Economic Policies and Bankruptcy Institutions: Brazil in a Period of Transition from Colony to an Independent Nation

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Changes in Brazilian bankruptcy law introduced in 2004 that provide better conditions for the recovery of indebted firms have been seen as a major step towards modernization of Brazilian legislation. The new law reflects greater concern in economic policy with growth and employment as opposed to the safeguarding of the rights of creditor. This kind of trend is not new in Brazilian history. It could be seen in the colonial period as part of a package of incentives offered by Portugal in order to promote economic activities in its colonies in accordance with the aims embodied in the mercantilism policies of that time.

On the basis of the definition of institutions provided by Douglass (1990, p 3) - “the rules of the game in a society, or more formally….the humanly designed constraints that shape human interaction” - the relevance of institutions in shaping Brazilian economic development in the nineteenth century has not been denied or ignored by economic historians. However, studies of the impacts of institutions have not followed the principles or methodologies suggested in more recent literature. The effects of institutions on economic growth have been mostly assumed and not duly investigated. Consequently, some spurious causal relationships have been established and become widely accepted. This has been the case, for instance, with one type of institution, the rules embodied in legal texts. On the one hand, such institutions are often used to explain developments that took place in the economy without sufficient investigation of their ability to account for the phenomena observed. On the other hand, the possibility that institutions of this kind may be the explanation for the course of certain events is frequently not considered at all. Even though there may be some exceptions, this reveals a certain lack of interest in the actual role played by legislation in shaping the developments observed. Laws have not been properly studied, leading economic historians either to ignore significant institutional changes or to misinterpret them.

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1 Papers published by the author before 1992 were signed M. Teresa R. O. Versiani
The study of the origins of Brazilian industrialization in the nineteenth century is a good example of this. Although the literature has emphasized the role of protective policies as responsible for attracting investments in industrial production, most of these studies are restricted to fiscal privileges: concession of financial subsidies, exemption or reduction of import tariffs on machinery and inputs, prohibitive import tariffs on similar products, etc. Such privileges, involving either the reduction of the costs of production for domestic firms or the enlargement of the demand for their products, would have given rise to more favorable forecasts regarding the profitability of the sector. Protection given to industry by means of other institutions, such as bankruptcy legislation, has been overlooked. Notwithstanding, prevailing bankruptcy regimes may have significant effects on economic performance, and changes in such regimes have been used from colonial times up to the present as one of the protective devices intended to direct investments towards specific sectors.

Any person or firm unable to pay their debts is insolvent. If their state of insolvency is legally recognized, they become bankrupt. Once acknowledged as bankrupt, the payment of their debts must be made according to bankruptcy laws and, when this is the case, they may become subject to legal penalties. According to legislation in force, losses from individual bankruptcies may be extended to firms as long as they are partially or entirely owned by bankrupt individuals. Thus, the bankruptcy of a firm may result from bad administration - fraudulent or not - from unfavorable business conditions or from individual bankruptcies of their owners.

The consequences of bankruptcies of firms are not restricted to the expulsion of inefficient firms from the market. Depending on the nature of the firm, its size and the characteristics of its production process, such consequences may spread at different rates of speed and to varying degrees of intensity to other firms and sectors. Considering that bankruptcy laws establish the legal limits of property rights of creditors and debtors, modifications of those laws and changes in those limits may have significant consequences for the performance of the economy as a whole.

Changes in bankruptcy laws have different effects not only among different firms but also among different agents involved directly or indirectly in the productive process of a firm. Legal measures protecting the property rights of the owners in relation to the assets of the firm certainly reduce their individual risks. Such a reduction in risks, all else being equal, will favor investments in these firms and, as far as labor is concerned, will provide a safeguard against unemployment in the case a firm becomes insolvent. However, another consideration is that, given such increased protection, the firm may face credit restrictions as creditors may see their property rights adversely affected. Therefore, the concession of privileged bankruptcy legislation for specific firms or sectors may serve as an efficient device for protec-
tion only if the adverse effects on credit restrictions do not counteract their protective effects.

The purpose of this chapter is to investigate the use of bankruptcy legislation as one of the instruments of economic policy used by the Government of D. João VI (1808-1821) by means of a thorough examination of the legal texts promulgated during this period. The assumption is that the bankruptcy legislation of D. João VI was part of a package of measures of economic policy taken with the primary purpose of increasing revenues collected by the government in order to deal with the increased costs of the Portuguese administration. This policy, stimulating investments in the production of commodities, such as gold and sugar, had long term effects on the development of the Brazilian economy in the nineteenth century, delaying the emergence of industry. It is not the purpose of this chapter to test such a correlation, as the data available would not be able to provide reliable results.

The period to be examined is particularly interesting in Brazilian economic history since it is a period of transition from a colonial government to an independent one. In fact, as far as Latin American countries are concerned, the transfer of the Portuguese Court to Brazil in 1808 and the stay of D. João VI Brazil until 1821 created conditions for a unique experience of transition from colonial to independent status. Not only was the transition relatively peaceful, but at the same time it did not entail a drastic rupture of institutions. On the contrary, as pointed out by some authors, the government of D. João VI restricted itself to transplanting Portuguese institutions to Brazil. In fact, in relation to the administrative apparatus required by the Government in order to be able to exercise its functions from its new seat, this was copied from Lisbon without taking into consideration the peculiarities of the new place where the court was being established.

However, the impact of a great and highly diverse set of external factors demanded changes in the institutions. Such changes were introduced in the form of legislation suitable for the new role to be played by the colony under the new circumstances. New institutions were created and old ones modified in order to build an institutional structure compatible with a new economic and political situation. The new institutional arrangements, which were the result of exogenous factors, became the heritage of the independent government of D. Pedro I in 1822.

