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Abstract:	The article presents the research group CoCoLaw (Comparing Early Modern Colonial Laws) to the general academic public. In short, the article will present an outline of the activities, research interests (especially those related to the matter of this journal's issue), and the objectives of CoCoLaw. The article is divided into three sections. The first section presents the group and its research, whereas the second explains the connection between studies on "police" or "police regulation," and the proposal to study "colonial law" in early modernity. The third section offers a view of the next steps of digitalization and the creation of a database.

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Comparing Early Modern Colonial Laws:

Police Regulation Overseas

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1. Introduction: Comparing Early Modern Colonial Laws

1.1. Overview of the research plan

The article outlines the activities, methodologies, presuppositions and main objectives of the research project CoCoLaw (Comparing Early Modern Colonial Laws).[1] The article is divided into three sections. The first one presents the group and its research plan, while the second explains the crucial concepts of 'police', 'police regulation' and 'colonial law' in early modernity. Finally, the third section discusses the digitalisation of and databases on police and colonial law.

The project's goal is to provide a description and comparison of the 'law'[2] produced for[3] colonial territories under the domain of the British, Spanish and Portuguese empires as well as the Dutch Republic during

[1] CoCoLaw, which started in 2022, is coordinated by Professor Heikki Pihlajamäki (University of Helsinki) and funded by the Academy of Finland for a period of five years. The Project is part of the RHONDA (Research in Historical Ordinances and Normative Data) network, coordinated by Annemieke Romein (Huygens Institute, Amsterdam) and Andreas Wagner (Max Planck Institute for Legal History and Legal Theory, Frankfurt). RHONDA is an informal community "committed to developing interoperable data models for historical decrees, ordinances and other legal regulations". Most of the researchers who are part of the network are studying police regulations in different parts of Europe.

[2] The term 'law' may be questioned since it brings forth assumptions not only about the institutions and agents applying the norms, but also about the structure of such norms. The assumptions in many instances reflect notions consolidated in the post-revolutionary European context – in which it is commonplace to perceive the production of law as an exclusive competence of the nation-state, where law is codified through legislative acts, which in turn are applied by professional and learned judges in state courts following a positivistic, monopolistic or unitary perception of the legal order. It should be clear that such specific assumptions are blatantly anachronistic when describing the early modern normative context. However, in the main body of the text we use the term law consciously in the sense that we wish to emphasise written law (statutes), without disregarding a) that such norms only operate in relation to other normativities; b) that the statutes are more often than not the product of a communicative process between different groups, authorities or institutions; and c) that the place of the statutes in the projected hierarchy of norms of early modernity is not the same as today. Moreover, the multiplicity of the expressions used to describe such a conception of law, as employed throughout the article, is a side effect of the effort to find appropriate designations and categories to explain the normative orders of early modernity, in Europe and in the colonies.

[3] The preposition 'for' in this sentence does not imply that the project will only be concerned with 'laws' enacted by the 'centre' to regulate its 'peripheries'. Rather, it is also important to consider the development of local governments in the colonies (as well as the activities of charted companies) and their own normative production, which sometimes also occurs through written normative acts (such as statutes in the case of North America).

early modernity.[4] The topic will be observed through two lenses.

First, the subject of 'colonial law' is situated within the framework of early modern European law. The normative production of it in the various colonies followed, at least in principle, the traditions of common law (e.g. in the British colonies)[5] and that of *ius commune* (e.g. in the rest of the selected colonies).[6] This was the case with most civil, procedural and criminal law. Within these branches of law, the normative practices in the colonies did not structurally differ from those in Europe during early modernity.[7] Meanwhile, the colonies were also being kept up to date on the latest legal trends and transformations in Europe: for example, the growth of police regulation during the early modern period may similarly be observed in quite a few colonies.[8] One of the main propositions of the project is that *the essence of what we normally conceive of as colonial law may be categorised as 'police regulations'*. The project thus charts the growth of police regulations at imperial, regional and local levels in the chosen colonial territories.

Second, the project places the selected colonial laws in a comparative framework, studying norms and patterns between one 'centre'[9] and another, or between each 'centre' and its respective colony/ies.[10] In this way, the project seeks to demonstrate how the legal strategies of the colonising nations developed in similar or different directions and why.

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[4] The group consists of five researchers (including the principal investigator), each one dealing with a range of selected territories and themes. In terms of geographical delimitations, the cases are as follows: Portuguese and Spanish America, Virginia, Jamaica, Ireland, Macau and Goa. In terms of temporal delimitation, the focus of the project is on the seventeenth and eighteenth centuries.

[5] For an analysis of how institutions and discourses usually identified with English common law circulated in the American colonies, especially in Virginia, see A. G. Roeber, *Faithful Magistrates and Republican Lawyers* (University of North Carolina Press: Chapel Hill, 1981). For more on how arguments based on common law permeated the revindications of local colonial governments and groups before and during the American Revolution, see Jack P. Greene, *The Constitutional Origins of the American Revolution* (Cambridge University Press: Cambridge, 2011).

[6] For just one example of a researcher who emphasises the importance of *ius commune* for understanding the Brazilian colonial context, see Gustavo C. M. Cabral, *Ius Commune: uma introdução à história do direito comum do medievo à idade moderna* (Rio de Janeiro: Lumen Juris, 2019), XIII and all the literature referred to therein.

[7] For an example regarding criminal law, specifically on the granting of 'grace' at the end of the eighteenth century in Brazilian territories, see Vanessa C. Massuchetto and Luís F. L. Pereira, "O Rei Como Dispensador da Graça: Autos De Livramento Crime e Cultura Jurídica Criminal em Curitiba (1777-1800)," *Tempo* 26, no. 1 (1990): 123–42, doi:10.1590/TEM-1980-542X2019v260106.

[8] For the development of police as a concept in the cases of France and Germany, see Andrea Iseli, *Bonne Police: Frühneuzeitliches Verständnis von der guten Ordnung eines Staates in Frankreich* (Epfendorf: bibliotheca academica Verlag, 2003); Michael Stolleis, *Geschichte des öffentlichen Rechts in Deutschland* (C. H. Beck, 1988). For more on how these normative practices and discourses impacted the Portuguese Empire and to some extent Portuguese America, see Airton C. L. Seelaender, *Polizei, Ökonomie und Gesetzgebungslehre: Ein Beitrag zur Analyse der portugiesischen Rechtswissenschaft am Ende des 18. Jahrhunderts* (Frankfurt am Main: Klostermann, 2003).

[9] In this article, we will be using 'centre' and 'peripheries' following in many regards the direction of Edward Shils Edward, "Centre and periphery," in *The Logic of Personal Knowledge: Essays Presented to Michael Polanyi*, ed. Polanyi Festschrift Committee (London: Routledge & Kegan Paul, 1961), 117–30.

[10] Communication between the colonies and the centre was intense – this may be seen through the constant exchange of letters and reports written by *in loco* agents to satisfy the demands for information from the government in Europe. For more on the case of Spanish America, see Ardnt Brendecke, *Imperio e información: Funciones del saber en el dominio colonial español* (Madrid and Frankfurt: Iberoamericana and Vervuert, 2012). The constant flow of petitions sent to the monarchies from the colonies is also relevant when considering this communication; see Roberta G. Stumpf, "Recorrer aos soberanos: notas sobre as denúncias dos vassalos das capitanias auríferas," *Almanack* 34 (2023). Moreover, the continuous territorial disputes over colonies (in which one colony could rapidly pass from the domain of one centre to that of another) and the presence of merchants with different backgrounds also intensified the circulation and exchange of experiences and practices. Furthermore, one other possible way to trace the circulation of legal information (without excluding others) is through an analysis of the circulation of agents and written documents, such as manuscripts and books, between the colonies.

