

# RIGHT TO LAND IN BRAZIL

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RIGHT TO LAND IN BRAZIL  
The gestation of the conflict  
1795-1824

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For Duda, who taught me to be a “girl”.

Finally, I thank David Willian Hardistys impeccable translation  
and my colleague Rui Santos thoughtful  
reading during the English translation process



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## PREFACE

Hardly a day passes without a Brazilian news agency reporting problems involving the use of land between us: it is the red Aprils, the red Mays, in an ambiguous invocation that refers to blood and socialism, showing the viscerally conservative character of our media and, as a rule, leaving in the background the X of the matter. And in this vast country, cut by rivers that until recently were undeniably mighty, without any records, also until recently, with climatic disasters actually deserving their names - earthquakes, typhoons, tsunamis and all the retinue of other scourges that do not spare other parts of the planet. Tiradentes thought, according to the *Autos da Devassa da Inconfidência Mineira*, that the country flourished and could be great in every way, if it were not for the Portuguese carrying all that wealth to the other side of the Atlantic, sucking out what was produced here, like perverse sponges.

In the painful process of the emergence of a nation where before there had been political subjection, economic dependence, captive labour and immeasurable expanses of land, Brazilians have become accustomed to blaming the Portuguese. What Tiradentes and others like him did is understandable: they played their part in their time, which was revolutionary and, soon after, there were nationalisms everywhere, with the crumbling old structures, as Alexis de Tocqueville had seen; Portuguese possessions in America earning a figure impossible to equate with the rickety shadow of their old European Dad, a long time bogged down in an apparent *cul-de-sac*. That this would continue relentlessly, driving the same argument - and with less than fifteen years from celebrating two centuries of independence - this, however, deserves greater reflection. The delay? Portugal's fault, the edge of Europe always about to plummet into the abyss. Slavery? Portugal's fault, which reinvented and worsened it during the time of the discoveries. If Antarctic France had remained in Guanabara Bay, during the Villegagnon period; had the United Provinces of the Netherlands - as the Netherlands today was then called - placed its foot in Pernambuco even after the departure of Maurice of Nassau, or had, who knows, Britain in retaliation occupied the Brazilian coast if Dom João had not changed Lisbon for Rio, everything would certainly have been different.

As nothing like this happened, and it is no more than material for novels or lucubration against reality, the historical evidence should be examined in order to make some progress in the understanding of our misfortune. To do so, *Right to land in Brazil: the Gestation of the Conflict*, by Márcia Maria Menendes Motta, provides the best ammunition. In her doctoral thesis, published in 1998, the author had already given scholarly attention to the land problem in Brazil. Issues relating to the social and political conflicts associated with the possession and ownership of land were dealt with on the frontiers of power in the former province of Rio de Janeiro, more specifically in Paraíba do Sul, and this was a work by a meticulous researcher who did not shy away from the thorny debates within the subject matter. There, her time period was the nineteenth century, when the empire skated across the land and labour problem, located among liberal and conservative precepts - which, as we know, have not always followed the original European ideology, by changing the order of factors and, in defiance of arithmetic, shuffling items around. This was a more precise and vertically oriented approach.

Nine years later, obstinate, like every historian worthy of the name, once more breaking in to the past to better understand - and support - the present, Márcia Motta brings to the public research into the genealogy, or the possible genealogies, of the terrible problem of land that plagues the country. The period covered is long, five centuries, but intersected by very specific conjunctures, which act as incisions on the same fabric and which leave marks: from the time of King Fernando, in 1375, to the time of the deputies of the Portuguese *Cortes* and independence, between 1820 and 1824, the *sesmarias* law and the regulation of land were perpetuated despite rereadings, additions, alterations and reinterpretations. Through extracts, the author introduces us to the agents of these cleavages, men who suggested changes in the law - such as Domingos Vandelli, Mello Freire, Francisco Mauricio de Sousa Coutinho, and José Bonifácio de Andrade e Silva - and the men who manipulated it, accumulating possession and properties followed by their battles to legalise it, such as Inácio Correia Pamplona and Garcia Paes Leme.

The heart of the problem lies in the wide range of conceptions and definitions that, over the centuries, have sought to explain the phenomenon of the *sesmarias*. Strictly speaking the *sesmarias* were initially conceived of as portions of land donated by the Crown in order to boost agriculture in a Portugal, and throughout the West, lashed by the crisis of the fourteenth century. They had to be cultivated, otherwise the relevant authorities could redistribute them to those who used them properly. The kingdom was small,

the land well known and trodden, the geographical boundaries well defined: in the American conquest, everything was immense and unknown with fluid or open boundaries, so everything changed. Soon the *sesmarias*, or rather the possession of them, were concentrated in a few hands, distorting the old sense of the law. However, to complicate things, and because the size of the land granted varied over time and, above all, was geographically varied, there was smallholders who, in the same way, possessed *sesmarias*, facing up to the larger owners, but also, like them, chasing recognition of their possessions, by sending papers accumulated by generations of farmers to the Overseas Council in Lisbon.

The *sesmarias*, therefore had a distinct meaning on one side of the Atlantic compared to the other, in the kingdom and the conquered land, in the metropolis and the American colony. In Portugal they imported much less than in Brazil, where, after being one of the vectors in the colonisation process, this is what remained in the genesis of the phenomenon of land injustice. Even so, independence ended up worsening the picture, with liberal ideals enshrining absolute private property and sweeping away the requirement to cultivate which, moreover, hardly applied in the Luso-American lands: its logic was another, referring to the communal traditions of the Middle Ages. Therefore, there is nothing paradoxical in the fact that in Portugal, custom valued the traditional occupation of the land along with the law proclaiming compulsory cultivation, while in Brazil, the custom – that is, the tradition of possession – particularly favoured the powerful, further reinforcing their pre-eminence. So, too, when, with independence, the law sought to domesticate custom, the consolidation of full land ownership aimed at fending off potential threats represented by impoverished farmers.

Transitioning with ease between the precepts of the social history of Edward P. Thompson, sociological and anthropological studies on land and a well-entrenched tradition of agrarian historiography in the universities of the city and state of Rio de Janeiro, Márcia Motta has written an enlightening book which is useful, topical and, what is more, based on copious documentary research. A book that deconstructs well-established claims in Brazilian historiography and elegantly advances our understanding of one of the central problems of our past, and thus forcing to think. There is no place for inventories attributing disasters to the Portuguese colonization, and here, Márcia is more than convincing in showing how we devalued and reinvented a law which, in Portugal, played a much more dignified role and, moreover, was a breakthrough in its time. With a good ruler and compass, we can construct an infernal geometry by ourselves and at our own risk.

Another national mania is the complaint that the Brazilian - as if this were another entity, different from ourselves - has no memory. Besides the meticulous history of the habits, customs and practices of land use, Márcia Motta's research refers to constructions made regarding these uses, reminding us that we are responsible for our history. She has, in all of this, offered us a historical work, in the best meaning of the word.

