

# Magistracy and Society in Colonial Brazil

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THE GOVERNMENT and society of the Portuguese empire formed two interlocking systems of organization. In one of them a metropolitan-directed administration, characterized by categorical and impersonal relations, joined the individual or corporation to the political institutions that constituted formal government. In the other system interpersonal primary relations were based on extended families and kinship groups (*parentelas*), shared corporate or social status and goals, and common economic interests. To understand properly the operation of government in colonial Brazil one must examine the interaction of these two systems and the relations of government employees with other socio-economic groups. The following analysis will deal with the Portuguese professional bureaucrats, not only as performers of specific political functions but also as dynamic participants in the complex relations that made up Brazilian colonial society.

For historical and theoretical reasons magistrates formed the core of the Portuguese imperial bureaucracy. At the center of each town in the Portuguese empire stood the *pelourinho* (pillory), symbol of justice and royal authority. Its location at the core of the community bespoke the Portuguese medieval concept of kingship which stressed the role of the monarch as dispenser of justice and protector of the poor and weak.<sup>1</sup> This close identification of King and Justice led quite naturally to the embodiment of royal authority in the judicial-administrative officers of the realm. This group, the magisterial bureaucrats, rose to power with the dynastic revolution of 1383 that brought the House of Aviz to the Portuguese throne.<sup>2</sup> Thereafter, the demands of royal centralization and the development of a

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<sup>1</sup> Martim de Albuquerque, *O poder político no renascimento português* (Lisbon, 1968), 146, 152.

<sup>2</sup> Henrique da Gama Barros, *História da administração pública em Portugal* (2nd ed., 11 vols., Lisbon, 1945-1954), III, 256-258; Marcello Caetano, "As Cortes de 1385," *Revista Portuguesa de História*, V (1951), 5-86. See also António Borges Coelho, *A Revolução de 1383* (Lisbon, 1965).

councillor structure of government depended increasingly on the magisterial bureaucrats. What resulted was a kind of symbiotic relationship, since the importance of the magistrates as a class proceeded directly from royal authority, while the King relied on the performance and loyalty of the magistrates to achieve and maintain this authority.

The rise of the magisterial bureaucracy did not go unnoticed or unchallenged. Other groups in Portugal, the landed and military nobility and the metropolitan municipal councils, opposed the social ascendancy of the bureaucrats and the concomitant political dominance of the Crown. This opposition was often expressed as anti-legal sentiments, criticism of lawyers and scribes who seemed to inherit without effort the privileges of the nobility in Portugal and the conquests of the soldiers beyond the Algarve.<sup>3</sup> By the mid-seventeenth century the parties to the conflict were ardently debating the relative value of arms or letters to the empire. Magnates in Portugal, soldiers in India, and sugar planters in Brazil all complained against lawyers and the legal class.<sup>4</sup> Their protestations were in vain, for although the military nobility continued in high positions in colonies and councils, much of the business of empire and the structure of government had come irretrievably into the hands of the professional bureaucrats.<sup>5</sup>

<sup>3</sup> In defense of "Letters" see João Pedro Ribeiro, *Preferencia das letras às armas* (Lisbon, 1645), and "Información en la causa de los estudios de Portugal" (Madrid, 1633), ms 4162 in the Biblioteca Nacional de Madrid (BNM). The best exposition of the contrary opinion is in Francisco Manuel de Mello, *Espanáforas de Várias Histórica Portuguesa* (Coimbra, 1931), 20-21. It is interesting to note that at the Cortes of Thomar (1581) one of the demands which the nobility made on Philip II of Spain was that nobles be employed in high colonial posts rather than lawyers, as had become the custom. The King's answer was evasive. See *Capítulos do Stado da Nobreza*, Archivo General de Simancas (AGS) Estado, Negociaciones de Portugal 427.

<sup>4</sup> The typical charges were that justice was expensive and slow and that magistrates engaged in a good deal of the seventeenth- and eighteenth-century equivalents of ambulance chasing. Such complaints often moved colonial councils in Portugal to consider placing a limitation on the number of magistrates and abolishing overseas tribunals. Suggestions to abolish the High Court of Goa were heard in 1688, and the Marquis of Pombal suspended that tribunal temporarily between 1750 and 1759. See Biblioteca Geral da Universidade de Coimbra (BGUC), Cod. 548 (Lisbon, June 10, 1688), f. 23 and Carlos Renato Gonçalves Pereira, *História da administração da justiça no Estado da Índia* (2 vols., Lisbon, 1965). For anti-legal sentiments in India see Diogo do Couto, *O soldado práctico* (2nd ed., Lisbon, 1954), 30-32; for similar statements about metropolitan Portugal, Francisco Rodriguez de Silveira, *Memoriais de um soldado da Índia (1535-1634)* (Lisbon, 1877), 191-193; and for Brazil, Engel Sluiter (ed.), "Report on the State of Brazil 1612," *HAHR*, XXIX (November 1949), 518-562.