1.2. 'Colonial Law' as a legal historiographical problem and analytical category

The first successful endeavours at colonial expansion marked a watershed in European and global history. For the first time, the economic and political enterprises of the four empires investigated here were truly operating on a global scale: that of Spain and Portugal since the sixteenth century, and England and the Republic of the United Provinces from the seventeenth century onwards. The law that each empire deployed and developed to govern and structure its overseas possessions was embedded in European traditions.[11] No doubt the normative models from the centre used in colonial administration had to be rearranged and transformed in practice: they had to be adapted to fit the specific circumstances of the overseas territories (be that because of the specificities of the environment and social problems or the lack of infrastructure for applying the same type of law as in the centre, or because the settlers had to confront and negotiate with native communities, which possessed their own normativities).[12] Such circumstances notwithstanding, the legal-technical solutions used in the colonies exhibited strikingly similar features as the ones designed for the centre.

The term 'colonial law' demands clarification. Strictly speaking, none of the colonies had a completely unique and independent set of laws that differed from those of the centre. Instead, authorities used many of the practices, types of knowledge, concepts, institutional models and even general framework of European law, at least in theory, in the overseas territories. António Manuel Hespanha, amongst others, has in fact warned against the risks of completely separating colonial law from European law in analytical terms.[13] This is not to say that colonial law operated in the same way as European law, but rather that both shared certain fundamental aspects – especially because elites (be they settlers or agents in service of the crown) in the colonies often produced and reproduced normative practices and argumentative patterns that mimicked the standards consolidated in Europe.[14]

The law of the colonies was a continuation, or at best a variation, of that in Europe.[15] Just as in Europe, the overall legal picture in the colonies can also be described as one where several normative orders or spheres simultaneously overlapped with each other, while covering more or less the same

[11] Some of these traditions we have already mentioned, such as the common law and the *ius commune* traditions. But here it is also important to note that theology also played a role in conforming normative practices in the colonies (which is also why in some parts of the present article we will use interchangeably the concept of normativity or normative orders and not only the term 'law'). Moving beyond the well-known controversy of Valladolid (with its repercussions for the treatment of native peoples in the Americas), it is also possible to point to the Jesuits and Franciscan missionaries as important intermediary agents in the circulation and production of normative information and practices in Portuguese and Spanish America. For more on this history, see Otto Danwerth and Thomas Duve, eds., *Knowledge of the Pragmatici: Legal and Moral Theological Literature and the Formation of Early Modern Ibero-America* (Leiden: Brill, 2020).

[12] For research on these adaptation issues, especially focused on the latter type, see Brian P. Owensby, and Richard J. Ross, eds., *Justice in a New World: Negotiating Legal Intelligibility in British, Iberian, and Indigenous America* (New York: NYU Press, 2018).

[13] A. M. Hespanha, "Porque é que existe e em que é que consiste um direito colonial brasileiro," *Quaderni Fiorentini* 35 (2006): 59–81; see also A. M. Hespanha, "Depois do Leviathan," *Almanack Brasiliense* (2007): 55–66. In addition, see the already mentioned work of Gustavo C. M. Cabral.

[14] For one example of how the lower houses of the thirteen British colonies of North America continued in the eighteenth century to mimic the practices and legal discourses of the English House of Commons from the seventeenth century, see Jack P. Greene, "Political Mimesis: A Consideration of the Historical and Cultural Roots of Legislative Behavior in the British Colonies in the Eighteenth Century," *The American Historical Review* 75, no. 2 (1969): 337–360.

[15] This was the case at least in the early phase of the colonisation. The second charter of Virginia, from 1609, expressly granted to the settlers self-governing power to enact, when necessary, any "Orders, Ordinances, Constitutions, Directions, and Instructions" so long "as the said Statutes, Ordinances and Proceedings as near as conveniently may be, be agreeable to the Laws, Statutes, Government, and Policy of this our Realm of England" (https://avalon.law.yale.edu/17th_century/va02.asp#1 (accessed 18.8.2023).). As the differentiation between colonial law and European law intensified, an increasing number of specific statutes were created (be it from the side of the centre or from the localities themselves, although with different political and economic interests). For more on this movement in the British Empire, see Christian R. Burset, *An Empire of Laws: Legal Pluralism in British Colonial Policy* (New Haven: Yale University Press, 2023).

geographical space.[16] To make matters even more complex, the channels of normative production (if only restricting our observations to the enactment of statutes[17]) were numerous: sometimes, written norms were enacted from the centre and destined exclusively for the colonies; other times, however, regulations could be requested by the colonies themselves (e.g. through petitions) or even produced directly by local authorities in the colonies.[18] Again, like in Europe, so too in their overseas colonies legal pluralism was *jurisdictional* pluralism, characterised by a multitude of authorities all entitled to 'speak the law'.[19] To be precise, instead of simply referring to 'colonial law' as a singular term, we would have to speak of *a combination of different normative orders at play in the overseas territories*. The term 'colonial law' is used here as a shorthand, while acknowledging the complexity described earlier.

Given the above considerations, colonial law may well be a useful open-ended term to illustrate core features of normative practices arising from the political relations of colonisation. One significant added value in using the category in this way is the possibility to describe how, despite the hierarchical or asymmetrical political relations of dominance and exploitation with the centre, a complex web of normativities was developed in those spaces – a web interrelated (continuously over time) with the European legal order. This interrelationship may range from inspiration and reproduction to the appropriation, translation and adaptation of normative information or practices from the centre based on the various local conditions found in the colonies. Here, it is necessary to distinguish between the inevitably anachronistic, yet useful, concept of premodern (or early modern) laws and the polarising concept of modern law used for governing colonial possessions in the nineteenth century. In the case of the latter, the legal position of the colonies in relation to the constitutional and administrative law of the empire had to be adjusted and distinguished in new ways – in many cases, resulting in the creation of specific and distinct colonial legislation.

The point of departure for comparing early modern colonial laws could be the different ways in which each sea power managed its colonial expansion. The distinct interests of each empire resulted in different strategies of colonisation. Portuguese and Dutch overseas expansion was motivated more by the desire to fight for and secure their trade routes than the desire to permanently occupy large tracts of land. Both empires invested relatively little in colonial administration and the development of normative practices in their colonies (at least initially). An extreme example is the case of Dutch overseas expansion:

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[16] The categories of legal pluralism or multinormativity are usually employed to describe this phenomenon. Currently, there is an ongoing debate as to whether and to what extent the categories are referring to different situations or projections, and if one should be used rather than the other. An in-depth analysis of this discussion will not be pursued here, though, as it is beyond the scope of this article. For some relevant literature on this topic, see Miloš Vec, "Multinormativität in der Rechtsgeschichte," in *Jahrbuch der Berlin-Brandenburgischen Akademie der Wissenschaften* (Berlin: Berlin-Brandenburgische Akademie der Wissenschaften, 2008), 155–166; Thomas Duve, "Was ist 'Multinormativität'? – Einführende Bemerkungen," *Rechtsgeschichte* 25 (2017): 88–101; Tamar Herzog, "The Uses and Abuses of Legal Pluralism: A View from the Sideline," *Law and History Review* (2023): 1–12.