São Paulo, April 2007.

Laura de Mello e Souza  
Universidade de São Paulo

## ABBREVIATIONS

**ANTT** - *Arquivo Nacional da Torre do Tombo* (National Archive of Torre do Tombo)

**AHU** - *Arquivo Histórico Ultramarino* (Overseas Historical Archive)

**BN – Li** - **Biblioteca Nacional – Lisboa** (National Library – Lisbon)

**BN - RJ** - **Biblioteca Nacional - Rio De Janeiro** (National Library - Rio de Janeiro)

**IHGB** - **Instituto Histórico e Geográfico Brasileiro** (Brazilian Historical and Geographical Institute)

**ACL** – **Academia Real de Ciências de Lisboa** (Royal Academy of Sciences of Lisbon)

**AMO** – **Arquivo do Ministério das Obras Públicas** (Archive of the Ministry of Public Works)

**AN** - **Arquivo Nacional – Brasil** (National Archives – Brazil)



## INTRODUCTION

The result of an extremely complex situation, the *sesmarias* (land grants) were established in Portugal in 1375 to address its thirteenth century economic crisis and the multiple ramifications of this. In the middle of that century, the then economic crisis had been exacerbated by the black plague. Disease and later endemic outbreaks hit Portuguese society hard, both in urban as well as in rural areas. The flight of workers to urban centres in search of better living conditions led to a further deepening of the crisis as the shortage of labour in the fields further reduced agricultural production. In every region of Portugal, from the north to south of the small country, depopulation was the rule. Given this situation, a law was passed in 1375 - for many, an agrarian law - with the primary aim of stimulating agriculture by enforcing cultivation on abandoned land<sup>1</sup>

The *sesmarias* law was intended to coerce the owners of land into cultivating them, under penalty of expropriation. It was intended to stimulate grain production and inhibit the flight of farm workers, based on the procedures it laid down.

The law inaugurated the principle of the expropriation of land, if it was not used. It did not refer to virgin lands and unpopulated areas. On the contrary, it was intended primarily to bring land previously worked on under cultivation once more. In safeguarding - in principle - the right to land of the former owners, procedures were instituted so they were advised of the intention to expropriate, thus guaranteeing their past right, but imposing cultivation of abandoned lands. For José Serrão, the *sesmarias* law “was linked to multiple provisions which were of a local character, and which lasted until at least the end of the fifteenth century, and it also had its revolutionary aspect, its air of agrarian reform “*avant la lettre*”.”<sup>2</sup>

In a work considered a landmark in Portuguese historiography, Virgínia Rau stated that “[...] more as a measure of internal colonisation

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1 According to the Ordenações Filipinas, “sesmarias are actually the granting of lands, dwellings or shacks that belonged or belong to certain landlords and which in another time were cultivated and made use of, and now are not”. Livro Quarto das Ordenações Filipinas, p. 822.

2 Joel Serrão. Dicionário de história de Portugal. Porto: Livraria Figueirinhas, n/d, p. 544.

rather than as agrarian law, the *sesmarias* survived, given that, to some extent, they were rather favourable for the development of agriculture”.<sup>3</sup> But still, the question remains: how can the effectiveness of the *sesmaria* be verified over time, since it remained in force for such a long period? Little is still known about it and “to what extent a restructuring of property was accomplished as well as a victory over the crisis”.<sup>4</sup>

In that study, Virgínia Rau highlighted the fact that the primitive memory of the acquisition of land rights through cultivation would not be forgotten and would have been passed on down through the centuries.<sup>5</sup> She also emphasised that the idea of taking land from owners who were not growing anything on it was very old in Portugal. In fact, such a notion went back to the times of the Roman Empire and the *Codex Justinianus*, which, according to Gama Barros,<sup>6</sup> included this order.

Even before it became an instrument for overseas colonisation, the *sesmarias* were used in Portugal to promote colonisation, including border areas. Thus, for example, in the village of Medelim, on the outskirts of the town of Monsanto, the wars with Castile led to a decrease in the local population in the mid-fifteenth century. To encourage the return or departure of rural workers to the region, in 1450 King Afonso V donated *sesmarias* of land.<sup>7</sup>

Despite Virgínia Rau’s doubts concerning the legal status bequeathed by the *sesmarias*, there is strong evidence that from early on what was transmitted - largely in terms of donations - was a perpetual and alienable control, although subject to some restrictions. Thus, already in ancient times, the *sesmaria* turned into a property, dependent on surrounding conditions, the common denominator of which being the question of cultivation.

The requirement to cultivate also involved representations, requests and complaints made by councils in relation to a breach of this requirement. In the Algarve, for example, in 1392, “the Tavira municipality spoke out against those who had received *sesmarias* and not tilled them and required a certain provision from those who wished to”.<sup>8</sup> In some places in the

3 Virgínia Rau, *Sesmarias medievais portuguesas*. Lisboa, Editorial Presença, 1982, p 143.

4 Joel Serrão, *op. cit.*

5 According to Rau, “the oldest preserved vestige of a land which has been taken from its owner for failing to cultivate it, is that recorded by the author of the Memoir concerning the History of Agriculture in Portugal (*Memória para a História da Agricultura em Portugal*) and attributed to the reign of King Afonso I”. Rau, *op. cit.*, p. 69.

6 Apud Rau, *Ibidem*.

7 *Ibidem*, p. 113.

8 *Ibidem*, p. 126.



province of the Alentejo protests also emerged. In other regions, there were criticisms regarding the procedures of the *sesmeiros* (which here refers to those who donate the land), without the owners of property located there being heard. Also according to Rau, in the mid-fifteenth century, “there were grievances by the people against the way in which *sesmarias* were handed out, and against the fact that they were not given lands of the Crown or churches when they were not used”.<sup>9</sup>

However, despite the complaints, there is evidence that the *sesmarias* were well accepted by the population in general. “Everything we know about the *sesmarias*, and the very silence of many towns and cities where they were in force, is rather enlightening”. Rau continued: “Except in Aveito, which was unaware of and repudiated its practice, and Trancoso, which protested against it with rare insight, the other lands of the kingdom hardly reacted”. Relying on the text of Gama Barros, the author concludes:

For some districts in particular, the *sesmarias* deserved applause, since they required the king to extend its use to their land, or asked for permission to have them put into practice. [...] But if they did not applaud, it was not, in relation to the *sesmarias*, against the law in itself which, in general or special sections, municipalities protested more often, but rather against the executors and the various abuses practised in its shadow.<sup>10</sup>

In short, while a law emerged to respond to the food crisis of a territory ravaged by war and pestilence, the *sesmarias* became a praxis and a law. In their name, many social agents sought to argue that land ownership should be subject to cultivation, and that that requirement was the route to the legitimacy of land ownership.