The study of the legislation on bankruptcy enforced by the government of D. João VI does not only allows the incorporation of a new variable into the study of economic development during this period but also reveals some of the purposes of the economic policy pursued. The aim of this chapter is not only to present the body of legislation on bankruptcy created or modified during the period but also to shed some light on the reasons behind such innovations. By doing so, it hopes to contribute to a general review of the nature and characteristics of D. João VI’s protectionist economic policy.
In terms of insolvency, D. João VI legislation followed the same pattern as of Portugal towards its colony. No general law on bankruptcy was promulgated until 1850, but protection to insolvent firms was provided to firms operating in specified sectors in order to stimulate investments in areas more likely to produce higher revenues for the government.

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The first section describes changes introduced into the Portuguese legislation on bankruptcy law before the arrival of D. João VI in Brazil with the purpose of stimulating investments in activities most capable of producing revenues for the metropolis, namely gold mining and sugar production. The increase in such protection of gold and sugar activities in the government of D. João VI is examined in the second section. The third section investigates the incentives provided for the formation of capital partnerships and presents the bankruptcy legislation for gold mining societies. The fourth section shows how bankruptcy laws were adjusted to deal with the joint stock companies authorized to be founded during this period. The conclusions are presented in the last section.

Bankruptcy laws in Colonial Brazil prior to the transfer of the Portuguese Court to Brazil: privileges for miners and sugar producers

In the colonial period, Portuguese laws were enforced in Brazil: the Ordenações Manuelinas, from 1521 to 1603, and the Ordenações Filipinas, thereafter. As for bankruptcy, this legislation did not establish a clear distinction between insolvent individuals and insolvent firms and did not show any special concern in setting conditions for their rehabilitation.

The Alvará of November 13, 1756, enacted by the Marquis of Pombal a year after the Lisbon Earthquake, has been considered by some jurists to be a landmark in the history of Brazilian legislation on bankruptcy by introducing “very original and authentic proceedings in commercial courts restricted to merchants, traders or business men”, as mentioned by Ferreira (1955, p 20)².

² Alvará was a royal decision that, at least in principle, was temporary in nature.
This Alvará had the purpose of rehabilitating credit in the Lisbon market, which had been chaotic since the earthquake of November 1 that resulted in a great number of bankruptcies and encouraged fraudulent actions on the part of debtors3.

As a first step, the bankrupt was to present himself at the Commercial Court. On the same day or, latest, on the following day, he was supposed to pay his debts according to the contracts. He also had to declare all of his assets, present his books with all entries chronologically registered, declare under oath the causes of his insolvency and hand over the keys to his enterprise. After that, an inventory was to be made of all of his assets that would be deposited in Court and entrusted to a businessman officially nominated as depositary. Then, news of the bankruptcy was to be duly published so that all those interested could appear. Once this first stage was concluded, a lawsuit was to be filed. If the bankrupt was considered guilty, he would be put in jail and subsequently subjected to trial. Finally, all of the bankrupt’s assets were to be publicly auctioned. Of the liquid proceeds from such an auction, 10% was to be put aside for maintenance expenses for the bankrupt and his family, in the event that the bankruptcy process was not deemed fraudulent. The remaining liquid proceeds were to be distributed among the creditors.

Despite the general bankruptcy legislation in force, new legal texts were issued from time to time granting special privileges to some specific sectors that the government wished to protect and stimulate. In fact, as early as 1618, all of the mining enterprises in the capitãneas of São Paulo and S. Vicente were exempted from impoundment and execution, regardless of their size (Alvará of August 8, 1618,§3). Such a privilege was part of a set of incentives for promoting the discovery of new gold deposits in the region. In the 1750s when, after reaching its peak, gold production started to decrease, this privilege was extended to all miners with more than 30 slaves (Decree of February 19, 1752 and Resolution of June 22, 1758).

A significant reduction in the revenues collected by the Portuguese government, resulting from the decrease in gold production in the second half of the eighteenth century as well as from increasing tax evasion, led the Portuguese government to intensify its protection to gold miners. As the decline in gold production was seen as a result of the exhaustion of deposits that could be explored at low cost, the government began stimulating the organization of capital partnerships. Such partnerships were expected to be able to attract the amount of resources necessary for gold mining under the new circumstances.

The Alvará of May 13, 1803 introduced a new regulation for the organization and administration of diamond and gold mines in Brazil, with the purpose of increasing their production and eliminating tax evasion. This Alvará

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3 The main objectives of this Alvará are stated in its introduction. This Alvará provides a new version to be enforced from that point up to Title LXVI of the Ordenações Book V.
granted privileges to companies and capital partnerships but did not include any references to the bankruptcy regimes to be followed. According to the first paragraph of Article VI, preference should be given to companies and partnerships in the distribution of mineral lands that required more labor and diligence. And the following article prescribed that in the case of swollen rivers, work should be given to companies because “…for their work, much more larger expenses are necessary, superior to the faculties of only one individual…”

These capital partnerships and companies were to be incorporated on the initiative of the General Mining Intendant and supported by the Administrative Council of Mines and the Governor of the capitania. The shares of those companies and partnerships would be divided among the partners or shareholders according to the number of slaves they had provided. The expenses would be divided among all shareholders according to the number of shares they owned.\(^4\) Even though this Alvará did not involve any innovations in the bankruptcy legislation, it brought about strong incentives for the formation of companies and capital partnerships in gold mining. Once partnerships in the form of joint stock companies started to be founded, they required specific regulations on bankruptcy. Such regulations were provided through their statutes.

Special bankruptcy legislation in the colonial period was not restricted to gold mining. It was also extended to sugar producers. Through the Resolution of September 22, 1758 and the Provision of April 26, 1760, ownership of sugar mills and sugar farms in Rio de Janeiro was exempted from impoundment and execution for payment of debts, execution being restricted to the profits. In 1807, those benefits were extended to all Portuguese ultramarine dominions (Alvará of July 6, 1807).