<sup>5</sup> Paulo Merea, "Da minha gaveta: Os secretários do Estado do antigo

In theory, the Portuguese monarch made all political decisions. In practice, however, the complexities of government forced him to lean heavily on various administrative and advisory councils, especially for those matters requiring specific knowledge or technical competence. In the daily process of decision-making the King's signature often became a rubber stamp for conciliar suggestions. Two Secretaries of State at court acted as intermediaries between King and councils, but they did not assume any significance until the union of Spain and Portugal in 1580. Rarely did they influence policy, and in colonial affairs it was only after 1750 and the rise of the Marquis of Pombal that Colonial Secretaries replaced the Overseas Council as creators of policy.

Unlike the Spanish government, that of Portugal never fully divided its conciliar system by geographical areas or between metropolis and colonies. Thus, between 1550 and 1808 there were three specifically colonial councils: the Treasury Council (*Conselho da Fazenda*, 1594-1641), the India Council (*Conselho da Índia*, 1604-1614), and the Overseas Council (*Conselho Ultramarino*, 1642-1808). None of these ever controlled all aspects of Imperial government,<sup>6</sup> and other bodies continued to play a part in colonial affairs. The Board of Conscience (*Mesa da Consciência e Ordens*) resolved moral and theological problems in both metropolis and colonies, handling matters as diverse as student riots at Coimbra and ecclesiastical benefices in Brazil. More central to this study, a Board of Justice (*Desembargo do Paço*) exercised in its sphere appointive, regulatory, and policy formation functions throughout the empire.

Designed as the apex of the judicial system, the Board of Justice had responsibility for the recruitment, promotion, procedures, and standards of the magisterial bureaucrats. Despite considerable jurisdictional conflict with the specifically colonial councils, the Board of Justice never relinquished its control over the judicial-administrative aspects of government.<sup>7</sup> In effect, the goals and standards of the magisterial bureaucrats were established and maintained by professionals who had risen to the Board of Justice. As a result, the

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regimen," *Boletim da Faculdade de Direito da Universidade de Coimbra*, XL (1964), 173-189. The post of colonial secretary was created in 1736.

<sup>6</sup> Curiously the Treasury Council and the Overseas Council have never received monographic treatment. On the India Council see Francisco Paulo Mendes da Luz, *O Conselho da Índia* (Lisbon, 1952).

<sup>7</sup> *Anais da Biblioteca Nacional de Rio de Janeiro (ABNR)*, XXXIX, 94-95, is a consulta of the Conselho Ultramarino of 1661 noting conflicts with the Desembargo do Paço. Mendes da Luz, *O Conselho* deals with conflicts between that organ and the Desembargo do Paço.

bureaucracy enjoyed a degree of autonomy, professionalism, and relatively high standards.

In the New World, the magisterial bureaucrats shared authority with other branches of government in a complex arrangement of checks and balances. After 1621 Portuguese America was divided into two large administrative units, the States of Maranhão and Brazil.<sup>8</sup> Each was ruled by a governor-general and subdivided into a number of captaincies administered by governors who also bore the title of captain. These officers, usually military men of aristocratic background, formed an executive group as direct representatives of the Crown. Although the captaincies were theoretically centralized symmetrically under the governor-general, centralization and symmetry were never achieved. Governors-general in Bahia often found it impossible to control subordinate governors in Rio de Janeiro and Pernambuco.<sup>9</sup> Moreover, all officials and in fact "even the meanest vassal" were encouraged to communicate directly with the King thus providing him with multiple sources of information while allowing subordinate and coordinate officials a certain degree of autonomy.<sup>10</sup>

Within the formal table of organization the magistrates constituted a second level of administration, balancing the authority of the governors and checking the independence of the municipal councils (*câmaras*), which characteristically represented dominant local interest groups. The first royal magistrate (*ouvidor geral*) arrived in Brazil in 1549 to perform his traditional functions as judge and defender of royal prerogatives. Relatively inefficient successors followed, and not until 1609 was a larger group of magistrates sent to Brazil.<sup>11</sup> In that year, as the result of judicial reform instigated by Spain in Portugal, a high court or *Relação* staffed by ten magistrates (*desembargadores*) and a number of minor officials arrived in Brazil.

<sup>8</sup> The State of Maranhão remained a separate entity until 1774. Judicial-administrative matters were appealed from Maranhão to the metropolitan Casa da Suplecação rather than to the *Relação* of Bahia.

<sup>9</sup> Dauril Alden, *Royal Government in Colonial Brazil* (Berkeley, 1968), 30-44.

<sup>10</sup> The Overseas Council made a special point of encouraging such correspondence and it rigorously reprimanded any official who tried to limit it. See Arquivo Histórico Ultramarino (AHU), Bahia papeis avulsos caixa 4, 1ª série não catalogada (April 26, 1645). Powerful individuals in Brazil, however, occasionally bribed ship captains not to carry such reports to Portugal as the "Rezoos g. darão os moradores para não se extinguir a *Relação*" clearly states. See Biblioteca Nacional de Lisboa (BNL), Coleção Pombalina 647, ff. 69-72.