[17] Regarding this observation, we are aware that statutes were not the normative core or the main legal source in early modern societies. As has been demonstrated for continental Europe, the enforcement or validity of statutes could be denied in a particular case, for instance if one of the parties held a privilege or a title of nobility; if 'equity' was employed; by the concession of grace; due to the existence of local customs opposing the rules of the statute; or by resorting to the authority of the commentators and glossators. For more on these themes, see A. M. Hespanha, *Como os juristas viam o mundo. 1550-1750: Direitos, estados, coisas, contratos, ações e crimes* (CreateSpace Independent Publishing Platform, 2015). Nonetheless, the fact that multiple institutions or organisations could produce statutes (alongside the potentiality that, in producing such statutes, a dialogue between the different levels occurred) is in itself a piece of information that should be taken into consideration when seeking to understand the complexity of early modern normative orders.

[18] For the case of Virginia, see the John R. Pagan, "English Statutes in Virginia 1660-1714," in *"Esteemed books of lawe" and the legal culture of early Virginia*, ed. Warren M. Blillings and Brent Tarter (Charlottesville: University of Virginia Press, 2017), 57–94.

[19] See the publication edited by Alejandro Agüero: *Justicia y administración entre el antiguo régimen y el orden liberal: lecturas ius-históricas*, https://historiapolitica.com/dossiers/dossier-justicia-y-administracion-entre-antiguo-regimen-y-orden-liberal-lecturas-ius-historicas/ (accessed 18.8.2023).

the Dutch colonial operations were organised and led by the directors of the trading companies, the East India Company (VOC) and the West India Company (WIC), though supervised by the States General. Even though the city of Batavia became a regional centre of Dutch Asian overseas operations in the Dutch East Indies, territorial expansion as such was not favoured, but instead developed out of necessity.[20] In the Americas, after losing regions in Brazil and in North America, Dutch operations in the West Indies diminished to that of a minor territorial power.[21]

In the Portuguese case, the strategies of the colonial administration shifted more to territorial control over time, as the examples of Brazilian captaincies from the mid-sixteenth century onwards and the New Conquests (*Novas Conquistas*) in the *Hinterland* around Goa in the mid-eighteenth century show.

Whether to invest in territorial conquest, and the heavy legal infrastructure it required, or in the establishment of trade networks coordinated by 'soft law' certainly depended on human, financial and military resources as well. Suffice it to say that the population of Portugal, according to a census conducted during the reign of João III in 1527–32, was between 1.25 and 1.5 million.[22] The population of the Dutch Republic was 1.5 million in the early seventeenth century, reaching two million in the late eighteenth century.[23] In contrast to these smaller sea powers, the population of Spain reached almost six million in the early modern period.

In addition to such differences, the comparative approach requires considering the different levels of agency and cultural resistance that native populations were capable of at the time. For example, the circumstances under which the Iberian monarchies in America and the Dutch in Far East Asia introduced their normative practices were extremely different. The case of the Portuguese Empire illustrates this point quite well since its strategies of colonisation in Asia differed dramatically from those in the Americas. The Portuguese recalibrated their strategies based on the types of socio-political arrangements found among the various native peoples. In the case of Asia, where institutions and traditions dedicated to diplomacy and warfare had been cultivated for centuries, the Portuguese had to be more 'subtle' and rely more on negotiations and concessions, adopting mixed forms of government.[24] In the Americas, the way in which European powers implemented colonial domination, although not preceding some degree of negotiations, could rely much more on violence and imposition.[25] It should also be noted that, in the Portuguese case, the figure of the missionary (in most cases, a Jesuit) also served as a crucial agent in colonisation, conforming with the colonial government and its normative practices.

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[20] Femme Gaastra, *Geschiedenis van de VOC. Opkomst, bloei en ondergang*, E-book edition (Walburg Pers, 2013), 41, 67.

[21] The Dutch, however, became and remained important actors in intra-American trade and were also deeply involved in the trans-Atlantic slave trade. Contrary to the VOC, the role of WIC as a monopoly diminished. See Wim Klooster, *Realm Between Empires: The Dutch Atlantic 1680-1815* (Cornell University Press, 2018), 57-97. For a discussion on the Dutch Atlantic, see Gert Oostindie and Jessica Vance Roitman, "Repositioning the Dutch in the Atlantic, 1680– 1800," *Itinerario* 36, no. 2 (2012): 129–160.

[22] A. R. Disney, *A History of Portugal and the Portuguese Empire*, vol. 1, *Portugal: From Beginnings to 1807* (New York: Cambridge University Press, 2009), 145.

[23] Jan de Vries and Ad van der. Woude, *The First Modern Economy: Success, Failure, and Perseverance of the Dutch Economy, 1500-1815* (Cambridge: Cambridge University Press, 1997), 50.

[24] Antonio M. Hespanha, *FIlhos da Terra: Identidades Mestiças nos Confins da Expansão Portuguesa* (Lisbon: Tinta da China, 2020), 96–99.

[25] The use of quasi-military expeditions led by *bandeirantes* by the Portuguese Empire is an infamous example of this tactic. The *bandeirantes* were local free men, many descendants of Portuguese settlers, who were not landowners and so could be persuaded by the crown to explore and conquer the *Hinterland* of Portuguese America in exchange for land and nobility titles. Their practice of violence is well documented. For the political imaginary of the *bandeirantes* of São Paulo and its consequences in the conflicts involving the mining region of Portuguese America, which also points to the violence perpetrated by the *bandeirantes* on their expeditions, see Adriana Romeiro, *Paulistas e emboabas no coração das Minas: idéias, práticas e imaginário político no século XVIII* (Belo Horizonte: Editora da UFMG, 2008).

With this analytical framework, the CoCoLaw project will systematically compare early modern overseas legal orders with each other, and by so doing, it will contribute to efforts at making legal history a truly global discipline. Cultural contextualisation and comparative methods best characterise the approach of the project.

2. Police and colonial law

2.1. Police as a research subject

The topic of police[26] is a classic research subject in European legal history, especially in Germany.[27] Many scholars today think that the increase in legislation and creation of administrative branches connected to the concept of police was essential to state-building or state-formation efforts in the early modern period.[28]

In attempting to trace and explain the process of transforming and modernising the state, scholars have elaborated broader interpretative frameworks. The categories of rationalisation (Max Weber), of a civilising process (Norbert Elias) and of *Soziale Disziplinierung* (social discipline) or *Fundamentaldisziplinierung* (fundamental discipline) (Gerhard Oestreich) must be mentioned here. The third category was especially central to discussions involving the theme of police for decades and may still today be considered so.[29]

Although all three categories have explanatory value, they must always be adopted with a certain amount of scepticism regarding their potential to encompass the entirety of historically complex phenomena. For years now, theoretically conscious historians have been warning about the risks of teleological narratives in historiography: namely, that by fixating only on features that survived through the passage to modernity, the observer runs the risk of underestimating other traditional or less noticeable

[26] The notion of police may be elusive or seem convoluted to some historians and even legal historians (especially since many use the term in different ways). First, here the word police does not imply the public institution in charge of the internal security of a nation-state (as mostly likely would be the case in current discussions). Police here refers to the older meaning of 'good order' (*Gute Policey* in old German) and the measures taken to maintain such order. In this sense, the term can refer to a concept used in treatises, and intellectual or political discussions, or to legal and administrative practices (the German *Policeyordnungen*, for example) that a polity may have adopted.

[27] For one of the best overviews on the subject still today, see chapters 8–9 of Michael Stolleis*, Geschichte des öffentlichen Rechts in Deutschland* (Munich: Beck, 1988). For more on the topic, see Karl Härter, "Art. Polizei," in *Enzyklopädie der Neuzeit,* vol. 10 (Stuttgart: Springer 2009), 170–180; Karl Härter, "Art. 'Policey' und 'Policeyordnungen'," in *Handwörterbuch zur deutschen Rechtsgeschichte* (Berlin: Erich Schmidt Verlag, 2018), 645–646, 646–652.