In the case of the gold mining sector, it is reasonable to assume that this special legislation on bankruptcy encouraged investments, even though the available data does not allow for a quantitative measurement of such effects. The high degree of uncertainty associated with gold mining activities in this period was reduced by the legal guarantee that the assets of an enterprise would not be lost in the case of bad luck and consequent bankruptcy of the owners. As the capital value of the enterprise was restricted almost completely to the value of the slaves for whom there were alternative uses, it seems clear that potential investors welcomed such exemptions from pledges and execution. Since slaves, working or not, have to be clothed and fed, the costs of keeping an operative mine were quite negligible. Thus, as variable costs were relatively low, it is reasonable to believe that a miner at this time did not have to have recourse to loans for working capital. Therefore, it is

\(^4\) *Alvará* of May 13, 1803, Article VII, Paragraph 3. Of the 128 shares that would form the capital of the company, 2 shares were to go to the government and were not subject to the payment of expenses.
possible to conclude that any adverse effects on the credit side, if any, were minor ones.

The transfer of the Portuguese court to Brazil and the maintenance of protection for gold and sugar activities by means of special legislation on bankruptcy

Protection for gold and sugar production by means of special legislation on bankruptcy was maintained in the government of D. João VI (1808-1821). References in the literature to the economic policy pursued by the government of D. João VI (1808-1821) have emphasized incentives provided to industry. This emphasis is understandable, given that one of the first measures adopted by D. João VI after his arrival in Rio was to abrogate the prohibition related to the production of cloth in Brazil. Freedom given to industry and the opening of Brazilian ports to international trade on January 28, 1808 may have suggested a departure from previous mercantilist policies (Carta Régia January 28, 1808).

However, an analysis of the legislation makes it clear that the purposes of the economic policy were still predominantly mercantilist. Brazil, either as a colony or as part of the reign of Portugal, was expected to continue to produce primary commodities and to provide increased revenues for the royal treasury. The study of legislation during this period reveals those objectives and indicates the sectors that received more incentives: iron and gold mining, transport, colonization and banking. This section will examine such incentives in order to detect privileges related to special bankruptcy regimes in the case of gold mining and sugar production.

Reliable data on Brazilian exports during the colonial period are not yet available. However, even if estimates from contemporary sources diverge significantly in absolute values, they tend to coincide in terms of relative values. There is no doubt that gold and sugar were responsible for most of Brazilian exports during colonial times. However, by the first decade of the nineteenth century, mining production was in evident decline and sugar exports, even though in recovery, were far from the levels attained in the seventeenth century. Considering that the main source of revenues for the government were taxes on gold production and taxes levied on imports and exports, it is not surprising that, despite the growth of the domestic market and

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5 The Alvará of D. Maria I on January 5, 1785 prohibited the production of cloth in Brazil, except cloth for "use and dressing of slaves, for sacking and wrapping cloth and other similar uses." By the Alvará of April 28, 1809, everyone in Brasil and in other Portuguese domains became free to establish any kind of manufacturing in the country.

6 According to Simonsen (1937), these products would have been responsible for 88% of the exports in the colonial period.
all of the measures taken to tax it, mining and international trade were the main focus of government attention. Therefore, it is easy to understand why the government of D. João VI would try to reverse the process of decay in mining production and to provide incentives for sugar exports. This was done by providing direct privileges and incentives not only to these activities but also to activities connected with the construction of the infrastructure necessary for the transport of exportable goods.

Although protection given to all of these sectors took different forms, this chapter will restrict itself to the examination one of them: special bankruptcy regimes.

Special bankruptcy regimes for miners.

In 1813, miners who employed fewer than 30 slaves requested that privileges related to exemptions from impoundment and execution given to large-scale miners in the 1750s be extended to them. They claimed that without such benefits their businesses could hardly be sustained. The Alvará of November 17, 1813, in addition to complying with this request, established other dispositions to be followed in case of bankruptcies in gold mining businesses. In fact, this was the first piece of legislation to deal exclusively with the regulation of specific privileges granted to bankrupt gold miners and to show an explicit concern for the rights of their creditors. Among the justifications for the new legislation, it is not only the needs of the royal treasury that are once more invoked but also the need to reconcile privileges granted to gold miners with those of their creditors.

This Alvará contained four articles. The first one granted to all miners engaged in gold production and employing any number of slaves the privilege of not being subject to impoundment or execution “...either their mines, or their slaves, tools, instruments and other of their belongings”. Such privileges covered all kinds of debts, including not only those incurred before the ownership and exploration of mines but even debts for which buildings, slaves and tools were offered as guarantees. The following article makes it clear that such privileges would also include fiscal debts. The last two articles were concerned with the rights of creditors and show that the purpose of the legislation was not to protect individuals but to keep gold mines operating.

In fact, the third article stipulated that, in order to be reimbursed, creditors should look for other assets of the debtor that could be pledged and executed. Those assets should include one-third of the profits of the business. And the fourth article introduced the possibility for gold mining enterprises to be impounded and executed. Such enterprises would be liable to execution if their

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7 A reference to this appeal from small miners is in the introductory part of the Alvará of November 17, 1813.
value was equal to or lower than the debts of their owners. In this case, plots of land, slaves, tools and remaining belongings could be executed under the condition that the enterprise was neither destroyed nor bought by a single individual. If there were no bids at the auction, ownership of the enterprise would be transferred to the creditor, who could not dismantle it or divide it.

The requirements for impoundment and execution of a mining enterprise in this Alvará make it clear that the spirit of the legislation did not involve the protection of creditors in case of insolvency of miners but the establishment of certain rules to avoid a reduction in gold production. Any reduction in gold production would cause a significant decrease in the revenues collected. As mentioned in the introduction of the Alvará, one reason for its publication was the Regent Prince’s wish “to promote the increase of this important branch of the mining sector, which is the source of the prosperity of my States and of revenues for my Royal Crown”.