To what extent did the law concerning *sesmarias* attain its goals? Why was it the object of so much criticism in the late eighteenth and nineteenth centuries and still remained as a law regulating access to land until its extinction in 1822, in Brazil, and in 1867, with the enactment of the Civil Code, in Portugal? The questions are not easy to obtain.

The silence of Portuguese historiography with regard to the law makes an answer difficult to make. After the work of Virgínia Rau, there has been no other on the theme focusing on Portugal. Uncomfortable silence for a historian. According to Monteiro, in a recent paper, relatively little is known about the specific area of the application of the *sesmarias* legislation. He continues: “Although present in many foral charters, [...], the *sesmeiros* were sparsely present, as far as is known, in Portuguese history of the modern

9 Ibidem, p. 134.

10 Ibidem, p. 141.

age”.<sup>11</sup> But “on the other hand, the legal feature of *sesmarias*, re-adapted from Portuguese medieval legislation had, in the same period, an important transition to the colonial space, and more particularly, to Brazil”.<sup>12</sup>

It is important to remember, however, that the first *sesmarias* outside the Portuguese mainland occurred on the Island of Madeira. Although no one knows for sure what the primary legacy to that island was, it was related to the arrival of João Gonçalves in Funchal, where he began to mark out the village and give the land as *sesmarias*, as mandated by the Infante D. Henrique, Lord of the aforementioned Island of Madeira, and, in accordance with that, he gave the lands that were not worked on for a period of five years, and obliged them to take advantage of them, under penalty of if they did not do so during this time, they would be taken from them and given to those who would make use of them.<sup>13</sup>

Besides the experience of that island, *sesmarias* were also granted in the Azores and in Mozambique. However, as we shall see, in the *Mariano* period, the only requests for confirmation of *sesmarias* in African territory relate to Mozambique.<sup>14</sup> It should be borne in mind that the African territories were “reservoirs of labour for America”.<sup>15</sup> What interested the Portuguese, above all, was the recognition of the sovereignty of the Portuguese king in the consecration of its commercial interests. Unless I am mistaken, there was no more consistent land occupation policy entailing the operationalisation of agrarian legislation and involving potential tenants interested in increasing the agricultural production of the different African regions.

The *sesmarias* were neither, therefore, a legal institution used in all Portuguese possessions, nor were they granted at all in Portugal in the eighteenth century. They continued, however, to be the subject of intense

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11 Nuno Luiz Madureira (coord.). *História do trabalho e das ocupações* Vol. 3. *A agricultura: dicionário das ocupações*. (org. por Conceição Andrade e Nuno Gonçalo Monteiro). Oeiras: Celta Editora, 2002, p. 339.

12 *Ibidem*.

13 Antonio Vasconcelos de Saldanha, *As capitánias do Brasil. Antecedentes, desenvolvimento e extinção de um fenômeno atlântico*: Lisboa, Comissão Nacional para as Comemorações dos Descobrimientos Portugueses, 2001, p 287.

14 Unfortunately, we cannot discuss here the potential differences in the provision of *sesmarias* in the various Portuguese colonies. This would also imply examining other forms of land occupation and legalisation, such as the periods in Angola.

15 Joaquim Romero Magalhães, “Os Territórios Africanos”. In: Francisco Bethencourt; Kirti Chaudhuri (dir.). *História da Expansão Portuguesa*. Vol. III. *O Brasil na balança do império (1697-1808)*, Lisboa: Círculo de Leitores, p. 60.

debate, especially when related to Portuguese agriculture, their negative aspects and their implications in Brazil.

This book was nurtured during my post-doctoral experience in Lisbon. In 2003, over seven months, I collected information about Brazilian *sesmarias*, the arguments of Portuguese jurists and texts produced by Portuguese memoirists about the agricultural crisis in Portugal, its relationship with the colony and with the distribution of land.

In collecting documentation material of reasonable proportion a set of issues were drawn up that gave rise to this work, involving the analysis of proposals for a system of *sesmarias* in colonial areas - particularly Brazil – in relation to the arguments in Portugal concerning the right to property and the agricultural crisis.

The book I am introducing here to the reader has as its starting point the year 1795, when the Portuguese Queen Mary I enacted the *alvará* of 3 May, with the aim of legislating on the irregularities and disorders of the *sesmarias* system in Brazil. In 1822 the system was permanently discontinued, and at the same time the subject of debate in the *Cortes liberais* in Portugal. The final *Corte* was the Constitutional Charter of 1824, which enshrined land ownership in all its fullness in the nascent Brazilian Empire.

The objective was therefore to understand how the *sesmaria* system was inserted in the Crown's attempt to regulate its relationship with the colony, while it – the *sesmaria* – was understood in Portugal as an important instrument for the appropriation of the land which led to various conceptions and conclusions concerning it. Throughout those years, the problems experienced in the metropolis that culminated with the transfer of the Court and, in 1822, with the independence of Brazil, produced numerous studies on the desired relationship between Portugal and Brazil that, despite different views, provoked reflections on the right to land, both in Portugal and in its then main colony.

To answer some of the questions raised by the sources, I went in search of an point with which to guide myself in the study of eighteenth century agrarian legislation. I ventured once more into the complex field of the Law and within the conceptions of justice which enshrine a particular vision of the history of the occupation of place. Influenced by Thompson, I tried to denaturalise private property, including the system of *sesmarias* and its most important basis, that of the requirement to cultivate it. The text which I now offer the reader is the result of this trajectory.

-- --In the first part, I discuss the concepts of land rights present in the reflections of the memoirists and jurists of the late eighteenth century in Portugal to understand how the *sesmarias* showed a particular reading of landed property. To do this, I analyse in particular the reflections of Domingos Vandelli and those of Pascoal José de Mello e Freire, the greatest interpreter of the Pombaline spirit.

In the second part, I describe the *alvará* of 1795, which sought to order the *sesmaria* concessions in Brazil. In reconstructing its many provisions, I show how land conflicts were a concern of the Crown and how the charter was an attempt to scrutinise the process of granting lands in the main Portuguese colony. Then I use the conclusions of Francisco Maurício de Souza Coutinho, brother of Dom Rodrigo and governor of Pará, to lay bare the limits of the action proposed by the *alvará*, which was suspended in the following year due to the intense land conflicts.

In the third part, I consider legislation relating to the system of *sesmarias* to understand the historicity, not only of its efforts, but also the constraints and limits of the Crown in matters involving quarrels over land. I reconstruct the *sesmaria* concessions from the *Mariano* period to highlight the regional differences and dynamics of occupation. Also in this part I analyse the reasons why *sesmeiros* and potential *sesmeiros* sought to meet the requirements of the administration, at the same time as using the law for their interests. Additionally, I reconstitute the intervention of the Crown in two emblematic situations: that involving Ignácio Correia Pamplona, in Minas Gerais, and the disputes over land involving Garcia Paes Leme, in the captaincy of Rio de Janeiro.