[28] See the classic work by Gerhard Oestreich, *Neostoicism and the early modern state* (New York: Cambridge University Press, 1982); for a fresh perspective on this idea, see Annemieke Romein, "Early modern state formation or gute Policey? The good order of the community," *The Seventeenth Century* 37, no. 6 (2022): 1031–1056. Many scholars will often point out that the notion of police is the basis for administrative law in the nineteenth century. However, it is equally noteworthy that the notion contained aspects that in modern law would be considered part of other legal branches, such as provisions repressing prostitution, vagrancy and specific groups (criminal law) or tax provisions (tax law).

[29] See Karl Härter, "Disciplinamento sociale e ordinanze di polizia nella prima età moderna," in *Disciplina dell'anima, disciplina del corpo e disciplina della società tra medioevo ed età moderna*, ed. Paolo Prodi and Carla Penutti (Bologna: Istituto storico italo-germanico in Trento, 1994), 635–658; Karl Härter, "Sozialdisziplinierung," in *Oldenbourg Geschichte Lehrbuch Frühe Neuzeit*, ed. Anette Völker-Rasor (München: Beck, 2000), 294–299; Karl Härter, "Social Control and the Enforcement of Police-Ordinances in Early Modern Criminal Procedure," in *Institutionen, Instrumente und Akteure sozialer Kontrolle und Disziplinierung im frühneuzeitlichen Europa / Institutions, Instruments and Agents of Social Control and Discipline in Early Modern Europe*, ed. Heinz Schilling (Frankfurt am Main: Klostermann, 1999), 39–63.

features that were nonetheless also part of the process of change and contributed to the larger picture and specificity of early modernity.[30]

Taking all these points into consideration, it is more suitable to understand police as a research object and field worthy of being investigated in its own right rather than merely as a prelude to something else. At least in European territories, the concept of police was already fundamental to state-building efforts since the sixteenth century. The concept was embedded in the reception of Aristotelian tradition, but the transformations around it followed the efforts to discover innovative models of active government for the emerging states in early modernity. Colonial administration was not alienated from this transnational process. Rather, it was complicit in the emergence of this active model of state action.

2.2. Methodological considerations

For legal historians, the discontinuities between police and what later became clearly separate branches of law in the postrevolutionary period should be highlighted.[31] For example, the *Ancien Régime* normative tradition underlying the notion of police did not make a distinction between public and private law,[32]or between justice and administration.

In the latter case, this meant the predominance of a jurisdictional type of activity on the part of authorities rather than an 'administrative' one (which lasted until the later stages of the eighteenth century and in some regions even until the nineteenth century).[33] Police intendents (or *commissaries*) in some places still functioned essentially as holders of *iurisdictio* (in this view, any other *corpora* within society also had their own *iurisdictio*, their own sphere of autonomy).[34] Even the king predominantly

[30] Heinrich Richard Schmidt, "Sozialdisziplinierung? Ein Plädoyer für das Ende des Etatismus in der Konfessionalisierungsforschung," *Historische Zeitschrift* 265 (1997): 639–682. See also Phillip Ajouri, *Policey und Literatur in der Frühen Neuzeit: Studien zu utopischen und satirischen Schriften im Kontext Guter Policey* (Berlin: Walter de Gruyter, 2020), 6–17.

[31] It is also imprecise to simply describe police as (an early form of) administrative law: see footnote 26 above. The concept of 'administrative law' brought about a rift in legal understanding from the nineteenth century onwards, while police as a legal category gradually disappeared at the same time. See Bernardo Sordi, "Chapter 1: Révolution, Rechtsstaat and the Rule of Law: historical reflections on the emergence and development of administrative law," in *Comparative Administrative Law*, ed. Susan Rose Ackerman et al. (Cheltenham: Edward Elgar Publishing, 2017).

[32] Bernardo Sordi, "Public Law before 'Public Law'," in *The Oxford Handbook of European Legal History*, ed. Heikki Pihlajamäki, Markus D. Dubber, and Mark Godfrey (Oxford: Oxford University Press, 2018). Surely, some form of linguistical distinction between public and private law has existed since ancient Roman times (the concept of '*ius publicum*' may be found in the digest [D.1.1.1.2]). This does not mean that since this period, the term has had the same meaning as it does today – the bind with the term '*ius sacrum*' would later be abandoned, and it certainly did not express an autonomous legal branch or field then. It is somewhat confusing that contemporaries of the eighteenth century, in the German context at least, considered *Policeyrecht* to be a part of the '*Teutsches Privatrecht*'. See Thomas Simon, "Das Policeyrecht des 18. Jahrhunderts als Teil des 'Teutschen Privatrechts': Zum Verhältnis von 'Recht' und 'Policey'," *Rechtsgeschichte* 19 (2011): 309–321.

[33] With 'administrative', we are here referring to the type of institutional activity that acts by itself, legitimised by formal law, whereas 'jurisdictional' here refers to the type of institutional activity that needs to be triggered by an external party to provide a case decision. For more on this distinction, see the literature referenced in footnote 18. For the argument that police institutions and regulations of early modernity were never able to resolve the 'jurisdictional paradigm' before the revolutionary rupture at the end of the eighteenth century, although they could ignite the process of institutional change based on a model of 'active government', see Bernardo Sordi and Luca Mannori, *Storia del Diritto Amministrativo* (Roma: Editori Laterza, 2001), 141.

[34] See, e.g. the *alvará* (here the term could be roughly translated as statute), which created the *Intendência-Geral da Polícia da Corte e do Reino* in Portugal, in existence from 1760 onwards. The reasoning of the *alvará* expressly declared that the institution was designed to take charge of the '*jurisdicção politica*', which should not be confused with the '*jurisdicção contenciosa*' (the latter belonging to the rest of the magistrates). Although it is possible to see how the logic of police gradually became differentiated from that of ordinary jurisdictional activity, with the goal being to achieve efficiency and the swift implementation

served as a judge in the 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 its jurisdictional function. It must come as no surprise, then, that conflict and confusion over jurisdictions were recurrent problems in this scenario.

It is also important to note that the model for governing was fundamentally different at the time than it is now: the imaginary of early modern historical actors was impregnated by a political configuration comprised of pacts, of *Stände* and of corporations with privileges. The principalities had to deal with plenty of intermediaries in the application of norms – while the modern state (at least in theory) relates directly (since administrative institutions and public servants are the *longa manus* of the State) to individual citizens and enforces law free of other such interests. This meant at the time that much of the implementation and even the enactment of police ordinances needed to be negotiated between authorities at different levels. It was not uncommon for police specialists to have noted that this factor was crucial to the effectiveness of implementing the law.

These points must be taken into consideration when interpreting historical legal sources related to police before the nineteenth century, mainly because an awareness of them significantly changes the approach of researchers to questions surrounding the implementation and enactment of 'police regulations' or even the understanding of the latter's social function. If we follow our argument that colonial law can be described as 'police regulation', then we can attempt to employ such considerations in the analysis of colonial contexts. The hypothesis here is that such considerations are helpful for the historical analysis of colonial law just as they are for European legal history.

2.3. Police: origins, development and expansion into the colonies

The etymological origin of the word police derives from ancient Greek, coming from the words *polis* and *politeia*, which were associated with notions like maintaining city order, 'good government', 'order' and 'good order', according to Aristotelian tradition. These words were translated into Latin as *politia*. The terms *police* and *gute Policey* first emerged in fifteenth-century France and the Holy Roman Empire of the German Nation, respectively.[35] Police then referred to 'good order' as an overall concept and goal of a community or state.[36] This 'good order' was then achieved and maintained with the help of the police

of new statutes enacted by the government, it is also clear that the language of power was still being coordinated based on the concept of 'jurisdiction'.