Questions about the real meaning of the expression “remaining belongings” used in the Alvará of 1813 led to another Alvará, namely the Alvará of July 8, 1819 that specified how exactly this term should be understood: houses of miners built on the lands of the mines they explored, repair shops, windmills, store houses for preparing and keeping food for slaves as well as the food kept in them, animals and anything else necessary for the mining work. Given that many gold miners were evading the payment of taxes on gold, the privileges of the 1813 Alvará were restricted in 1820 to those bankrupt miners who could prove with documents duly authenticated by the competent office that they had taken their production to places authorized to melt the gold and to extract the part due as taxes. In addition, creditors would be allowed to show that miners had failed to do so in order to be exempted from such privileges and forced to pay them.

The fixed capital of a gold mining firm in the early nineteenth century was restricted to slaves that could have alternative employments. Therefore, the exemption of slaves from the rigors of general laws on bankruptcy, either because the undertaking turned out to be a failure or because the owners were in debt due to involvement in previous businesses, was certainly prone to function as an incentive for investment.

Special bankruptcy regimes for sugar cane producers.

Special bankruptcy privileges for sugar producers were also maintained and strengthened in the government of D. João VI. The Alvará enacted on January 21, 1809 responded to a demand from small sugar producers that privileges conceded to sugar producers of the Capitania of Rio de Janeiro in the 1750s should be extended to all producers. The Alvará of 1809 makes it clear that the main aim of the government was to create a legal apparatus that

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8 Alvará of September 28, 1820
would allow producers facing financial difficulties to remain in operation. In fact, the advantages for the economy, for the government and for future creditors of keeping those enterprises in operation are emphasized in the text:

in the present circumstances of great weakness in Commerce, it would be convenient to my service that the use of the mentioned privilege were more largely extended to the farmers able to keep their establishments at work for the general utility of the inhabitants of this State and in favor of the culture what conciliated with the interests of their creditors

In fact, this Alvará reaffirms the privileges of exemption from impoundment and execution for ownership of sugar mills and farms operating regularly and the limitations on possible execution to one-third of the yield of the enterprise. It also allows for the possibility of execution when the debt is equal to or greater than the value of the sugar cane farm or the sugar mill and establishes that the evaluation of the mills should take into consideration slaves, cattle, lands and tools. In this case, execution should follow rules prescribed by the law of June 20, 1774. However, this Alvará introduces an extra protection for the creditor. Referring to Paragraph 3 of the Alvará of 1807, it stipulates that in order to prove that debts have reached the value required for execution, the creditor may add other debts incurred by the debtor. However, in order to do so, certain procedures had to be followed by the creditor. The Alvará of January 21, 1814 made it clear that fiscal debts were included in the privileges granted to sugar cane and sugar producers.

The D. João VI incentives for the formation of capital partnerships and his bankruptcy legislation for gold mining societies

As discussed above, the Portuguese government had started to encourage the formation of capital partnerships for gold exploration even before the transfer of the Portuguese Court to Brazil. D. João VI pursued this same policy. In a Carta Régia to the governor of the Capitania of Minas Gerais on August 12, 1817, D. João VI stated that “the state of decadence of the works in the gold mines, each day more expensive, not only because most of the lands easy to be worked on have already been worked on, but mainly because miners do not have the necessary practical mining knowledge”. To allow for the introduction of new technology, he ordered that stock capital partnerships should be founded in Minas Gerais. The formation of those partnerships was to be the initiative of the Mining General Inspector or its representative and should take place under the authority of the General Governor of the capitania. The statutes to be adopted by those partnerships, signed by the Minister
and Secretary of States for the Reign Affairs, were attached to the Carta Ré-
gia.⁹

Even though the format for those partnerships, as suggested by the stat-
utes, were similar in many ways to the common format for joint stock com-
panies, there is no explicit mention of the limitation on the liability of share-
holders to the value of their shares, one of the main characteristics of joint
stock companies. In addition, Article 2 stated that shareholders would not
have any right to interfere with the partnership management. An interesting
peculiarity of those societies was that the value of the shares was expressed
in money and in number of slaves. According to Article II, each share would
correspond to 400$ or to “three young and healthy slaves aged from 16 to 26
years.” Article V reaffirmed privileges granted by the Alvará of 1803 to
those partnerships (their preferences in the distribution of any mineral lands
to be discovered). According to Article IX, they would be able to use the
services of mining masters who had been brought from Germany by the gov-
ernment. Government expenses for the partnership would be reimbursed
from the profits corresponding to one or two shares, according to the size of
the firm. A major indicator of the government’s keen interest in encouraging
investments in gold mining is provided in Article XV, which grants a tax
reduction on gold production from 20% to 10% 2 years after a firm begins
operations and as long as it is proved that the right technology had been
used. This Alvará may be seen as one of the first attempts from the Brazilian
government to launch public and private partnerships.

According to Article XV of the statute, shares could be transferred by
sale, inheritance impoundment, but the new owner would not be allowed to
withdraw the money or the slaves. In the case of insolvency of one of the
shareholders, slaves corresponding to his shares could not be sold for the
payment of his debts. However, the ownership of those shares could go to
his creditors, who would receive all corresponding dividends. Thus, the
right of creditors to receive payment from their credits was differed to the
future, and the value to be received became uncertain. It is also worth noting
that inasmuch as they were established as joint stock companies, the specif-
ics of such partnerships have to be taken into consideration. In a joint stock
company, the liability of a shareholder is restricted to the value of his shares.
Therefore, in principle, if the assets of a bankrupt shareholder were to be
pledged and executed, this would involve a portion of the assets of the com-
pany corresponding to the value of his shares. In the case of gold mining and
sugar farms and mills, such executions were already prohibited by the legis-
lation in force. In other ventures that did not have such protection, the shares
of bankrupt shareholders could be entrusted to a depositary and afterwards
sold at public auction, reverting the proceeds from such a sale to the credi-

⁹ Estatutos para as sociedades das lavras das minas de ouro, que se hão de estabelecer na
Captantia de Minas Geraes enclosed to the Carta Régia of August 12, 1817.
tors. Considering the non-existence of a capital market, this could hardly be a solution.