<sup>11</sup> Stuart B. Schwartz, "The High Court of Bahia: A Study in Hapsburg Brazil 1580-1630" (Ph.D. dissertation, Columbia University, 1968), especially chapter 1. The number was increased to twelve in 1658. See *Documentos Históricos da Biblioteca Nacional de Rio de Janeiro (DHBNR)*, LXVI, 146.

The *Relação* became the core of the magisterial bureaucracy in Brazil. Eventually provincial magistrates (*ouvidores*) in the captaincies and after 1696 royal municipal magistrates (*juizes de fora*) also served, but they remained professionally and jurisdictionally below the high court.<sup>12</sup>

A myriad lesser officials at the captaincy and municipal levels characterized the lower echelons of government. As early as 1552, the perceptive Jesuit, Manuel da Nóbrega, pleaded for more colonists and fewer government employees who wanted "nothing more than to do their time and collect their pay . . . , and as this is their principal goal they do not love the land and all their affection is for Portugal."<sup>13</sup> By the seventeenth century Brazilians held many of these offices, but the effect of the change was not wholly invigorating. Colonials were anxious to become a "child of the paymaster" (*filho da folha*) and the tendency was for these offices to multiply without improving in performance.<sup>14</sup>

Offices in the lower echelons of government were often rife with venality and incompetence. These posts were traditionally granted as rewards or favors; the usual response of the Crown to a legitimate petition was to promise "some office of justice or the treasury." Under both the Hapsburgs and the Braganças there was considerable purchase of office, often with hereditary control.<sup>15</sup> Pluralism (holding more than one office) was condoned and the use of deputies (*serventia*) a common practice.<sup>16</sup> Instances of municipal councillors

<sup>12</sup> Sebastião da Rocha Pitta, *História da América portuguesa* (Lisbon, 1880), 242-243. Juizes de fora should not be confused with the nonprofessional elected municipal judges, the *juizes ordinários*.

<sup>13</sup> Serafim Leite (ed.), *Cartas do Brasil e mais escritos do P. Manuel da Nóbrega (opera omnia)* (Coimbra, 1955), 114.

<sup>14</sup> Offices multiplied for various reasons. Governors and magistrates often tried to get their friends and relatives on the payroll. Moreover, the sale of offices became a source of revenue for the Crown. See for example *DHBNB*, XXXVIII. D. João de Castro to Ouvidor Christovão Soares Reimão. Unfortunately, there is no study on the sale of office in the Portuguese empire. For posts requiring technical competence (reading and writing) it was usually stipulated that the applicant be apt. In Brazil this was often impossible to enforce. Although an *alvará* of November 13, 1642 stated that only those people who could read and write could serve as judges, circumstances forced the Crown to abandon this position.

<sup>15</sup> For example, among the offices sold in Rio de Janeiro in 1664 were probate judge (*juiz dos orfãos*); court clerk (*escrivão da correição*); bailiff (*meirinho da correição*); and three notarial offices. *ABNB*, XXXIX, 104-105.

<sup>16</sup> Pluralism was not permitted among the magisterial bureaucrats although they sometimes inherited or purchased minor offices which they sold or rented. Desembargador João Elizeu de Sousa owned a treasury office in Cachoeira, Bahia.

and elected judges who were functional illiterates and of notaries who could scarcely sign their own name occurred from time to time.<sup>17</sup>

Such incompetence was unknown, however, within the ranks of magisterial bureaucrats, whose central role in the formal structure of government and royally sanctioned position as guardians of that structure rested on their competence and professionalization. A short discussion of the professional and private lives of these men, therefore, may illumine our analysis.<sup>18</sup>

The Board of Justice administered a personal and professional examination to all those seeking entry into the ranks of the royal bureaucracy. The applicant was expected to be a graduate in civil or canon law from the University of Coimbra with at least two years of practice as a lawyer.<sup>19</sup> Socially he was expected to be the legitimate son of honorable and orthodox parents. More precisely, anyone who had artisan or shopkeeper forebears or whose family was tainted with the blood of "New Christian, Moor, Mulatto, or other infected race" was theoretically prohibited from royal service.<sup>20</sup> The extent

Arquivo Nacional de Torre do Tombo (ANTT), Chancelaria de D. João V, Livro 78, f. 63v.

<sup>17</sup> Arquivo Público de Estado da Bahia (APEB), Ordens Régias Livro 5, No. 38. King to D. João de Lencastre, Governor of Brazil (Lisbon, February 15, 1698) noted that even though rural judges could not read or write, it did not matter as long as their clerks could do so.

<sup>18</sup> The following analysis is based on the collective biographies of the 167 magistrates (*desembargadores*) who served in the High Court (*Relação*) of Bahia from 1609 to 1759. See José Antônio Caldas, *Notícia geral da toda esta capitania da Bahia desde o seu descobrimento até o presente ano de 1759* (Salvador, 1959). For biographical information the series *Leitura dos Bachareis* in the Arquivo Nacional de Torre do Tombo (ANTT) was most helpful and when deficient the records of matriculation (*verbetes*) in the Arquivo da Universidade de Coimbra filled many gaps. Professional careers were traced in the ANTT chancellery books of Felipe II, III, D. João IV, Afonso VI, Pedro II, João V, and José I. Also the Livro dos assentos dos bachareis do Desembargo do Paço, BGUC, Cod. 644 proved helpful. The following categories were used in tabulating this material: place and date of birth; father's occupation; university degree; date of entry into royal service; positions held before entering the Bahian tribunal; date of entry in the *Relação*; posterior service; special characteristics (e.g., membership in a military order, marriage in Brazil, etc.).