[35] Its use in treatises, official documents and ordinances may be found in sources from the Late Middle Ages onwards throughout Europe, seemingly having first been incorporated by the Court of Burgundy. However, it should be noted that the concept was utilised and developed, both in scholarly literature and legislation or official documents, more systematically in German-speaking and French-speaking regions. For a timeline of the earlier appearances of the concept in documents, see Andrea Iseli, *Gute Policey: Öffentliche Ordnung in der frühen Neuzeit* (Stuttgart: Eugen Ulmer, 2009), 14–15; Franz-Ludwig Knemeyer, "Polizei," *Economy and Society* 9, no. 2 (1980): 172–196, esp. 174. For more literature and other examples, see Härter, "Disciplinamento sociale e ordinanze di polizia", esp. 639.

[36] On the history of the term, see Karl Härter, "Security and 'Gute Policey' Early Modern Europe: Concepts, Laws and Instruments," *Historical Social Research* 35, no. 4 (2010): 41–65; see also Peter Nitschke, "Von der Politeia zur Polizei: Ein Beitrag zur Entwicklungsgeschichte des Polizei-Begriffs und seinen herrschaftspolitischen Dimensionen von der Antike bis ins 19. Jahrhundert," *Zeitschrift für historische Forschung* 19 (1992): 1–27; Marc Raeff, *The Well-Ordered Police State: Social and Institutional Change Through Law in the Germanies and Russia, 1600-1800* (New Haven, Conn.: Yale University Press, 1983). Initially, the term police was simultaneously understood as a situation and activity – the situation of 'good order' and the activity

ordinance (*Policeyordnung*). The concept and the practice of enacting ordinances appeared in some combination from the fifteenth century onwards in practically all parts of Europe, although with different formats and in different periods.[37] But not only in Europe, for this characterisation of order proved particularly well-suited to the colonisation of other continents at the time, where – seen through European eyes – nothing was old and worth preserving.[38] With colonisation, everything was new or in the process of being created. Police regulation began to develop in the fifteenth century, roughly at the same time as global colonisation. Expanding European empires used police to organise their colonisation efforts, which has been demonstrated, for example, in the cases of Sweden[39] and Russia.[40]

The term police, referring to a 'well-ordered police state', to use Marc Raeff's formulation, appeared throughout Europe, but the term *Policeyordnung* does not have an equivalent in other countries. However, not even in Germany were all the laws that we now identify as 'police regulation' labelled as such. This was the case only with the so-called *Policeyordnungen*, which covered broad spheres of public order. In addition, numerous regulations were adopted with the aim of creating or supporting police in narrower areas of life.[41]

Police as legislation is one thing, while the emergence of police and *Policeygesetzgebung*, or its other linguistic equivalents, is another. We use the term police consistently to facilitate comparison between the different empires already in the sixteenth and seventeenth centuries. We do this regardless of whether authorities used the term, or an equivalent of the term police ordinance or *Policeyordnung*, in a certain empire or polity, thus emancipating the discussions from different national traditions and, for the purposes of this project, replacing older traditions with a common language and thereby facilitating comparisons.

Like the police ordinances of the German principalities, colonial police norms had a hierarchical structure, but in not quite the same manner. The Dutch, Portuguese, English and Spanish police ordinances introduced in the colonies from the European centres were far less numerous than the German Imperial

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of maintaining it. In the sixteenth and seventeenth centuries, there was a tendency to view 'police matters' as being focused on maintaining the security of religious morals and hierarchical relations of the estates (*Stände*).

[37] It was in France and the Holy Roman Empire (the German principalities) that the first entries of the use of both the concept and the practice of enacting ordinances directly connected with it are documented. Both political territories would also later exhibit more development than other places in terms of intellectual appreciation of police and in the sheer number of police regulations. However, by the eighteenth century it is possible to find statutes that could easily fit the categories of police regulations throughout Europe (in Italy, Portugal, Spain, Sweden, for example). It is sometimes argued that England never had any police regulations; however, the English poor laws and sumptuary laws of the Tudor era have for some time now been the subject of much study by the English-speaking academic community. For an edited volume that has proposed adopting a 'global perspective' on one of the most famous types of police regulation (although not linking sumptuary laws to the concept of police), see Giorgio Riello and Ulinka Rublack, eds., *The Right to Dress: Sumptuary Laws in a Global Perspective, C.1200–1800* (Cambridge: Cambridge University Press, 2019).

[38] Many scholars have pinpointed the social impulse for the growth of police regulations in the growing sense of disorder in European societies from the fifteenth century onwards and in the decline of the power of the estates (*Stände*) to regulate social life (the greater the feeling of disorder, the more need for police regulations). For more on this idea, see Iseli, *Bonne Police*; Franz-Ludwig Knemeyer, "Polizei," *Economy and Society* 9, no. 2 (1980): 172–196. It is no surprise that the colonies (seen so often as uncivilised places and disordered territories) would soon be deemed worthy of regulation via similar normative instruments.

[39] Toomas Kotkas, *Royal Police Ordinances in Early Modern Sweden: The Emergence of Voluntaristic Understanding of Law* (Leiden: Brill, 2014).

[40] Raeff, *The Well-Ordered Police State*.

[41] The argument made by Achim Landwehr is that all these written laws should be evaluated as designed and guided according to the rhetoric of '*Guten Policey*'; see Achim Landwehr, "Die Rhetorik der 'Guten Policey'," *Zeitschift für historische Forschung* 30, no. 2 (2003): 251–187.

regulations. In Germany, apart from the three imperial police ordinances, known as the *Reichspoliceyordnungen*, at least 50 different imperial laws and ordinances contained police regulations. The imperial police also covered a wide range of topics. The imperial ordinances of the four colonial empires, in contrast, concentrated on issues worth regulating from the metropole. Given the immense variety of territories that each of the empires had acquired, it would have been impossible to regulate them with the same degree of detail as did the Germans. Most police matters were regulated at different regional or local levels. However, as Tau observes, it is necessary to remember that "the elaboration of [the norms] was not usually a unilateral act of the one or those who subscribed to it but was the result of an agreement between the various authorities [...] with the consensus of [...] ministers, advisers and practitioners".[42] Here, too, the flexibility underpinning ideas about police proved advantageous since such ideas could be moulded to fit local circumstances and interests.

It is also important to note that, midway through the eighteenth century, police as a concept underwent a transformation: increasingly, the concept implied the rational and internal management or administration of the empire. Not only did the duties performed by the police institutions and regulations increase significantly, but they were no longer conservative in nature: the various empires directed police to change, guide and promote the social conditions of a certain colony, many times in line with cameralistic ideals.[43]

If we attempt to present a broad overview of how police regulation functioned in the different empires, we should first briefly ask what we know about the police in England, Portugal, the Republic of the United Provinces and Spain. Compared to certain other parts of Europe, the literature is relatively sparse.

For Spain, monographic works cataloguing significant numbers of police regulations are lacking. However, articles exist on individual police-related topics.[44] For the colonies, research relating police regulation to the so-called *derecho indiano* is even rarer.[45] However, Víctor Tau published in 2004 a valuable study entitled *Los bandos de buen gobierno del Río de la Plata, Tucumán y Cuyo*. In his

[42] Víctor Anzoátegui Tau, *Los Bandos de Buen Gobierno de Buenos Aires en la época hispánica* (Valladolid: Casa-Museo de Colón, 1983), 54. Here, it is already possible to see how a legal historian dealing directly with the normative sources (in this case, the *bandos*) of the Spanish Empire arrived at a strikingly similar conclusion as that of researchers in the field of police studies, namely that police regulation was the result of a communicative process between different instances, organisations and agents within the structure of government.