Even though the liability of a shareholder was limited to the value of his shares, his property rights were not limited to his shares but included dividends distributed to shareholders. Could the property rights on those future dividends be credited to shareholders? No general legal solution was provided for this problem, leading companies to create their own rules regarding the matter. Those rules were included in their statutes and were, therefore, subject to the approval of the government. In fact, by then, any joint company in Brazil, in order to exist legally, had to be authorized to operate and have its statutes approved by the government. Thus, each company created its own bankruptcy regime.

The transfer of a share corresponds to a change in the ownership of part of the physical assets of a firm. If the shares could be pledged and executed, the continuation of the operations of a firm could be jeopardized. Therefore, to assure protection, joint stock companies introduced dispositions in their statutes giving their shareholders the privilege of exemption from execution of their shares.

**Joint stock companies authorized by D. João VI**

Joint stock companies certainly facilitate the aggregation of financial resources from the private sector, and they have been used by different governments from different countries in order to attract savings for investments that are considered to be a priority. To induce the private sector to invest in such undertakings and to make government projects feasible, different benefits and privileges are offered to investors. This has been the case in Brazil as well. The role played by joint stock companies in the enforcement of economic policies is not new. Trade companies created to operate in Brazil in the early colonial period certainly helped the Portuguese government achieve its mercantilist purposes.

In Brazil, authorization from the government was a necessary condition for incorporating any joint stock company until 1882, even though the need for such authorization was only regulated in 1849. The requirement for such approval created the basis for the establishment of public and private partnerships. On the one hand, the format of joint stock companies was in itself an attraction to individual savers, as it enhanced their possibilities for investments. On the other hand, the need for authorization provided the government with a means of attracting such savings for projects of its own interest. In fact, the acquiescence of the private sector to entering into these partnerships was often obtained thanks to different benefits granted to shareholders and to companies.
This section lists (Table 1) all of the joint stock companies authorized to be founded in the period and investigates the bankruptcy regimes adopted by them. At this point, it should be noted that despite the requirement of legal authorization, some companies were organized and started operating without such permission. Therefore, the list presented does not comprise all joint companies in operation.

As shown in Table 1, only seven joint stock companies were approved in legal documents in the period 1801-1821: three marine insurance companies, two gold mining companies, one bank and one fluvial transport company. How those companies protected themselves against the unfavorable effects of the legislation in the case of a future bankruptcy is investigated in the following sub-sections.

Table 1. **Joint stock companies authorized by D. João VI (1808-1821)**

<table>
<thead>
<tr>
<th>Years</th>
<th>Legal Document</th>
<th>Company name</th>
<th>Object of the company</th>
<th>Company’ headquarters</th>
</tr>
</thead>
<tbody>
<tr>
<td>1808</td>
<td>Decreto 24/02/1808</td>
<td>Cia de Seguros Boa Fé</td>
<td>Maritime insurance</td>
<td>City of Bahia</td>
</tr>
<tr>
<td>1808</td>
<td>Alvará 12/10/1808</td>
<td>Banco do Brazil</td>
<td>Deposit discount and issue</td>
<td>City of Rio de Janeiro</td>
</tr>
<tr>
<td>1808</td>
<td>Carta Régia 24/10/1808</td>
<td>Cia de Seguros Conceito Público</td>
<td>Maritime insurance</td>
<td>City of Bahia</td>
</tr>
<tr>
<td>1810</td>
<td>Decisão N.5 05/02/1810</td>
<td>Cia de Seguros Marítimos Inemnidade</td>
<td>Maritime insurance</td>
<td>City of Rio de Janeiro</td>
</tr>
<tr>
<td>1817</td>
<td>Carta Régia 16/01/1817</td>
<td>Cia de Mineração do Cuyabá</td>
<td>Gold Mining</td>
<td>Na</td>
</tr>
<tr>
<td>1819</td>
<td>Decisão N.55 15/12/1819</td>
<td>Sociedade de Agricultura Commercio e Navegação do Rio Doce</td>
<td>Fluvial transportation</td>
<td>Na</td>
</tr>
<tr>
<td>1821</td>
<td>Carta Régia 21/02/1821</td>
<td>Cia de Mineração dos Anicuns</td>
<td>Gold Mining</td>
<td>Na</td>
</tr>
</tbody>
</table>

*Sources: legislation and companies’ statutes mentioned in the text*

The maritime insurance companies

As shown in Table 1, only three joint stock maritime insurance companies were authorized to be founded in this period. The literature mentions seven insurance companies that were founded in the city of Rio de Janeiro during the government of D. João VI\(^{10}\). Either some of the extra four companies were not founded as joint stock companies or they were informally formed as such but did not receive government approval.

The provision of maritime insurance services, in high demand in an economy specialized in the production of commodities for export and based on

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African slave labor, could hardly be financed by one individual. Therefore, it is to be expected that those services were offered by firms founded as capital partnerships. In addition, given that such services were a response to pressing needs from export and import merchants, they did not require special privileges from the government to be founded.

As soon as D. João VI arrived in Bahia, he signed a decree (Decree of February 24, 1808) authorizing the formation of a maritime insurance company, the Companhia de Seguros Boa Fé. According to the text of the decree, the merchants of the city of Bahia had required such authorization. Article 4 of the statutes of this company, attached to the decree, characterizes this company as a joint stock company: “the shareholders’ liability does not go beyond the value of their shares.”