In the last part of this text, I reconsider the arguments concerning *sesmarias* in the 1820s, both in Portugal and in Brazil, to demonstrate the process of the delegitimisation of the system as the basis of land ownership. To do so, I highlight the thoughts of Francisco Manoel Trigoso Aragão Morato, during the period of the convocation of the *Cortes*, and the proposals put forward by the Bahian deputy Domingos Borges de Carvalho. I also follow the interventions of the Court once installed in Brazil, from 1808 onwards, and the expectations raised by the country's independence. In this sense, I analyse the criticisms made by the Portuguese António José Gonçalves Chaves concerning the *sesmaria* system and the distribution of land in the country. Finally, I consider the "discourses" of the constituents in 1823 and the consecration in 1824 of the ownership of land in all its fullness.

To do justice to the task that gave rise to this book, I quietly and peacefully occupied the chronological terrain of others, gradually becoming a historian of the eighteenth century.

I thus sought to redimension the discussions around the very idea of conflict, reconstructing not only the clashes, but, above all, the principles that guided the creation of the system of *sesmarias*, the various readings made concerning it and the search for “legitimate title”. To achieve this, I retrieved the historiography on the system, aligning my research in order to create new questions for sources which had already been widely used.

In this my journey to a land that was rather unsteady, I counted on the support of many friends, whose friendships were also nurtured during this trajectory. I must thank here Rogério Ribas and Ismenia Martins, who opened the doors of Portugal to a newcomer in modern history. In that beautiful city I counted on the memorable support of Jamile de Oliveira, who shared the anxieties of a Brazilian. I was also lucky to still be able to discuss my first impressions of my travels within the *sesmarias* with Nuno Monteiro, Manoel Hespanha, José Vicente Serrão and José Luis Cardoso. I am very grateful to the Josés for helping me understand Portuguese agrarian history. Also in Portugal, I counted on the support of the French historian Didier Lahou, who kindly gave me the CDs relating to the Resgate project for the Captaincy of Pará and Professor Farinha who received me at the University of Lisbon. Across the Atlantic, I had the invaluable assistance of Elione Guimarães, Henrique Lacerda and Marina Machado, who helped me with the sources on Minas Gerais and Rio de Janeiro, and Graciela Bonassa Garcia, who rushed to my aid when I needed some information about Rio Grande do Sul. The four were always to be found in the Agrarian Reference Section and shared my anguish over “land issues” in Brazil.

I would like to thank the generosity of Francivaldo Alves Nunes, who graciously sent me copies of the Annals from the Pará Archive.

I cannot forget the support given by CAPES to enable me to carry out a post-doctoral internship and also to CNPq, who obviously suspended my productivity scholarship during my stay, but returned it in full after my return! Without the support from CAPES and CNPq, it would have been impossible for me to become a scientist, concerned with unravelling the history of land conflicts in the country.

I would also like to express my gratitude here to my friends from the *Companhia das Índias - Núcleo de História Ibérica e Colonial na Época Moderna*. They were the first to hear this story.

Early versions of parts of this book were presented in group discussions and International Congresses, organized by Georgina Santos, Guilherme Pereira das Neves and Rodrigo Bentes. By adding myself, I became “a legitimate titleholder”, a historian of the Company, also benefiting from the contact with the other members of the group: Ronaldo Vainfas, Luis

Carlos, Ronald Raminelli, Daniela Calainho, Célia Tavares, Luciano Raposo, Rogério Ribas, Sheila de Castro Faria, Iris Kantor and Laura de Mello e Souza. Finally, I would like to give thanks for the kind words that appear in the preface to the book. This is not my first work, and hopefully not the last. But in its name, I have obtained new friends and I have now possessed the fertile territory of modern history.

I would particularly like to thank Ronaldo Vainfas. He read the first version of this text, when we shared the coordination of the Postgraduate Programme in History at UFF. His careful reading was crucial in several points in this work and his excitement strengthened me when I thought of quitting. His generosity showed itself at various times during the course of this story. Out of our partnership, I gained a friend!

Speaking of company, I would like to reiterate my happiness at sharing my life with Leandro Mendoza and our children: Leandro Dittz, José Renato and Maria Eduarda. I also must remember my friend Allan Rocha, on behalf of our complicity.

This book, nurtured in Portugal, gradually came to light after my return to the country. Over the last three years, it has been written in the holidays and school breaks, at weekends and during Christmas periods. It is the result of a commitment to research under conditions which are hardly comfortable. In this sense, it is emblematic of the difficulties researchers face at federal universities in Brazil, subject to the requirements of undergraduate and postgraduate courses and the impositions of support agencies. It is also the result of the certainty that freedom to research is a conquest for the historian and it - freedom - sometimes means running counter to a system that tends solely to quantify production, without realizing that the nurturing of a book is a pleasurable, but also painful, task.

Márcia Maria Menendes Motta  
March 2007

PART 1  
MEMOIRISTS AND JURISTS:  
agriculture and right to land in Portugal  
The late eighteenth century



THE *SESMARIAS*: ORIGIN AND CONSOLIDATION OF A CUSTOM

LAW IN DISPUTE: POSSESSION AND PROPERTY IN THE LATE  
SEVENTEENTH CENTURY





## THE *SESMARIAS*: ORIGIN AND CONSOLIDATION OF A CUSTOM

### THE MEMOIRISTS AND THE DECLINE IN PORTUGUESE AGRICULTURE: APPROACHES

For many historians, the idea of decline and the need for reforms were feelings shared by the Portuguese intelligentsia in the late seventeenth century and throughout the eighteenth century. The perception of Portugal's moral and political degradation was the result of it having chosen commercial profit, through the adoption of foreign fashions, though a courtesan attitude, and through urbanism, which would have removed the Portuguese from the healthy cultivation of the earth "[...] from the austerity of their composure, clothing and their military virtues."<sup>16</sup> Be that as may, the notion of decay was the - unpredictable - result of a broad process of dependence on a colonial-based economy, structured around the exploitation of its colonies, with the actual economic activities in Portugal being complementary in nature.

The "excessive dependence on the colonial vector", according to Serrão, led to distorted trends in the economic structures of the metropolis.<sup>17</sup> It is true that due to the exploitation of gold from Minas Gerais, the Portuguese economy experienced a period of relative prosperity, with the commercial sector being the main beneficiary of the funds obtained from mining. In the mid-eighteenth century, however, the fall in production of the ore showed that the period of wealth had tended to hide the Portuguese dependency on

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16 Ana Cristina Nogueira da Silva and António Manoel Hespanha. *A identidade portuguesa*. In: José Mattoso (dir.) *História de Portugal*, Tomo 4: *O Antigo Regime* (coord. by António Manoel Hespanha), Lisboa: Estampa, 1998, p. 29. According to the authors, "the theme of the decay of the Portuguese with regard to a golden age, marked by rustic austerity and by a bellicose army, attributable both to contamination from the climes and the softening practices of the South such as becoming focused on trade, is a theme already present in the second half of the sixteenth century, and related to decadent themes present in classical literature". *Ibidem*, p. 32, note 37.