<sup>19</sup> José Justiano Andrade e Silva, *Collecção chronológica da legislação portugueza (1603-1700)* (10 vols., Lisbon, 1854-1859), IV (June 19, 1649).

<sup>20</sup> Sons of those artisan guild members who had been elected to the joint artisan assembly (*Casa de vinte quatro*) were eligible to serve in the royal bureaucracy. See Andrade e Silva, *Collecção*, IV (December 16, 1644), VI (May 26, 1663). Four *desembargadores* in Brazil were the sons of members of the *Casa de vinte quatro*. Five others were allowed into the service despite other "impediments." On the *Casa de vinte quatro* see Franz-Paul Langhans, *As Corporações dos Ofícios Mecânicos. Subsídios para a sua história* (2 vols., Lisbon, 1943).

to which a friend at court or family connections influenced career patterns is obscure, but it seems unlikely that positions of magisterial rank were bought outright. Some nepotism was institutionalized, since the sons of magistrates were given preferential treatment.<sup>21</sup> Clandestine purchase and nepotism, however, did not imply a complete breakdown of performance or standards, since the required competence examination by the Board of Justice insured at least minimal qualifications of all appointees. Still, personal influence vied with seniority as the principal requisite for promotion. Performance was evaluated by successful completion of the incumbency examination (*residência*), and thus a premium was placed on adherence to norms rather than on innovation or outstanding achievement.

The magistrates who served in Brazil between 1609 and 1759 came from social groups of middle rank. In a statistical sample of 100 high court magistrates, the sons of merchants, soldiers, and artisans were more numerous than those who claimed noble (*fidalgos*) origins. Far more significant, 13 percent were the sons of minor and municipal officials and 22 percent of university-trained lawyers and bureaucrats. In fact, a legist class is represented in these figures. Sons followed fathers into the university and then into royal service. These men often married the daughters of other bureaucrats so that endogamy and class perpetuation became identifiable characteristics of the group. *Filho da pez sabe nadar* (the fish's son knows how to swim), the Portuguese equivalent of "the apple doesn't fall far from the tree" was often true. A good illustration was Antônio Rodrigues Banha, who entered the high court of Bahia in 1729 and whose father and maternal grandfather had both preceded him in that tribunal. Such a case was not uncommon in Portuguese bureaucracy.<sup>22</sup>

The typical high court magistrate in Brazil entered royal service at age 26. First he served a three-year term in Portugal as a royal municipal judge. Then he was moved to another town and reap-

<sup>21</sup> There are many examples of this. Pero Nogueira Coelho, magistrate in India, petitioned for a metropolitan post "as your Majesty usually gives . . . to people of quality and especially to sons of desembargadores." See BGUC, Cod. 460, *Consulta* of the Board of Justice (January 26, 1636), ff. 59-61. In Brazil, Cristovão Salema de Carvalho asked for a position and was granted it because his father was a desembargador. During the following century, Manuel da Costa Bonicho was made desembargador in Bahia because his father was a successful magistrate. Cf. *DHBNE*, LXVI, King to Count of Odemira (June 5, 1655), 88; BGUC, Cod. 709 (December 20, 1712), f.149.

<sup>22</sup> His father was Dionízio de Azevedo e Arevalos, who entered the High Court of Bahia in 1713. His maternal grandfather and namesake was Antônio Rodrigues Banha, who had entered the tribunal in 1680 and who had married a Brazilian.

pointed at the same level or promoted as provincial magistrate (ouvidor) for a similar term. After about 15 years of service on the average, the magistrate expected promotion to a high court, and it was precisely at this juncture that, prior to 1680, most of the magistrates came to Brazil. Before that date many tried to avoid Brazilian service, but by the end of the century a post in the Bahian high court was ardently sought as an important step up the promotional ladder, and the excess of deserving magistrates forced the Crown to make supernumerary appointments.<sup>23</sup> After six to eight years of service in Brazil the bureaucrat could expect to return to a position in the Oporto Relação and the Supreme Court of Appeals (Casa da Suplicação) in Lisbon.<sup>24</sup>

This career pattern meant that the age of the average high court magistrate on arrival in Brazil was 42 and that he had been seasoned by fifteen years of professional experience. These men, therefore, were senior magistrates of proven competence and loyalty. In the last years of the sixteenth century direct promotion from subordinate colonial positions to posts in the Relação became common. After 1682, 42 percent of those who served in the Bahian tribunal had previous colonial experience and 70 percent of these in Brazil. Thus only at the end of the century did a colonial sub-system begin to form, and even then prior or subsequent service in the metropolis was never excluded to colonial magistrates.<sup>25</sup>

Only in rare and exceptional cases did magistrates who had served earlier in Portuguese India discharge professional duties in Brazil.<sup>26</sup> However, those who served in the West African colonies—

<sup>23</sup> Of the first ten appointed in 1609 nine sought to be excused from what seemed to be occupational exile. By the end of the seventeenth century, however, the title of desembargador do Brasil was sought by and granted to overseas ouvidores. Supernumerary appointments were made as early as 1705, although they were not fully regularized until 1718. See Schwartz, "The High Court," chap. II; ANTT, Chancelaria D. Pedro II, Livro 23, f. 119; Livro 29, f. 236; BGC, Cod. 709, f. 154.