[43] Thomas Simon, *"Gute Policey": Ordnungsleitbilder und Zielvorstellungen politischen Handelns in der frühen Neuzeit* (Frankfurt am Main: Klostermann, 2004). See also Andre Wakefield, *The Disordered Police State: German Cameralism as Science and Practice* (Chicago: The University Chicago Press, 2009).

[44] For a list of some of them, see Ernest Lluch, "Cameralism beyond the Germanic World: A Note on Tribe," *History of Economic Ideas* 5, no. 2 (1997): 85–99; Adriana Luna-Fabritius, "Cameralism in Spain: Polizeywissenschaft and the Bourbon Reforms," in *Cameralism and the Enlightenment: Happiness, Governance and Reform in Transnational Perspective: Enlightenment World-Political and Intellectual History of the Long Eighteenth Century*, ed. Ere Nokkala and Nicholas B. Miller (Routledge: Abingdon, 2019), 245–266. Ernst Lluch and Luna-Fabritius highlight the circulation of cameralistic ideas in the Spanish Empire and often connect the theme of police with them.

[45] For exceptions, see Johannes-Michael Scholz, "Policía: Zu Staat und Gesellschaft in der spanischen Neuzeit," in *Policey im Europa der Frühen Neuzeit*, ed. Michael Stolleis, Karl Härter and Lothar Schilling (Frankfurt am Main: Klostermann, 1996), 213-297; Heikki Pihlajamäki, "The Westernization of Police Regulation: Spanish and British Colonial Laws Compared," in *New horizons in Spanish Colonial Law: Contributions to Transnational Early Modern Legal History*, ed. Thomas Duve and Heikki Pihlajamäki (Frankfurt: Max Planck Institute for European Legal History, 2015), 97–124. For another perspective, see the work of Romina Zamora, which, although not looking specifically at the statutes, is concerned with how the concept of '*casa poblada*' (household) appeared in the region of Tucuman, relating it to the concepts of '*buen gobierno*' and '*policía*'. See Romina Zamora, "Casa poblada y buen gobierno: 'oeconomia' católica y servicio personal," in *San Miguel de Tucumán*, vol. XVIII (Buenos Aires, 2017).

investigation of the *bandos*, Tau made a connection between the documents and the concept of police. According to him, the *bandos* regulated many matters that may be classified as pertaining to the police, although they also contained other types of regulations. On the other hand, some classic police matters were not touched upon in the *bandos* (e.g. mining and the water supply, which other government provisions ultimately regulated).

Portuguese historiography offers more material for comparison. Here, Airton Seelaender's book *Polizei, Ökonomie und Gesetzgebungslehre*, which deals with the Portuguese Empire of the eighteenth century, should be highlighted. Seelaender gives a broad perspective on how people viewed the notion of police in Portugal and how it related to the 'theory of legislation' by providing a contextualised interpretation of Portuguese legislative sources and legal literature of the time.[46] A good complementary work is an article by Pedro Cardim and Miguel Baltazar on the diffusion of legislation throughout Portugal, which provides a quantitative analysis of Portuguese royal legislation from 1621 to 1808.[47] However, neither of these works took the statutes produced in the colonies into consideration.[48] Therefore, an analysis of the *bandos* enacted by the governors of captaincies in Brazil (or other types of local written law) are not yet publicly available.[49]

When it comes to Dutch overseas expansion, issuing '*plakaten*' – legislation that generally can be translated as ordinances – became a central tool for governing and regulating the Dutch overseas trading posts and occupied territories. As Annemieke Romein points out, no compilations of ordinance books were published in the seventeenth- or eighteenth-century Dutch trading posts and colonies, except for Suriname, where the Police Council decided to compile all ordinances into published volumes in the early eighteenth century.[50] Publications of the colonial legislation as edited volumes were prepared only in the following centuries. The first wave was linked to the distinctive position of the East Indies for the Dutch Republic: the region, broadly corresponding to present-day Indonesia, remained the largest colony of the Dutch kingdom after the Napoleonic wars. As a part of the interest of developing Dutch colonial administration, Jacobus Anne van der Chijs, a nineteenth-century Dutch colonial official and scholar, collected and published old colonial police ordinances and statutes. This series of publications includes

[46] Seelaender, *Polizei.* The findings especially useful here are that 'polícia' as a concept began to appear textually in Portuguese statutes ('*alvarás*') more and more frequently after the second half of the eighteenth century, during the Pombaline reforms, a time accompanied by an intensification of legislation and even changes in formal legislative procedure, which facilitated the enactment of norms from the top down.

[47] Pedro Cardim and Miguel Baltazar, "A difusão da legislação régia (1621–1808)," in *Um reino e suas repúblicas no Atlântico. Comunicações políticas entre Portugal, Brasil e Angola nos séculos xvii e xviii*, ed. João Fragoso and Nuno Gonçalo Monteiro (Rio de Janeiro: Civilização Brasileira, 2017), 161–207. In the article, the authors also provide a classification of matters that appear in the legislation, which has proven to be quite useful for the study of police since the changes in matters of importance parallel those taking place in the German territories and other European monarchies at the time.

[48] Nonetheless, Seelaender has analysed some written law produced by the Portuguese Empire directed at regulating colonial matters; see, e.g. Seelaender, *Polizei*. For an in-depth analysis of the case of the Diamond District in Brazil, see Nathaly Mancilla-Órdenes, "The Crown as an apprentice: Policy, colonial administration and new meanings of law in the Diamond District (1771–1808)" (PhD thesis, University of Brasília, 2023).

[49] However, recently some studies on the *Bandos* have been produced in certain captaincies, with promising results; see Arthur Curvelo, "Ordens, bandos e fintas para fazer a 'cruel guerra': os governadores de Pernambuco, a câmara das Alagoas e as 'entradas' nos Palmares na segunda metade do século XVII," *Revista do IAHGP* 67 (2014): 193–223.

[50] Annemieke Romein, "The Formative Role of Early Modern Books of Ordinances: The Low Countries and Their Overseas Lands," in *The Early Modern State: Drivers, Beneficiaries and Discontents.: Essays in Honour of Prof. Dr. Marjolein 't Hart*, ed. Pepijn Brandon, Lex Heerma van Voss, and Annemieke Romein (London: Routledge, 2022), 89–111.

sixteen parts and a register, chronologically covering the period from 1602 until 1811.[51] As Romein puts it, "the purpose was to uncover the past and offer insights into the political-legal institutions; and even to legitimize further colonial conquest. Such a publication did also offer a means by which to identify the metropole of Batavia as part of the ongoing state-formation process, or rather, empire-building process". Today, the collections are invaluable for the analysis of Dutch legal history in general, and crucial for the study of early modern Dutch legal history in particular, even if done with completely different knowledge-constitutive interests in mind.