17 José Vicente Serrão. "O quadro económico". In: José Mattoso, *op. cit.*, p. 68.

its colonies, requiring the need for a “partial reconversion”,<sup>18</sup> the greatest example of which being the Pombaline reforms.

The late eighteenth century, in a context of relative economic prosperity, saw the formation of a generation of memoirists, authors of numerous articles, containing proposals for solving some of the problems considered the most urgent. An expression of a process of “economics becoming autonomous as an academic discipline”,<sup>19</sup> the texts produced at that time (largely arising from the activities of the Lisbon Royal Academy of Sciences, founded in 1779) were the written expression of the “partial conversion”<sup>20</sup> that Serrão speaks of, since many memoirists sought to analyse the structural situation of agriculture in Portugal, “the delay or ‘decadence’ of which was taken as a basis for the precarious development of other economic sectors more vulnerable to the pressures of the situation”.<sup>21</sup>

In analysing the thinking of the memoirists in the late eighteenth century, Cardoso states that one of the most important issues they debated referred to issues relating to the development and reform of agriculture in the country.

This was a difficult issue which had to be approached delicately, to the extent that focusing on it entailed discussion of the actual social and political structure of the *Ancien Regime*, while also taking into account the nature of the property system and the ways of boosting production, which were noticeably subject to the requirements of the privileged social orders (the clergy and landed nobility).<sup>22</sup>

Esteves Pereira also pointed out that Portuguese physiocracy devoted itself to carrying out analyses of structural deficiencies, leading to an in-depth reflection concerning the primary sector. For him, however, many of the proposals of the physiocrats were “of a very altruistic type and also,

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18 Ibidem, p. 69.

19 José Luis Cardoso. O pensamento económico em Portugal nos finais do século XVIII. 1780- 1808, Lisboa, Editorial Estampa, 1989, p. 25.

20 Serrão, op. cit., p 68.

21 Cardoso, op. cit., p. 38.

22 Ibidem, p. 103.

in some cases, not substantive enough to respond to situations involving structural deficit.”<sup>23</sup>

Through more indirect routes it has been possible to find evidence of more direct criticism concerning issues related to what we would nowadays call agrarian legislation. In the late eighteenth century, perceptions concerning social inequalities were to be found in the midst of moral criticism against some of the pillars of the *Ancien Regime*. The criticisms were therefore directed at the decay of Portuguese agriculture and had the clear intention of seeking out the reasons for and the ways to overcome this. According to Cardoso, the memoirists tended to focus on the nature of the tax structure, “a heavy system of taxes and duties reminiscent of feudal times, coherently embedded in the logic of the manorial economic and legal framework”.<sup>24</sup>

The complaints against this widespread agricultural decline sought to propose solutions. Discussions about the physical causes and soil potential, and the idea of setting up agricultural schools to overcome the “inherent” obstacles regarding “workers and landowners”<sup>25</sup> were some of the measures advocated by the memoirists of the period.

There were those who advocated the recultivation of a particular product which was no longer grown in the country. This was the case, for example, with an author who argued for stimulating the cultivation of hemp, which had previously been widely cultivated in Portugal during the discoveries, as it provided raw material for the preparation of ropes and sails for the Portuguese vessels.

In the Memoir on the advantages that the Portuguese nation obtained from the setting up of its forgotten hemp production (*Memória sobre os interesses vantajosos que resultam à nação portuguesa pelo estabelecimento da esquecida agricultura do cânamo*),<sup>26</sup> António José de Figueiredo Sarmento stated that it was not even necessary to argue for the product, “particularly in a country such as Portugal with its Shipping, a Navy and Overseas Colonies”.<sup>27</sup>

As well as the speeches in favour of revitalizing this or that product, there was also the argument for transforming the land into private property,

23 José Esteves Pereira. Genealogia de correntes de pensamento do Antigo Regime ao liberalismo: Perspectivas de síntese. In: Fernando Marques Costa, et al (org), *Do Antigo Regime ao liberalismo*. Lisbon: Vega, n/d, p. 52.

24 *Ibidem*, p. 104.

25 *Ibidem*, p. 109.

26 Arquivo Histórico do Ministério das Obras Públicas, Ministério do Reino MR36, “Cultura do Linho”, Antonio José de Figueiredo Sarmento, n/d.

27 *Ibidem*.

which could mean making the poor responsible for the agricultural situation, since it was they who were the beneficiaries of an agricultural dynamic based on the existence of open fields. An anonymous author, for example, wrote:

The contempt for or lack of knowledge of true agronomical principles has kept the land open, and uncultivated common land, spread across the Kingdom under the name of pastures and public places, along with the natural envy that ignorant people conceive, as soon as someone wishes to appropriate any portion of that common ground to use for cultivation, always arguing with seeming justice about the absence of woods and pastures, and therefore imposing on the Ministry and producing an incalculable number of claims, divisions and hatreds that distract from useful work, and always end up ruining certain owners.<sup>28</sup>

Although defending the privatisation of common lands, the anonymous author acknowledged the existence of conflicts regarding the appropriation of those lands. Besides this, it would be sensible and necessary to amend the laws, because, according to him,

only when the legislative system is united in favour of cultivation, and is of one accord, can it thrive, with the infallible axiom that the prosperity of agriculture in general is not only the careful work of individuals, but the result of the constitution: and it is only the government that singularly has the power to reform it.<sup>29</sup>

The words of the anonymous author were not devoid of meaning. If, on the one hand, the ideas advocated by the memoirists in favour of the privatisation or the allocation of land long abandoned, or hardly used, together essentially amounted, to “a first attempt at creating conditions for the emergence of a capitalist structure, which was parallel and non-confrontational, with the structure based on manorial type relationships”;<sup>30</sup>

28 ACL, Manuscrito 1438, Memória sobre a agricultura para a academia real das ciencias. Anonymous, 1807, pp. 16-17.

29 Ibidem, p. 29.

30 Cardoso. op. cit., p. 118.

on the other, they could not escape the evidence of land conflicts, which meant taking a position - contrary or not – regarding the law in force.

The issue of common land had however, appeared even more clearly in a previous text, in the memoir of Bernardo de Carvalho e Lemos, written in 1796.<sup>31</sup> His text is a broad defence of property rights, as a process that would prevent the violence of usurpation. Property would then have the principle of preventing the abuse of power, “bringing in its origin the same human constitution that, without this property, would soon annihilate itself”.<sup>32</sup>

In defending private property, Bernardo Lemos argued in favour of landlords and the problems caused by the use of land in common pastures.