<sup>24</sup> Out of the desembargadores who saw service in Portugal after returning from Brazil, 83 percent reached Oporto and 52 percent served in the Casa da Suplicação.

<sup>25</sup> After 1680 magistrates began to arrive in Brazil as ouvidores without previous metropolitan experience.

<sup>26</sup> The expeditions were Jorge Seco de Macedo, who was appointed chancellor of the Bahian tribunal in 1655 after service in India and in the Casa da Suplicação, and Ignácio Dias Madeira, sent from Goa to Brazil in 1736. See AHU, Bahia papeis avulsos caixa 6, 1ª não catalogada (November 27, 1654); ANTT, Chancelaria D. João V, Livro 92, f. 312 (November 25, 1736). Joaquim Veríssimo Serrão (*Do Brasil filipino ao Brasil de 1640* [São Paulo, 1968]) claims that Antão de Mesquita also served in India but Veríssimo Serrão has confused him with another man of the same name.



Angola, Cabo Verde, São Tomé, and Guiné—were often promoted to the Bahian high court. There were, in effect, two colonial channels of promotion, which we can call the Indian Ocean and the Atlantic Ocean branches. Both were integrated into the metropolitan system, but they remained distinct from each other. Only 15 percent of the magistrates who saw service in Brazil rose to conciliar positions in Portugal. This fact indicates that the highest levels of government were filled by officials who had risen by direct metropolitan appointment or through the Indian Ocean branch. If the magistrates in Brazil perceived this inequality, they may have been more willing to exploit their immediate position for personal gain since adherence to bureaucratic norms did not insure the achievement of their highest professional aspirations.

Although the ecclesiastical bureaucracy lies beyond the scope of this discussion, the function of the Church as an administrative arm should at least be noted. The King exercised control of the Church in matters temporal, and churchmen, both regular and secular, performed tasks of direct benefit to royal government. The influence of the Church pervaded society, and for many Brazilians the parish stood as the most immediate and recognizable institution of organization. Moreover, despite much jurisdictional conflict between civil and ecclesiastical officials in the colony, Church doctrine generally supported the Crown and the dominant theory of government.

Control over the official hierarchy, over colonial officials and colonial affairs depended on regulation, jurisdictional overlap, multiple lines of communication, and shared, if not conflicting, powers. Blurred and disputed lines of authority meant constant reference to Portugal and arbitration by metropolitan councils. Statutes and royal commands combined with periodic and extraordinary investigations (*devassas*) to stop abuses, insure honesty, and assure compliance with expected behavior. Each official from viceroy to doorkeeper of the customhouse lived under the shadow of a terminal examination (*residência*) which would come at the end of his incumbency,<sup>27</sup> and this too was expected to check misbehavior in office.

In this system of countervailing powers and institutionalized mechanisms of metropolitan control, the *Relação* and the subordinate royal magistrates were the principal cogs. Considered by the Crown as the most loyal and efficient body of officials, they were charged

<sup>27</sup> A typical *residência* can be seen in the documents printed in *Livro primeiro do governo do Brasil 1607-1633* (Rio de Janeiro, 1958), 333-411.

with preventing the dominance of any political and economic force in the colony, while maintaining the prerogatives and standards of the Crown. It was the magisterial bureaucrats who conducted the various investigations and the judicial review and who staffed special advisory councils and administrative boards.<sup>28</sup> To control the magistrates, the Crown depended on certain regulatory powers of the governor-general within the system of checks and balances and on the multiple lines of communication. Probably to an even greater degree, the Crown looked on the professional standards and goals of the magistrates, on mechanisms such as rotation in office, and on their collective ties to royal power as means of keeping them subservient to royal desires.

These men of non-noble gentry and professional backgrounds hoped to find in the promotional channels of the bureaucracy a means for status gratification and social ascendancy. Upper magistrates considered themselves the social equals of the titled and landed nobility in Portugal. By the eighteenth century jurists argued that the study of law literally enobled an individual. Also by the accretion of rewards and titles the professional bureaucracy began to identify with the attitudes and aspirations of their former class and political rivals.<sup>29</sup> A certain amount of group consciousness, however, kept the magisterial bureaucrats from becoming simply integrated into the nobility. The means by which they sought to fulfill their particular status and financial desires within their professional position form the links between formal and informal government in Brazil.