Insurance companies displayed, then, peculiar characteristics. They required very little investment in terms of physical assets, and their operational costs were relatively low. Therefore, the capital of the companies largely corresponded to the amount of financial resources available eventually needed for the payment of insurance premiums. As a consequence, shareholders joining the company were not required to pay for the entire value of their shares. This meant that a significant portion of the capital remained with the shareholders and out of the control of the management of the company.

Assuming that an insurance company was well managed and no liability beyond its ability to pay was assumed, temporary problems of liquidity were expected to be solved by the payment of unpaid shares. If some shareholders refused to do so and the firm went bankrupt, there were no firm assets to be executed, as the capital of a firm did not correspond to its physical assets. If the capital of a company was less than its debts, there was no way shareholders assets could be impounded and executed because, in a joint company, the liability of shareholders did not go beyond the value of their shares. In addition, impoundment and execution of shares belonging to an individual bankrupt shareholder would involve a complicated process whenever those shares had not been paid for. Thus, the basis of such companies was trust among shareholders. Consequently, it would be reasonable to expect that insurance capital partnerships, joint stock or not, were founded by a small group of individuals linked to each other by family, friendship or business ties, those ties being more important than the format of the association among them. In fact, this seems to have been the case. There is some evidence that, besides those three joint stock companies, formal and informal

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11 D. João disembarked at the City of Bahia on January 24, 1808.
12 Florentino (1997) calls attention to the great demand for insurance services resulting from the slave trade between Africa and Brazil. According to him, the insurance business in the city of Rio de Janeiro was mainly financed by slave traders.
partnerships were founded in the cities of Bahia and Rio de Janeiro to deal with insurance business.\textsuperscript{13}

In the case of Companhia de Seguros Boa Fé, protection against bankruptcy granted to investors - in addition to the limitation on the liability of the shareholders to the amount of their shares given to investors in any joint stock company – involved severe penalties to be imposed on shareholders who refused to pay for their shares whenever they were asked. Its capital was fixed at 400 \textit{contos}, and the statutes did not establish any deadlines for the payment of the shares to the company.\textsuperscript{14} This payment would only become mandatory when the amount of financial resources maintained by the company were not enough to cover the losses of those insured. In such a case, shareholders were to pay the amount required to cover the company’s debts (proportional to their holdings) within eight days. In case a shareholder refused to comply with his obligation, he would immediately be expelled from the company without any rights.\textsuperscript{15}

Another insurance company authorized by the Carta Régia of October 24, 1808 to be established in the city of Bahia was the Companhia de Seguros Conceito Público, also an enterprise of local traders.\textsuperscript{16}

The first joint stock maritime insurance company authorized to be founded in the city of Rio de Janeiro was the Companhia de Seguros. Such authorization was given in 1810.\textsuperscript{17} According to their statutes, each shareholder was immediately to pay an amount corresponding to 10\% of his shares, the remaining amount to be paid whenever required by circumstances.\textsuperscript{18} The process of official approval of the statutes of this company reveals the government’s concern with the rights of creditors. According to a statement from the Junta do Commercio Agricultura, Fabricas e Navegacao that supported D. JoãoVI’s decision, the statutes originally presented had to be modified in order to make all shareholders liable for the capital of the company in case some of them went bankrupt. The Junta emphasized that mutual trust among shareholders that allowed them to keep 90\% of the value of the shares to be used for their own benefit should not be detrimental to those insured. Similarly, problems caused by insurance being taken out over and above the capital of the company should not be harmful to those insured. Accordingly, in the statutes approved, the liability of shareholders was ‘in

\begin{itemize}
\item \textsuperscript{13} Florentino (1997, p 128) mentions 10 insurance companies operating in the city of Rio de Janeiro in 1829.
\item \textsuperscript{14} \textit{Condições da Companhia de Seguros da cidade da Bahia}, Article 2. These statutes were attached to the Decree of February 24, 1808.
\item \textsuperscript{15} \textit{Condições da Companhia}, art. 11.
\item \textsuperscript{16} The statutes of this company have not yet been located.
\item \textsuperscript{17} N. 5 BRAZIL Resolução de consulta da Real Junta do Commercio, Agricultura, Fabricas e Navegacao de 5 de fevereiro de 1810.
\item \textsuperscript{18} Although this capital partnership carried the name of the company, usually given to partnerships constituted as joint stocks, the liability of the shareholders was not limited to the value of the shares.
\end{itemize}
solidum’, not only in relation to the capital of their shares but also in relation to everything exposed to risks.¹⁹ “The shareholder who did not accomplish with his obligations related to the payment of their shares would lose his right to past profits, would share the responsibility for losses brought to the company from adverse conditions and would be subject to the payment of interests”²⁰.

The Bank of Brazil

The transfer of the Portuguese court to Brazil made radical institutional monetary and fiscal reforms an imperative. The scarcity of currency in circulation increased with the intensification of international trade after the opening of Brazilian ports on January 28, 1808. A monetary reform was required in order to introduce liquidity to the economy so as to support the expansion of commercial activities. Increased administrative expenses in Brazil, as well as the financial difficulties faced by a metropolis at war, also required new sources for government financial resources. An examination of the legislation enacted during the period shows that an increase in the financial resources at the disposal of the Royal Treasury was in fact the main aim of D. João VI’s economic policy. Not only were a great variety of new taxes levied, but activities (e.g., mining) that were most able to generate public revenues were also stimulated. In this context, the establishment of a public bank in Brazil to provide financial resources for the Royal Treasury and to increase the circulation of money was seen as a measure of top priority to be taken by D. João VI’s government as soon as the Portuguese Court was installed in Rio de Janeiro. The Alvará of October 12, 1808 ordered the establishment of a public bank in the city of Rio de Janeiro.