Who is the owner of the Building a part of the year and another part which then goes to a third owner who is not completely master of the property and on this principle cannot fail to cause much awkwardness to the progress of agriculture, by remaining opposed to its original institution, and for this reason, not interested in making those repairs, which are needed because of the damage done.<sup>33</sup>

As such, in the view advocated by the author, the owners are not interested in fixing and repairing the damage caused by floods, and the destruction wrought by cattle, since they would not actually be in full possession of their property, subjected as they were to a custom that hindered progress, not only for a given property, but for all of the country’s agriculture.

In defence of the institution of a freehold, Bernardo Lemos would use the example of the occupation of the vast uncultivated lands of Southern America, “[...] due to the abundance of the produce they harvest, nobody [would] dare to do so, without first seeking the certainty of property, so that they would not experience its usurpation by another”.

And he continued:

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31 Bernardo de Carvalho Lemos. What is the damage and utility of what occurs in many territories of the Kingdom with all open lands being common pasture for all the cattle, for some months of the year, and the influence this custom has on Agriculture, for the various types of products, for good, or for bad, 1796. Academia Real de Ciências de Lisboa, Série Azul, MS 07.

32 Ibidem, p. 210.

33 Ibidem, p. 211.

[...] to avoid this, those who can would become the Lord of the property, by that power made available to them. Head of the Nation, who has all the captive strength to establish and observe the Kings that strengthen, and conserve all the parts of a large society, that make up the body politic of a Nation, then safe, by the Government of the establishment, and sure of not being disturbed in the portion of the land allotted to him, and which can freely be disposed of as his.<sup>34</sup>

By ignoring the colonial reality and the complex forms of occupation established there, Bernardo Lemos used a vision of America to express his certainty about the Siamese relationship between freedom and property to consolidate the progress of agriculture in his country. For him, if the American colonists had to give part of their land for common ground, they would certainly abandon their occupancy project.

By advocating the destruction of a custom - the use of common pastures - the author was emphatic that that was opposed to the original institution of property rights and showed himself to be angry at the conclusions of some jurists regarding the issue.<sup>35</sup> Without explaining to whom he was addressing his criticism, he stated that:

Looking perhaps with the same indifference at the importance of cultivating the land as those jurists who have written, and in their work which they left us ended up asserting that as regards the benefit for the land, albeit in good faith, obtained when passing it over to a Third Owner, that person should only pay for the expense that had been made, for the same farm, and not according to the increase in value, and income that would be given it, through having had plantations of vines, which had been completed, for the time it was used to produce, which would so often would be decided by an arbitrary jurisprudence [...].<sup>36</sup>

Thus, Bernardo Lemos accused some jurists of recognizing the custom of common pastures and was rather disturbed by this, since the recognition

34 Ibidem, p. 211V.

35 I will discuss the views of lawyers on property and customs below.

36 Bernardo Lemos de Carvalho, op. cit. p. 215.

of that custom entailed a limit to property, since when using those lands, the lords would only receive compensation from the improvements carried out there. It is therefore implied that positions contrary to the common use of land and the clear need to write about them revealed the clash of perceptions over land rights and their limits.

Many memoirists preferred to emphasize that the agrarian laws of the kingdom were evidently effective. Another anonymous author, who wrote in 1782, made a forceful defence of King Ferdinand's law concerning *sesmarias* and stated that nowhere in Portuguese law could be found "[...] a single document that discourages, and slaughters the farmers, with there being so many that ennoble and distinguish them".<sup>37</sup> This latter author had set out to write a history of agriculture. However,

[...] The lack of accurate evidence is the cause of this and some other serious defects affecting this Memoir. To avoid them, it was necessary to examine the main Archives of the Kingdom, especially those in the Torre do Tombo. It was necessary to view all the Foral Charters, or at least those of the main territories.<sup>38</sup>

In other words, the author was aware that writing a history of Portuguese agriculture would imply revisiting the foral charters in terms of their relation to the territorial appropriation, examining the files, and reconstructing – I would say - the multiple origins of Portuguese property.

Two further authors provide examples outlining contemporary perceptions concerning the problems of Portuguese agriculture: the first, another anonymous author, the second Domingos Vandelli. Let us first consider the lessons from our unknown writer.

The problems involving the question of justice in relation to lawsuits were a focal point of an anonymous author who wrote an extensive article entitled: "Political Economy Memoir in which I urge that it is realised that

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37 *Memória de Litteratura portugueza*, published by the Lisbon Royal Academy of Sciences, Lisbon, in the Atelier of the Same Academy, tomo II, p. 14.

38 *Ibidem*, p. 43.

the promotion of Agriculture in general should be the primary concern of the Ministry”.<sup>39</sup>

The author seeks to explain, first, the various reasons for the decline in agriculture, beginning with the repeated notion of the “wrong method and ignorance of the true way of cultivating the land”.<sup>40</sup> Just like his contemporaries, he reiterated the notion that the “farm workers, with no more understanding than just following a blind habit, threw the seeds into their properties without respecting anything other than their coarseness and the habits of their elders”.<sup>41</sup>

However, in listing the other causes, the author shows a more discerning perception of the problems concerning Portuguese agriculture. In total eleven reasons were given by him. Almost all of these showed decline in terms of the absence of things: a lack of labour, lack of water to fertilize the properties, lack of good roads to move the produce from one place to another, a lack of individuals to cultivate the land. As for other reasons, these involved not the lack, but the presence, of problems to be overcome: excess of privileges, the existence of many vagrants begging, the “mechanism used for farming”, the prisons heedlessly taking prisoners thoughtlessly, with their cells full of the innocent, wretched victims. And also the cause which

39 Memórias Económico Política em que primo se faz ver que o fomento da Agricultura em geral deve occupar as primeiras vistas do Ministério, Anonymous author, n/d, ANTT, Ministério do Reino, Memórias sobre diversos assuntos, maço 356. There are other memoirs in the collection that generally refer to the general decline of agriculture, but without referring explicitly to the problems of land appropriation or agrarian legislation. Amongst others, Luiz Antonio de Medeiros Velho. Plano dos vantajosos interesses que resulta à Nação Portuguesa pelo estabelecimento da esquecida agricultura do canamo. Antes de 1797; João Nepumuceno Pereira da Fonseca (Juiz de Fora). Adicionamento à Informação dos Celeiros Públicos desta Comarca d’Ourique sobre outras Providencia para a promoção d’ Agricultura e População da Província d’Além-Tejo, 1782; Projecto sobre o estado actual das terras dos Salgados na Leziria de Villa Franca, segundo o Methodo j indicado na sua Memória, que offereceo o Almoxarife de Azinhaga, o qual novamente o reforma, sem embargo dever a pouca aceitação que teve, 1803; Prospecto Histórico da Agricultura da Província do Minho, e especialmente do termo de Guimaraens, 1805, ANTT, Ministério do Reino, Memórias sobre diversos assuntos, maço 356.