The Crown was not unaware of these personal and class aspirations and realized that the role of the magistrates in the formal structure of government would be compromised by extra-professional contacts. Thus the Crown tried to isolate the bureaucrats from the pressures of individual, familial, or class interests. Statutes sought to separate the judges from Brazilian society by limiting their residence, social relations, dress, and habits. No magistrate, for example, was to marry in the area of his jurisdiction or to enter into

<sup>28</sup> The governor-general appointed *desembargadores* for special investigations and circuit tours of inspection. Magistrates were made members of bodies such as the Mint or, after 1759, the Boards of Inspection which regulated agricultural commerce. In the course of time magistrates acquired additional duties. By 1730 the position of *Ouvidor* carried with it the position of *Provedor* and *Juiz dos órfãos*.

<sup>29</sup> On these claims to nobility see Francisco de Almeida e Amaral Botelho, *Discursos jurídicos em que se contém várias matérias úteis aos principantes com os assentos da Caza da Supplicação* (Lisbon, 1790), 97-111.

business there.<sup>30</sup> To lift the magistrates above society the Crown invested them with great authority, paid them substantial salaries, and granted them membership in the honorific military orders.<sup>31</sup>

These measures, designed to reinforce the authority and effectiveness of the magistrates in a society deeply respectful of ascriptive status, had two unforeseen consequences. First, the bureaucrats, with their shared university background, esprit de corps, and group consciousness, could articulate policies or desires independent of the Crown's goals.<sup>32</sup> This, however, they rarely did. More commonly the magistrates used their authority and prestige for personal or familial aggrandizement. Though salaries were high, graft and malfeasance, for example, did not disappear. Instead the access to more capital increased the opportunities for magistrates to invest in prohibited business ventures. Seen from another angle, the dignity, authority, and wealth of the magistrates did not isolate them at all from an awed society. Quite to the contrary, their prestige made them seem more attractive allies to important socio-economic groups, especially the dominant planter oligarchy. The role—or more exactly roles—of the magistrates presented a paradox. On the one hand, disinterested magisterial bureaucrats formed the keystone of the formal governmental structure erected by the Crown. But on the other, they pursued individual and collective goals and entered into a variety of personal relations that openly conflicted with their expected professional behavior.

Brazil contained various means for creating an extensive "social genealogy"—the web of both kin and other primary relations.<sup>33</sup> Curiously, just as Church doctrine and officials had bolstered the formal political structure, so Church-sponsored marriage, godparent-

<sup>30</sup> Fernando Mendes de Almeida (ed.), *Ordenações filipinas (1603)* (3 vols., São Paulo, 1957), I, tit. xcv; Andrade e Silva, *Coll. chron.*, I, 113, 295. After 1615 all married magistrates sent to Brazil were expected to bring their wives. On the limitations of commerce see BGUC, Cod. 71, f. 134, Law of August 29, 1720.

<sup>31</sup> The chancellor's salary was second only to that of the governors-general. The desembargadores not only received respectable salaries, but were also given expense accounts while on circuit tours and life insurance provisions for their families. Appointment to the Court in Brazil often carried with it promise of a membership in one of the military orders and of a position in a superior tribunal in Portugal.

<sup>32</sup> S. N. Eisenstadt, "The Political Orientations of Bureaucracies in Centralized Empires," *Essays in Comparative Institutions of Social Change* (New York, 1965), 216-250.

<sup>33</sup> This term is used and explained in the excellent analysis by Anthony Leeds, "Brazilian Careers and Social Structure: An Evolutionary Model and a Case History," *American Anthropologist*, LXVI (December 1964), 1329.

age, and religious brotherhoods supplied vital integration to the informal structure. Although expressly forbidden by law, high court and lesser magisterial bureaucrats in Brazil did marry Brazilians.<sup>34</sup> Twenty-six magistrates of the Bahian High Court (15%) married in Brazil, and although the social origins of all the brides have not been ascertained, it is clear that many were daughters of the planter oligarchy or of other government officials.<sup>35</sup> A second institution for creating social linkage was that of ritual godparentage (*compadrio*) which created close ties and placed mutual obligations on all parties concerned. Magistrates, their retainers, relatives, and friends also entered into these ritual relationships, thereby extending their obligations and influence.<sup>36</sup> It should be made clear, however, that the nature of Brazilian society and the social aspirations of the magistrates limited most of these personal relations to the highest strata of colonial society. Chances are slim indeed that the marginal mulatto, the enslaved Negro, or even the Portuguese cobbler ever became the *compadre* or the brother-in-law of a magistrate.<sup>37</sup>

In their search for financial gain and status positions concomitant with their rank, the magisterial bureaucrats in Brazil also cre-

<sup>34</sup> The marriage of magistrates was prohibited by an *alvará* of November 22, 1610 which was reinforced by a law of March 24, 1734. Cf. Andrade e Silva, *Coll. chron.*, I, 295; BGUC, Cod. 711 (March 24, 1734). In order to marry within the area of his jurisdiction, a magistrate had to petition for special permission such as that granted to Manoel Pinto da Rocha in 1611. See ANTT, Chancelaria Filipe II, privilégios, Livro 2, f. 196v. Failure to obtain this permission could result in suspension and recall. See BGUC, Cod. 708 (November 27, 1728), f. 27.