In the Dutch post-colonial period, authorities published early modern Dutch colonial *plakatenboeken* from the mid-twentieth century until the present day. In 1944, the *Kaapse Plakaatboek* collection was published in six volumes (five in Dutch, one in English) in South Africa.[52] The set of colonial legislation from the time of the Dutch rule in Suriname, Curaçao, Aruba and Bonaire, and St. Maarten, St. Eustatius and Saba were published first, followed by a recent publication in the series, the *Plakaatboek* for (Dutch) Guyana 1670–1816, edited by J. Th. de Smidt, T. van der Lee and H.J.M. van Dapperen. While the collections on the Dutch Caribbean have not been included in the Huygens Institute's resource database, the work on Dutch Guyana has been published digitally.[53] The most recent addition to the East Indian collection of *plakaten* is *Ceylonees plakkaatboek* by Lodewijk Hovy, which includes collected ordinances from the Dutch period (1638–1796) in present-day Sri Lanka, though they are not yet digitally available.[54]

It is important to engage in source criticism as an intrinsic part of any analysis using such sources. For instance, the *Nederlandsch-Indisch plakaatboeken* include mostly only summaries based on the original sources. Although in many cases the information available in the *Nederlandsch-Indisch plakaatboeken* can be double-checked in the diverse array of sources digitised in the National Archives of the Netherlands, the collection does not include all the ordinances that were sent from the East Indies to the Dutch Republic. Ships carrying ordinances that were drafted and sent by the governor-general and the council in Batavia to the Hague could be sunk or otherwise damaged. The collection of summaries from the ordinances is not, therefore, a complete picture of the ordinances, and neither do they reflect the variety of intentions of the overseas officials. The National Archive of Indonesia (Arsip Nasional Republik

[51] Jacobus Anne van der Chjis, ed., *Nederlandsch-Indisch plakaatboek, 1602–1811*, 17 volumes (Het Bataviaasch Genootschap van Kunsten en Wetenschappen met medewerking van de Nederlandsch-Indische Regering, 1885–1900), available online in Leiden University's digital repository of colonial sources: http://hdl.handle.net/1887.1/item:1251234 (accessed 18.8.2023).

[52] Romein, "Books of Ordinances," 101–102; M.K. Jeffreys, ed., *Kaapse Plakkaatboek: 1652–1707 – Cape of Good Hope (South Africa)* (Cape Town: Argiefkommissie, 1944).

[53] J. Th. De Smidt and T. van der Lee, eds., *Plakaten, ordonnantien en andere wetten uitgevaardigd in Suriname 1667–1816,* vol. I*, 1667–1761* (Amsterdam: Emmering, 1973); J. Th. De Smidt and T. van der Lee, eds., *Plakaten, ordonnantien en andere wetten uitgevaardigd in Suriname 1667–1816,* vol. II, *1761–1816* (Amsterdam: Emmering, 1973); J. Th. De Smidt, T. van der Lee, and J.A. Schiltkamp, eds., *Publikaties en andere wetten alsmede de oudste resoluties betrekking hebbende op Curaçao, Aruba, Bonaire,* vol. I, *1638–1782* (Amsterdam: Emmering, 1978); J. Th. De Smidt, T. van der Lee, and J.A. Schiltkamp, eds., *Publikaties en andere wetten alsmede de oudste resoluties betrekking hebbende op Curaçao, Aruba, Bonaire,* vol. II, *1782–1816* (Amsterdam: Emmering, 1978). J.A. Schiltkamp and J. Th. De Smidt, eds., *Publikaties en andere wetten betrekking hebbende op St. Maarten, St. Eustatius en Saba, 1648/1681–1816 (*Amsterdam, Emmering 1979), https://www.huygens.knaw.nl/resources/plakaatboek-guyana-1670-1816/ (accessed 18.8.2023). The summaries of the ordinances and laws related to the Dutch Caribbean world can be accessed at the following website: https://www.huygens.knaw.nl/resources/the-dutch-in-the-caribbean-world-c-1670-c-1870/ (accessed 27.11.2023).

[54] Lodewijk Hovy, ed., *Ceylonees plakkaatboek plakkaten en andere wetten uitgevaardigd door het Nederlandse bestuur op Ceylon, 1638–1796* (Verloren: Hilversum, 1991).

Indonesia) has made parts of its VOC collections available online (although not always downloadable or of good quality) but not the archival inventories that include the police ordinances.[55]

Such challenges notwithstanding, using *plakaatboeken* as a primary source in legal historical research yields numerous advantages. They can offer an overview of the essential challenges that the overseas governing officials faced regarding specific topics pertaining to the central trading hubs. Several ordinances, for instance, were enacted to forbid and regulate illicit trade in the East Indies. While such an action on its own might be explained by the fact that authorities failed to diligently implement the ordinances, it may also have been the case that governing officials of the VOC had neither the knowledge nor the ability to easily interpret the ordinances.[56]

When comparing the material available for analysing Dutch colonial legal history and the ordinances issued by this smaller sea power, it is striking how different the situation was compared to England. For reasons related to its own historical tradition, discussions of police matters in colonial contexts have been neglected by scholars.[57] It was only quite recently that English-speaking scholars tried to establish a connection in their sources with the concept of police. Even still, research linking an analysis of statutes with the concept of police is almost non-existent. On the other hand, much research is available on colonial legislation (for the thirteenth colonies especially).[58]

It is typical that many of the works dealing specifically with police matters (such as vagrancy, urban improvements, public health, orphans and laws targeting the poor) are not classified as investigations of police norms in colonial contexts, despite the fact that much of the secondary literature and a few primary sources[59] demonstrate that the methodological tools already perfected in German *policey* studies may be useful for the study of colonial legislation as well. Comparative research is, therefore, clearly needed.

3. Digital sources of colonial law

The rapid digitisation of archival materials and printed collections of sources makes it possible not only to conduct comparative research on different legal systems but also to expand the perspectives by including an analysis of agency at a grassroots level in different colonial spaces. For such comparative studies, it is not only interesting to look at legislative sources (ordinances, statutes[60]) but also at other types of sources (such as official correspondence, administration documents, reports and so forth) that can clarify the

[55] See https://sejarah-nusantara.anri.go.id/archive/ (accessed 18.8.2023). Particularly important inventories in the Indonesian National Archives in this regard are the collections of original plakkaten, inv. numbers 2248–2419. For more information, see Louisa Balk et al., *The Archives of the Dutch East India Company (VOC) and the Local Institutions in Batavia* (Jakarta: Brill, 2007), 243–245.

[56] For ordinances related to illicit trade outside the VOC monopoly, see, e.g. 210–213 in the index (volume 17) of Nederlandsch-Indisch plakaatboeken, http://hdl.handle.net/1887.1/item:1272731 (accessed 27.11.2023).

[57] However, an article by Robert von Friedeburg focuses on the Tudor legislation, which closely resembles continental police norms: "Ordnungsgesetzgebung Englands in der Frühen Neuzeit," in *Policey im Europa der Frühen Neuzeit*, ed. Michael Stolleis, Karl Härter and Lothar Schilling (Frankfurt am Main: Klostermann, 1996), 575–603.

[58] Warren M. Billings, *Statute Law in Colonial Virginia: Governors, Assemblymen, and the Revisals That Forged the Old Dominion* (Charlottesville: University of Virginia Press, 2021), https://doi.org/10.2307/j.ctv1c7zfvd (accessed 4 Dec. 2023).

[59] Here, we can briefly quote the *Boletim Ultramarino*, a compilation of legislation destined for the overseas territories of the Portuguese Empire, available online. An exploratory reading of this document demonstrates that many police matters appear in the documents. Not only that, but the concept of '*bom governo*' (good government) is also constantly mentioned throughout the sources.

[60] Wolfgang Wüst, "Acquisition – Digitization – Edition: Reflections on the premodern "Policey" Corpus", in: Advances in Social Sciences Research Journal (ASSRJ), vol. 9, issue 10 – October 2022, pp. 176–191.

meaning conferred on specific rules (and concepts, such as police). Combining sources of legislation or regulation with other sources also sometimes makes it possible to observe local resistance to and negotiations about the actual implementation of ordinances, revealing the juxtaposition of ideals and practice in the overseas territories.