Unable to finance such an undertaking, the Government was forced to turn to private investors, and this first public bank may be seen as the first example of a private and public partnership.²¹ According to the statutes attached to the Alvará and signed by the Minister of Finance on October 8, 1808, the bank, named Banco do Brazil, would be founded as a joint stock

¹⁹ Condições da Companhia de Seguros – Indemnidade confirmadas por sua Alteza Real o Príncipe Regente Nosso Senhor, pela immediata Resolução de 5 de fevereiro de 1810, estabelecida nesta praça do Rio de Janeiro pelos negociantes abaixo declarados, attached to N. 5 BRAZIL Resolução de consulta da Real Junta do Commercio, Art.2
²⁰ Condições da Companhia de Seguros– Indemnidade , Article 3
²¹ The creation of the Bank of Brazil, as a response not only to the demands of the government but also of those dealing with commerce, entailed a very significant institutional change that was to have critical direct and indirect effects in short and long term on future institutional arrangements as well as on development.
company. In fact, its capital would be divided into shares, where the liability of the shareholder would be limited to the value of each one’s shares.\textsuperscript{22} Although this joint company was to be established on the basis of private savings, the bank to be created was a public undertaking. Government interference in the creation of the bank was not limited to initiating its establishment and formulating its statutes. The statutes of the company created conditions for governmental interference in the administration and management of the bank, as well as limiting the rights of the shareholders.\textsuperscript{23}

As far as bankruptcy is concerned, this company introduced a significant innovation. According to its statutes, “any impoundment or execution, either fiscal or civil on the bank’s shares was null and prohibited”\textsuperscript{24} No other clauses in the statutes mentioned any rights of creditors of bankrupt shareholders, in relation either to future dividends or to past profits. Notwithstanding this, the government had many difficulties in attracting private savings to constitute the capital of the bank. The legislation in this period, as well as some contemporary stories, reveals different kinds of pressure that were used to force people to subscribe to shares. Historians dealing with the creation of the first Banco do Brazil have described the most bizarre concessions and privileges offered to subscribers, but none of them mentions those related to a special bankruptcy regime. In fact, protection offered by the statutes was not enough to encourage private investors in the first years to be willing to allocate their savings to this government undertaking.

The gold mining companies: Companhia de Mineração do Cuyabá and Companhia de Mineração dos Anicuns.

Given that very few capital partnerships were legally established in the sector of gold mining, the bankruptcy legislation promulgated up until 1817 dealt exclusively with the properties of mining enterprises and did not mention what would happen with the shares of bankrupt shareholders. The founding of those companies generally adhered to the legislation on gold mining then in force that allowed for a great degree of government interference in its management in order to assure the collection of taxes from increased gold production.

The Companhia de Mineração do Cuyabá was the first joint stock gold mining company to have its statutes officially approved by the government. These statutes, sent by the Governor of the \textit{capitania} of Matto Grosso for

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\textsuperscript{22}Alvará of October 12, 1808.
\textsuperscript{23} \textit{Estatutos para o Banco Publico estabelecido em virtude do Alvará de 12 de Outubro de 1808} attached to the Alvará of October 18, 1808, Articles IX to XIII. The first directors and members of the of the Bank Board were nominated by the Decree of January 24 1809.
\textsuperscript{24} \textit{Estatutos para o Banco Publico estabelecido em virtude do Alvará de 12 de Outubro de 1808}, Art. VI. Those statutes were signed by D. Fernando José de Portugal, appointed Minister of Finance by the decree of March 26, 1808.
\end{flushleft}
royal approval on 31 May 31, 1814, were approved by the Carta Régia of January 16, 1817, 8 months before the new legislation regulating the establishment of capital partnerships to explore gold in Minas Gerais was enacted. The approval of such a document reveals not only the persistent interest of the government in the establishment of capital partnerships to explore gold mines but also in extending such explorations to areas outside the capitania of Minas Gerais. The reason for this interest was once more made explicit in the text: the possibility that those undertakings would increase revenues collected through taxation. In fact, in this document D. João VI refers to the “the advantages that such establishment may bring to my Royal Treasure”.

According to the statutes, the capital of the company was to be constituted on the basis of shares, each share corresponding to 100$ in currency to be paid at the time of subscription and two slaves dressed and equipped with tools to be handed over to the company as soon as mining operations had begun. The payments in currency would be used to finance preliminary operations necessary to prepare the mines for exploration.25

Since mining activities up to then were not established – at least officially – as capital partnerships, the legislation related to the consequences of bankruptcy in force was restricted to the properties and profits of the mining business. According to the legislation in force as provided by the Alvarás of November 17, 1813 and July 8, 1819, mining enterprises could only be executed under very special circumstances, and the execution of profits was limited to one-third of the total.

The adoption of a joint company as a format for new capital partnerships in the sector introduced the possibility of increasing the protection provided to creditors of bankrupt miners. This protection was not provided by any general law but by the statutes of the company seeking government approval. That there was a significant interest in safeguarding the rights of creditors in the companies to be founded is easy to understand. Those companies were created to explore gold deposits to which access was more difficult and, thus, were expected to involve greater expenses. Not only would equipment would have to be imported, but the assistance of foreign technicians would also be needed. Such new operations would require a greater dependence on credit. Thus, the statutes of companies should not only provide incentives for a large number of individuals to invest in the new undertaking. They also had to safeguard the rights of the creditors.

In the case of the Companhia de Mineração do Cuyabá, its statutes increased protection of debtors and creditors. The statutes of the Carta Régia of August 12, 1817 regulating the establishment of companies for the exploration of gold mines to be established in Minas Gerais included in Article XIV

25 Estatutos para o Governo da Companhia de Mineração do Cuyabá, attached to the Carta Régia of January 16, 1817
the possibility of impounding shares of the companies\textsuperscript{26}. In the case of the Companhia de Mineração do Cuyabá, this possibility was explicitly rejected: “The shares of this company are exempted of any fiscal or civil impoundment or from the Judge of Orphans, Deceased and Absents.”\textsuperscript{27} Despite the legislation in force that limited the possibility for execution of the gold mining profits to one-third, the statutes of the Companhia de Mineração do Cuyabá did not establish such a limit.\textsuperscript{28} However, as the company was to keep one-sixth of the profits owed to each subscriber on reserve, the appropriation limit per creditor was significantly decreased from one-third to one-sixth. In fact, according to Article X of the statutes, the shares of a debtor would not be transferred to creditors, but rather his debts would be paid by future dividends on his shares: “The creditors’ rights will be restricted to the profits coming from these shares, requiring them only when they are distributed to all shareholders”.