40 Memórias Económico Política em que primo se faz ver que o fomento da Agricultura em geral deve occupar as primeiras vistas do Ministério Anonymous author, n/d, ANTT, Ministério do Reino, Memórias sobre diversos assuntos, maço 356. The text is probably from the late eighteenth century, since in referring to the Minister of Agriculture, the author states” [...] that he regulates the future through trienniums, as in the way that is practised with the Judges of Rio and Bahia, who do the first three years as an ordinary Magistrate, and the second three on the First Bench”.

41 Ibidem.



was directly related to the production of wine. Amongst the rest, there is one that stands out in terms of the importance it assumes in the author's text. I am referring to the ninth cause:

the immense number of time consuming lawsuits, commonplaces for which the Law is formally required, and the replies and rejoinders, delays of twenty days, reformulating the same, letters requesting that the form for the suspensory period be over fifty days, and other details which occur during the cases [...] are the reasons why many farm workers wish to claim their properties, or propose other actions, abandon Farming for the Law Court, wasting many days in unnecessary delays to ascertain the truth, spending money on inns, and the expenses of the lawsuits, money that could be used to till their farms.

He continues:

[...] what to say about delay lasting months, what to say? From year to year the judges have other sentences to make; how often the poor litigating farmers come from their villages to the cities and towns to hand their cases over to the power of the Notary, the Scribe and the Judge, uselessly [...].<sup>42</sup>

Without referring to any specific legislation, the anonymous author explicitly considers that one of the main causes of the decay in agriculture in Portugal was the injustice that was committed in relation to the farm workers and their lawsuits and litigation. The barriers and various legal tricks sought to prevent individuals from asserting their right to the land. As such, and even bearing in mind the ignorance of the farm workers - like other memoirists - he brought to the light of day problems pertaining to justice and its relationship with land appropriation.

To address the many reasons for the decline, our author also listed the necessary arrangements for progress in agriculture. It was necessary to take advantage of all those who could work. Therefore, it was necessary that the town councils, "according to way of doing things, establish the price

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42 Ibidem.

of a day's work in terms of the quality of the services provided".<sup>43</sup> It was also urgent that the Minister of Agriculture had exclusive jurisdiction with summary knowledge on the issue of the water and fertility of the properties. It would also be necessary to look after the major routes, namely the public roads and the side roads.

He advocated the abolition "with firm action of both the number of privileged individuals, and the extent of their privileges".<sup>44</sup> To avoid vagrants, measures should be taken to prevent the practice of begging from those who were not blind, crippled or totally decrepit. Those falling within these categories should be able to beg only in their own districts. With regard to the vagrants to be expatriated, it was imperative that they not be granted passports, and not able to discern their destination. He also advocated the abolition of prison for crimes not deserving capital punishment, and, in this case only when there was "full proof and ability to convict".<sup>45</sup>

To solve the issues concerning the lawsuits, the author was forceful: only do summary cases with one appeal, since in cases that have this right, or the right of the person, one can ascertain the truth in the summary cases".<sup>46</sup> The decision to uphold a summary procedure in lawsuits for land and the defence of rights would be accompanied by a clear idea of legal procedures. In this way it can be understood why he also advocated that "Sentences in cases should be made without tedious preambles and gibberish words, and by someone simply expressing the facts".<sup>47</sup> He continued:

and the same sentences must go immediately to the words of the indictment, where necessary, to avoid the same indictment later on, an unnecessary formality, which only serves to fatten the Notaries and impoverish the parties.<sup>48</sup>

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43 Ibidem.

44 Ibidem.

45 Ibidem.

46 Ibidem.

47 Ibidem.

48 Ibidem. And furthermore: "The interlocutory appeals should never be petitioned, as long as they are beholden to the Junior Ministers, as long as they are within five leagues, because long experience shows that almost all of these Interlocutory Appeals are to lengthen the case, since the Appellants receive modest expenses from the compulsory warrant, this makes the number of proceedings increase, even those in Court".

In short, the anonymous author came close and at the same time distanced himself from his contemporaries.

If, on the one hand, he also insisted on the ignorance of the farm workers, which made him one more voice as part of a certain way of looking at those social subjects, on the other hand, he widened the perception of the causes of the decline to make an explicit reference to the issue of lawsuits, stratagems and legal proceedings. He also recognized that the delay in the resolution of conflicts was one more element – and not the least - to explain the decline in Portuguese agriculture and the impoverishment of the parties involved in litigation.

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Let us look in more detail at the arguments and conclusions of Domingos Vandelli - an exemplary case, in the words of José Luis Cardoso. Dominic Vandelli was author of “Political Arithmetic, Economics and Finance (*Aritmética Política, Economia e Finanças*)”, Commander of the Order of Christ, holder of a Doctorate in Philosophy from the University of Padua, and was deputy of the Royal Board of Trade, Agriculture, Manufacturing and Navigation. He was invited by the Marquis of Pombal to oversee the chair in Philosophy at Coimbra University, and as far as is known, enjoyed considerable influence in Portugal.<sup>49</sup>

His coming to Portugal was associated with the founding of the *Colégio dos Nobres* – set up in 1761 - and responsibility for the education of the children of the nobility. The institution was formed within the “context of the political project pursued by Pombalism, the total affirmation of royal sovereignty and State power in the face of all peripheral powers, including of course that of the nobility”.<sup>50</sup> Due to the relative failure of the college, Vandelli was transferred to Coimbra in 1772, and participated in the reform of the University, part of the Pombaline plans to improve its teaching. He was active in the University for nearly 20 years, from 1772 to 1791, and it was there that he cemented his reputation.

His importance is still remembered due to his visceral relationship with the project to set up the Royal Academy of Sciences in 1779, an institution that played a “leading and co-ordinating role in research into and discussion

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49 Innocencio Francisco da Silva. Dicionario bibliographico portuguez, Lisboa, Imprensa Universitária, MDCLLLX, tomo II, p. 200.

50 José Vicente Serrão “Introdução”, in: Domingos Vandelli, *Aritmética política, economia e finanças*, Colecção de Obras Clássicas do Pensamento Económico Português, número 8, Lisboa, Banco de Portugal, 1994. p. XIV.

of major national issues”.<sup>51</sup> The work of Vandelli can thus be identified as the highest expression of thought of the Academy of Sciences, since the author managed “to condense in an exemplary manner the essential content of the message conveyed by the memoirist literature”.<sup>52</sup>

It is not intended here to recover Vandelli’s entire work and his contributions regarding the issues that afflicted the Portuguese nation: finance and taxes, the relationship between Portuguese trade in Portugal and its colonies, the problems of factories or his career as a naturalist.<sup>53</sup> For the purpose of this study, it is necessary to discuss his vision regarding Portuguese agriculture in more detail and the agrarian question itself.