With respect to future research on the legal history of the Dutch overseas trading empire, the digitalisation projects of different archives, especially the National Archives of the Netherlands, as well as digitised legal literature, such as the *plakatenboeken*, offer novel possibilities for comparative research approaches. The VOC archives, the most consulted archive site in the Netherlands, has been entirely digitised for the public.[61] Also, the National Archives of the Netherlands is pioneering user-friendly applications of AI-based text recognition programs, enabling the public to use search tools when consulting the contents of the VOC archives.[62] In terms of research on the legal history of the Dutch overseas trading empire, it is therefore possible to consult both the ordinances issued by the States General (and the East Indies local government) and sources illustrating the political, economic and social context where the ordinances were issued. [63]

Although the archival materials pertaining to the West India Company are less coherent (in part due to the more complex, and less successful, organisational history of the company), significant archival collections relating to Dutch Atlantic history are digitally available as well.[64] In addition, there are important archival collections digitally available that illustrate legal disputes relating to long-distance trade, such as the archives of *Hoge Raad van Holland* or Zeeland and (West-)Friesland, 1582–1797.[65]

With respect to the Portuguese Empire, digitalisation has helped immensely with making legal historical sources available for general use. The website *O Governo dos outros* (The Government of Others) is one of the best examples of this development. The site is dedicated to publicising legislation relating to Portugal's seaborne empire (from 1496 to 1961). It is also noteworthy to add here that the older project of compiling a Portuguese database on written statutes and laws (*Ius Lusitaniae*) has been incorporated into the *O Governo dos outros* website.[66]

Regarding the Spanish Empire, beyond the noticeable amount of legislation for the Indies issued by the *Council of the Indies* through royal ordinances and broadly applied across Spanish-controlled territories, different authorities at the local level, as mentioned earlier, also had the power to regulate matters through the issuance of decrees known as *bandos de buen gobierno* and other police regulations. This means that, within the institutional framework of the Spanish colonial administration system, a single colonial city could find itself simultaneously subject to regulations issued by the viceroy, the regional court or the municipal government.

The challenges and efforts involved in compiling and making relevant historical sources available reflect the decentralised nature of this normative practice, originating from various local instances. Over

[61] For an overview, see https://www.nationaalarchief.nl/onderzoeken/zoekhulpen/overzicht-van-voc-archieven-1594-1814 (accessed 18.8.2023).

[62] For the material database of sources made accessible with AI text recognition, see https://zoekintranscripties.nl/ (accessed 18.8.2023).

[63] For instance, letters sent by the Governor-General of Batavia are now digitally available: https://resources.huygens.knaw.nl/vocgeneralemissiven (accessed 18.8.2023).

[64]For the archives of the first and second Dutch West India Companies, see https://www.nationaalarchief.nl/onderzoeken/archief/1.05.01.01; and https://www.nationaalarchief.nl/onderzoeken/archief/1.05.01.02.

[65] For use of the Hoge Raad archives, see https://www.nationaalarchief.nl/onderzoeken/zoekhulpen/uitspraken-hoge-raad-van-holland-en-zeeland-1582-1795 (accessed 18.8.2023).

[66] See https://www.governodosoutros.ics.ul.pt/ (accessed 18.8.2023)..

the years, an array of printed source collections have become accessible, such as those for Paraguay,[67] Argentina,[68] Cuba,[69] Venezuela[70] and the Philippines.[71] Nevertheless, owing to the nature of the source material and the distinct principles underlying the investigation that supports each compilation, a unified pattern is absent, making comparison and classification more difficult.

To address this challenge, one approach would be to digitise and transcribe all the sources, adhering to guidelines like TEI, which would facilitate broader comparisons, categorisation and utilisation of source materials through search engines.

Fortunately, initiatives in this direction already exist. One such initiative is the *Compendio Bandos de Buen Gobierno de la Ciudad de México*, directed by Guadalupe de la Torre Villalpando from Mexico's Instituto Nacional de Antropología e Historia.[72] This project has made available online edicts issued in Mexico City between 1697 and 1821. The effort has entailed collecting sources from various Mexican archives. Notably, the project has resulted not only in digitised historical documents and provided images of them but also a transcription of their contents using palaeographic methods. The platform enables users to conduct searches using keywords, dates or the names of the authorities that issued the edicts. Additionally, it includes a glossary to aid in understanding specific legal terminology.

In the case of the Dutch archives, there are still some relevant VOC collections that are not yet digitally available, for instance the minutes of the *Raad van Justitie* and collections of the *Schepenbank* of Batavia, which are held in the Indonesian National Archives. Also, several relevant VOC collections are scattered across parts of Asia where the company operated, for example in Sri Lanka and regions in present-day India. These archives, which illustrate the daily lives and lived experiences of the local populations, are not, to our knowledge, digitally available yet.[73]

Regarding the Portuguese Empire, although the website *Governo dos Outros* makes available several compilations of laws from the nineteenth century and even some individual diplomas, there is still a considerable gap concerning legislation from the colonies. Namely, many *bandos* enacted by the governors of the *capitanias* are not available in digital form, at least not through this website. Without such sources, it is difficult to comprehend the entire picture of colonial law.[74]

The above observations on the state of the archives are also the first step in conceiving the creation of our own database. The CoCoLaw project will need to address some gaps that currently exist in the available digitised documents concerning colonial legislation, although plenty of material has already

[67] Herib Caballero Campos, *Los bandos de buen gobierno de la provincia del Paraguay, 1778–1811* (Asunción: Fondec, 2007).
[68] Tau, *Los Bandos*.
[69] Dorleta Apaolaza Llorente, *Los bandos de buen gobierno en Cuba: la norma y la práctica (1730–1830)* (Bilbao: Universidad del País Vasco, 2016).
[70] Edda O. Samudo and David J. Robinson, *A Son de Caja de Guerra y Voz de Pregonero. Los Bandos de Buen Gobierno de Mérida Venezuela 1770–1810* (Caracas: Academia Nacional de la Historia, 2009).
[71] Patricio Hidalgo Nuchera, *Los autos acordados de la real audiencia de las Islas Filipinas de 1598 y 1599* (Madrid: Universidad Autónoma de Madrid, 2017).
[72] https://bandosmexico.inah.gob.mx/menu.html (accessed 18.8.2023).
[73] For novel research conducted on these sources, see Alicia Schrikker and B. Sur, "An Empire in Disguise: The Appropriation of Pre-Existing Modes of Governance in Dutch South Asia, 1650–1800," *Law and History Review* (2023): 1–25, doi:10.1017/S0738248022000554 (accessed 18.8.2023).
[74] Recently, the CoCoLaw project has been granted the HSSH Catalyst Grant in Finland, which will be used to cover the expenses of a digitisation project of Brazilian legal sources in the federal state of Ceará. This project is being conducted jointly with Professor Gustavo César Machado Cabral and the material will be deposited in the archives of Ceará. See https://www.helsinki.fi/en/helsinki-institute-social-sciences-and-humanities/research-support/catalyst-grant-funding (accessed 18.8.2023)..

been digitised. A certain amount of travel and various digitisation efforts will thus comprise part of the project.

In addition, it is possible to think about creating a database on police regulation in the colonial context. The already ongoing RHONDA project and the initiatives by the Max Planck Institute for Legal History and Legal Theory in compiling the *Repertorium der Policeyordnungen der Frühen Neuzeit*,[75] or database index, also provide a firm foundation for making progress in this direction. For example, the classification scheme crafted for the *Policeystudien* may easily be adopted, with a few adaptations, to serve our own purposes. Ultimately, the creation of a database may give us the possibility to compare a large array of sources from various regions in the world and provide new paths for writing legal history.

[75] See https://www.lhlt.mpg.de/publikationen/repertorium-der-policeyordnungen (accessed 18.8.2023).