The Carta Régia of February 21, 1821 approved the statutes of another gold mining joint stock company, the Companhia de Mineração dos Anicuns. This company came to replace a previously unsuccessful partnership that had been established with the purpose of exploring gold in this province but that went into bankruptcy. In his letter to the governor of the capitania giving his approval to the establishment of a new company, D. João VI complained about “the meager profits My Royal Finances have taken from the rich discovery of the Anicuns under the management of the previous partnership.”\textsuperscript{29}

The value of shares in the new company were to correspond to 12$ and one slave of an age between 16 to 35 years and without any disease, dressed and equipped with tools.\textsuperscript{30}

Even though legislation on privileges granted to gold miners in 1813 and 1819 did not take into account the specifics of societies established as capital partnerships, the statutes of these new companies extended to their shares the privileges of not being pledged and executed. In fact, according to Article 48 of the statutes, the shareholders, as far as their shares and respective profits were concerned, would have the privileges granted by the Alvarás of November 17, 1813 and July 8, 1819.

\textsuperscript{26} Estatutos para as Sociedades das lavras das minas de ouro, que se hão de estabelecer na Capitania de Minas Geraes, attached to the Carta Régia, August 12,1817
\textsuperscript{27} Estatutos para o Governo da Companhia de Mineração do Cuyabá, attached to the Carta Régia of January 16,1817, Article X.
\textsuperscript{28} Alvará de 17 de Novembro de 1813, artigo 3
\textsuperscript{29} Carta Régia of February 21, 1821
\textsuperscript{30} Estatutos para a companhia de Mineração dos Anicuns na Província de Goyaz, attached to the Carta Régia of February 21, 1821
Sociedade de Agricultura Commercio and Navegação do Rio Doce

The government’s concern for promoting activities capable of producing higher public revenues, one of the outstanding characteristics of D. João VI’s economic policy, entailed not only granting privileges and concessions to sugar and gold producers. Taxes on imports were another significant source of income. In this context, the development of a transport system that created conditions for an intensification of import and export trade was certainly seen as an important goal to achieve. It is in this context that the great interest of the government in colonizing the northeastern regions of Minas Gerais and in opening roads from Minas to the ports of the capitania of Espírito Santo should be understood. On the one hand, those lands and rivers were expected to contain rich deposits of gold. On the other hand, the establishment of fluvial navigation on the river Rio Doce would allow access to the old gold regions of the central areas of Minas Gerais and to the potential gold areas of the northeastern areas to the seaports of the Espírito Santo capitania. Such possibilities may explain the government’s persistence in fighting the indigenous people who lived in the region and in promoting the colonization of the region. The policies implemented by the government were not successful. It was only in 1819 that a company - Sociedade Agricultura Commercio e Navegação do Rio Doce - was established with the purpose of promoting navigation in this river by offering transport and trade services.

In the process of obtaining governmental approval for the statutes, some modifications had to be made to the company’s proposal. One of these modifications was related to the article dealing with the vulnerability of the company’s shares to pledge and execution. According to the legal text that approved the company’s statutes, the payments of the shareholders to the company were not at all exempted from pledge and execution. On the contrary, legal procedures made it possible for the resources of the shareholders up to the value of their debts and in accordance with judicial decisions to be taken by creditors. Those resources could not be withdrawn from the company, but the subrogated creditors would have the right to receive the dividends whenever distributed and under the same conditions as other shareholders. The same procedure would apply to fiscal creditors.

Final Remarks and Conclusions

The study of legislation passed by D. João VI suggests that the development of a manufacturing sector in Brazil was not one of the major concerns of the Portuguese administration, as is often emphasized in the literature. Nor

31 Carta Régia of May 13, 1808
should the opening of Brazilian ports to international trade be viewed as an abandonment of mercantilist policies. Freedom to trade and freedom to establish domestic manufacturers were more the result of difficulties faced by a metropolis occupied by Napoleonic troops than of a sudden adherence to the liberal ideas of Adam Smith. In fact, legislation during the period reveals constant interference by the government in the economy.

The investigation of legislation on bankruptcy enacted during the period confirms this point of view. This legislation was used as one device, among many others, to induce investment in activities capable of producing in a shorter period of time greater resources for the Royal Treasury. Activities of this kind were seen as those oriented to the supply of commodities (gold and sugar) in high demand in European markets. The acceptance of Smith’s theory of comparative advantages did not entail adherence to the classical principle of non-intervention by the state in the economy.

In this context, legislation on bankruptcy of sugar and gold mining establishments was intended to stimulate new investments. As long as such activities were not highly dependent on credit, legislation tended to provide greater protection to bankrupt producers in order to keep their enterprises in operation. In the case of mine producers, some regard to the rights of creditor was shown once the degree of insolvency of an enterprise became too high, indicating the possibility of a reduction in production. The legislation of 1813 granting such protection to creditors was introduced in a period when the production of gold began to require more sophisticated technology and became more dependent on credit.

Once capital partnerships began to be formed as joint stock companies and single individuals did not own the physical assets of an enterprise, changes had to be made to the rules applied in case the company, or some of their shareholders, became insolvent. Such changes were not made through special legislation for joint stock companies but through the statutes of these companies. Since the formation of companies was subject to official approval of their statues, a channel for government interference was open.

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