<sup>35</sup> The majority of the brides were Bahians and Pernambucans. For example, Antão de Mesquita married the daughter of Paulo Bezzera, a Pernambucan sugar planter and member of the town council of Olinda. Antônio José de Afonseca Lemos wed a Bahian lady whose father was a municipal councillor in Salvador. The Brazilian-born magistrate Simão Álvares da Penha married the sister of the renowned Jesuit Father Antônio Vieira whose father was a senior clerk in the *Relação* of Bahia.

<sup>36</sup> I am sure that extensive research in the Arquivo de Cúria Metropolitana do Salvador would reveal many references to the participation of magistrates and other officials in ritual godparentage relationships. My brief probe in the summer of 1967 turned up the following item: Paróquia de Vitória, Livro dos bautizados (1630-1713) Desembargador Belchior Ramires de Carvalho served as godparent for Gonçalo, son of plantation owner, Antônio Gomes and his wife Ana Maria de Castelo Branco (December 4, 1694).

<sup>37</sup> Studies on the Brazilian family show clearly that lower income and status groups are less able to maintain extended family structures. Compliance with ideal patterns is therefore limited to upper class individuals and families. See Emílio Willems, "The Structure of the Brazilian Family," *Social Forces*, XXXI (1953), 346. Charles Wagley, summarizing a number of community studies, notes the same phenomenon in *The Latin American Tradition* (New York, 1968), chapter VI, "Kinship Patterns in Brazil."

ated a secondary layer of nonritualized relationships. High court magistrates often served on the board of directors in the honorific Holy Brotherhood of Mercy (*Misericórdia*) and sometimes controlled its senior position of *Provedor*.<sup>38</sup> The *Misericórdia* counted among its brothers the wealthiest and socially most prominent members of Bahian society, and thus the opportunity for friendship and personal interaction between the magistrates and certain groups was increased.<sup>39</sup> Moreover, ritualized and nonritualized primary relations tended to become concentrated in the same individuals and reinforce each other. Of the six magistrates who served as *Provedor* of the *Misericórdia* of Salvador five were married to Brazilian women and the sixth was Brazilian-born. Either these men had used family connections to obtain the position, or their family connections made others in the society more ready to accept them.

Many magistrates also engaged in business activities—whale fishing, slave trading, commerce, and plantations—entering into contracts and partnerships. Some, like Pedro de Cascais and Caetano de Brito de Figueredo, went deeply into debt, while others, like the Bahian-born Cristóvão de Burgos, became fabulously wealthy.<sup>40</sup> In our discussion their success or failure is a secondary concern. What is important is the existence of these extraprofessional activities and the accompanying network of personal relations that they imply.

Blood and ritual ties, business enterprise, favoritism, and venality could all be viewed strictly as violations of expected behavior which hampered the normal operations of government. At the same time these mechanisms permitted primary relations to penetrate into a highly rationalized system of categorical and impersonal ones. Despite royal attempts to eliminate these “deviancies,” these primary

<sup>38</sup> Magistrate Manoel Pinto da Rocha became *Provedor* of the *Misericórdia* in 1621 or 1622. See Arquivo da Santa Casa da *Misericórdia* da Bahia (ASCMB), Livro I do Tombo 40 (June 30, 1622), f. 25. In 1716 the Crown noted that for the previous five years the position of *Provedor* of the *Misericórdia* had been held by magistrates who had spread about a good deal of money to insure their election. The Crown ordered that *desembargadores* could serve on the Board of the *Misericórdia* but not as *Provedor*. AHU, Conselho Ultramarino, Cod. 247, King to the Viceroy of Brazil (September 26, 1716), ff. 68-69.

<sup>39</sup> A. J. R. Russell-Wood, *Fidalgos and Philanthropists* (Berkeley, 1968) is the basic study of the *Misericórdia* of Salvador.

<sup>40</sup> Cascais owed 256,400 reis (almost a year's salary) to Pedro Viegas Giraldes. ASCMB, Livro do Tombo I, Testament of Pedro Viegas Giraldes (1637), ff. 125v-126. APEB, *Ordens Régias* Livro 21, N. 24c indicates the large debts which chancellor Caetano de Brito de Figueredo contracted with a Bahian merchant and which he refused to pay for nine years. Cristóvão de Burgos was described in 1675 as “o mais afazendado na terra” in Arquivo da Câmara Municipal do Salvador, Livro 159, King to the Câmara (March 18, 1675).

relations which constituted and constitute so much of Portuguese and Brazilian life continued to prevail. Indeed, they gave an unintended flexibility to government and facilitated the resolution of problems on the local level when official channels were too slow or obstructed.

The colonial bureaucrats, seen from the standpoint of a virtuous governor, metropolitan councillors, or even those colonials who had no personal ties with them, often appeared to violate the required standards of their vocation. To be sure, they were never totally absorbed and always capable of pursuing independent or royal interests. Still, the dominant socio-economic groups in the colony never found the royal bureaucrats beyond the reach of colonial pressures or ignorant of colonial desires. Local interests could be expressed and implemented through the web of primary relations, so that policy-making was never simply a matter of royal fiat and bureaucratic compliance.

