough to impose its laws perfectly on the Portuguese and the Amerindians. Therefore, after the capitulation of the WIC in 1654 the Roman Dutch Law became irrelevant to Brazil. The influence of the Roman Dutch Law was limited to the Company’s presence and did not extend beyond the geographic and temporal boundaries of the colony.