In effect, the existing social and political organization could accommodate modifications in the structure of colonial society such as the economic ascendancy of an urban mercantile class after 1730. Through the formation of social alliances with the bureaucracy, groups and individuals could acquire social legitimacy and the security of powerful friends and relatives. Thus within the formal table of government—a static pattern of organization—new interests could be articulated by the creation of new groupings. These changing social patterns provided, therefore, a dynamic element in the relationship of society to bureaucracy.

This is not to ignore the difficulties created by individual and collective abuses. Tax evasion, graft, faulting on debt payments, and especially misuse of authority were charges often brought against magisterial bureaucrats in Brazil. Occasionally a magistrate could be fairly described as was one royal municipal judge in Pará—"the most evil and perverse man by nature, habit, and design that has until now been honored with the authority of an official." But generally the system of checks and balances kept magisterial activities within bounds, while their professional goals, their loyalty to the Crown, and their personal interests prevented them from becoming the tools of any one colonial group or faction.

Although statutes prohibited Brazilians from serving in the Bahian *Relação* or in subordinate royal positions in Brazil, the law was bent to meet colonial demands. Between 1653 and 1753 ten Brazilian-born magistrates served in the *Relação* and others held positions

as provincial judges.<sup>41</sup> This practice did not stop even after an attempt in 1663 to eliminate such violations of the law.<sup>42</sup> In fact, when a second *Relação* was established at Rio de Janeiro in 1752, the man selected for its senior position (*chanceler*) was the Bahian, João Pacheco Pereira, former provincial magistrate of Ouro Preto.<sup>43</sup> Moreover, the Crown took special pains to inform Brazilians that they were not excluded from royal employ in other colonies or in the metropolis, a fact in which the colonials took considerable pride.<sup>44</sup>

Ten Brazilian-born magistrates in the High Court, twenty-six married to Brazilian women, thirty-five who had served previously in Brazil, others related to former governors of Minas Gerais and Pernambuco, and still others who had fathered illegitimate children in the colony—the network of these personal relations was wide indeed.<sup>45</sup> Offended parties in Brazil might censure individual magistrates, but the royal bureaucracy never seemed a distant and oppressive imperial tool to the Brazilian oligarchy. Instead, Brazilians themselves hoped to matriculate their sons in Coimbra and find a career for them in the bureaucracy. These opportunities may at times have been more apparent than real, but there seems little doubt that the theoretically open nature of the professional bureaucracy muted the distinctions between colonials and peninsulars. While the formal structure of administration placed Brazil in a

<sup>41</sup> Luiza da Fonseca, “Bachareis Brasileiros-Elementos biográficos (1635-1830),” *Anais. IV Congresso de História Nacional* (11 vols., Rio de Janeiro, 1951), XI, 113-405, makes extensive use of the *Leitura dos Bachareis* and lists hundreds of Brazilians with Portuguese law degrees.

<sup>42</sup> After the reestablishment of a Brazilian high court in 1652 a number of Brazilians filled magisterial posts. Because of the abuses caused by conflict of interests the Crown prohibited Brazilians from serving in that tribunal in 1667. Both the *Câmara* of Salvador and the Jesuits complained of this discrimination, and it is apparent that the Board of Justice did not continue it. The pertinent documents are published in Serafim Leite, *História de companhia de Jesus no Brasil* (10 vols., Lisbon, 1938-1950), VII, 195-199.

<sup>43</sup> The practice of appointing Brazilians in Rio was continued. See Mário de Sampaio Ribeiro, “O Rio de Janeiro em 1783 segundo o chanceler da sua *Relação*, Conselheiro José Luís França,” *Anais da Academia Portuguesa da História*, ii series, XV (1965), 29-87.

<sup>44</sup> Rocha Pitta, *História da América Portuguesa*, “Pessoas naturaes do Brasil, que exerceram dignidades e governos ecclesiásticos e seculares na pátria e fóra d’ella,” 334-336.

<sup>45</sup> Desembargador Belchior de Sousa Vilas Boas fathered an illegitimate child in Bahia. See ANTT, Chancelaria João V, *Legitimações*, 133 f. 30. Even today in Brazil individuals can often identify between 50 and 500 relatives in the *parentela* or extended family. Wagley, *Latin American Tradition*, 190. Colonial genealogies such as Pedro Taques de Almeida Paes Leme, *Nobiliarquia Paulistiana*, were in a sense recognition of the importance of such personal relations.

classic colonial position, the informal structure allowed colonial interest groups to treat the magistrates as simply another source of power subject to alliance and cooptation.

After 1750 the administration under the Marquis of Pombal changed much of the formal governmental structure, and his policies resulted in the creation of new interest groups and the restructuring of old alliances. In essence, however, most of the informal structure remained unchanged. Royal government in colonial Brazil was never efficient but it never totally collapsed. Magisterial bureaucrats played the crucial though often unintended role of balancing colonial and metropolitan interests.