In the 1789 Memoirs on the agriculture of this kingdom and its conquests (*Memórias sobre o a agricultura deste reino e suas conquistas*)<sup>54</sup>, Vandelli sought to show the status, the causes of decline and the means to make agriculture flourish in Portugal and its colonies. Besides complaining about the uncultivated land and the farming techniques employed by the farm workers in Portugal, he also asserted the existence of large tracts of uncultivated land in the islands of the Azores and Madeira, and the islands of São Tomé, Ano Bom and Príncipe as well as in Angola. With regard to Brazil, he noted the practice of burning the woods and production “in the vicinity of the sea coast” and “the edges of rivers inside the country” and highlighted the use of slave labour in Brazil as an impediment to the presence of white farmers, as being the main reason as to “why in Brazil there can never be a major increase in agriculture”.<sup>55</sup>

To understand the reasons for the impoverishment of Portuguese agriculture Vandelli stated:

the total decline of agriculture began with the conquests,  
and it remained in this deplorable state due to the exorbitant

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51 Ibidem, p. XVI.

52 Cardoso, op. cit. p. 57.

53 For an analysis of the trajectory of the naturalist Vandelli, see Ronald Raminelli. *Ilustração e patronagem: estratégias de ascensão social no império português*. In: *Anais de história de Além- Mar*. Vol VI, 2005, p. 297-325.

54 Domingos Vandelli. *Memórias sobre a agricultura deste reino e suas conquistas*. In: Vandelli, op. cit., p. 135-142.

55 Ibidem, p. 139.

privileges, and the taxes on staples, and the prohibition on withdrawing certain products from agriculture.<sup>56</sup>

He went on:

therefore cultivating and populating uncultivated lands was no longer given due care; on the contrary, most cultivated land started to have fewer people on it, and ended up without cultivation; public paths were no longer looked after, nor was internal navigation, and there was an almost complete disregard of the wise agrarian laws.<sup>57</sup>

For Vandelli, there were physical and moral causes to explain this decline. Among the physical causes, two were related to the “almost unusable” roads and rivers, with the latter being subject to flooding “due to lack of moats or drains”. What was also highlighted was the “lack of unity of homes and villages”, as well as the “small number of people and livestock”. However, among the physical causes, two others deserve attention: the perception that there was an issue concerning the concentration of land ownership, the “distribution of the land into large estates” and the “lack of resources to cultivate the land”. Among the moral causes, he emphasizes not only the “lack of instruction or education in the farm “workers” but also “the contempt in which the farmers are held”, as well as the fact that the ministers not only protected them, but also often oppressed them. Among the moral causes, there was the resignation of the farmers, contenting themselves with “a vile sustenance”, and who, due to their poverty, often did not even get married<sup>58</sup>

As regards the colonies, the moral causes for the decline of agriculture boiled down to two issues: “the lack of settlement is the main reason for hardly any increase in agriculture and also the gold mines”.<sup>59</sup>

Given so many causes, both physical and moral, what then was Vandelli’s proposed solution? Firstly, he emphasized the existence of “excellent, but rarely executed, land laws”,<sup>60</sup> proposing that they should then form the basis for a Rural Code. However, he also acknowledged that the enactment of a code was

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56 Ibidem, p. 140.

57 Ibidem.

58 Ibidem, p. 141.

59 Ibidem.

60 Ibidem, p. 142.

not sufficient in itself. It was necessary “that, as did the ancient Romans, there be land censors or people observing the land”.<sup>61</sup>

Vandelli advocated the building of good roads and repairing navigable rivers, as important aspects for the revitalization of agriculture, given that farm workers – he said – “in general, know their interests”. He thus ended his article listing solutions to deal with the physical causes of the decline of agriculture. To restate his final words, the author quoted an extract from the political testament of Dom Luis Cunha to legitimise his argument.

But it matters little if the farmers harvest much, if they cannot do business from one province to the other through the difficulties of moving around, as there are so few navigable rivers in Portugal [...] The routes are not only designed for beasts of burden, but also large carts: so that they can help the farmers and facilitate the sale of the produce which they cultivate, and manufacturers and the like, who work [...].<sup>62</sup>

The choice of authorized words made the author’s meaning clear. Dom Luis Cunha had been a judge in the Oporto Appeal Court, in 1685, and also at the *Casa de Suplicação* Court, three years later. He was also an important Portuguese diplomat, who had worked in London on the negotiations regarding the Spanish succession and also represented Portuguese interests at the Congress of Utrecht, when discussing territorial demarcations in America. According to scholars, his work translated “Portuguese thinking concerning cultural renewal emerging from the modern scientific spirit”.<sup>63</sup> He was also responsible for the appointment of Sebastião José de Carvalho e Mello to one of the secretaries of the kingdom.<sup>64</sup>

In citing Dom Luis Cunha, Vandelli backed up for his own discourse in defence of the agricultural recovery of Portugal.<sup>65</sup> In fact, D. Luis Cunha had written that

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61 Ibidem. In chapter 3, I will reconsider the lessons from Francisco Mauricio de Sousa Coutinho concerning the sesmarias. He was also aware of the need to incorporate other fields of knowledge in the drawing up of an agrarian code or law.

62 Ibidem, p. 142.

63 Luis da Cunha, Testamento político. Introdução. São Paulo, Alfa-Ômega, 1976.

64 Ibidem.

65 For a reflection on the role of Dom Luis Cunha within the framework of the Portuguese Enlightenment, see Charles Boxer. *O Império marítimo português*, São Paulo: Companhia das Letras, 2002.

the fifth obligation of the father of families [i.e., the prince] is to visit his lands to see if they are being well cultivated, or if any part of them has been encroached upon [...] You will find, not without some astonishment, that many lands have been usurped to become common, and others uncultivated, many paths impracticable, which means that what they could produce is missing [...].<sup>66</sup>

In other words, in restating his argument using someone of the import of Dom Luis Cunha, Vandelli established a link with the past, to give even greater legitimacy to his proposals. As such, he ended his text by quoting from Alexandre de Gusmão, one of the most illustrious figures, who in 1748 wrote that, “agriculture should be increased, the roads made up, and the rivers to be navigated and watered should be counted”.<sup>67</sup>

In another text, Memoir concerning the preference that should be given to agriculture over factories in Portugal (*Memória sobre a preferência que em Portugal se deve dar à agricultura sobre as fábricas*)<sup>68</sup>, Vandelli explained his vision for agriculture in his country in more detail. This time, he endeavoured to compare the situation in Portugal at that time with England and Holland to demonstrate the thesis that issues relating to agriculture and industry were not independent, as Colbert had thought, “because without taking care of agriculture, the factories could not flourish, or, if so, precariously”.<sup>69</sup> He was sure that major changes were needed in agriculture, but they could not be separated from a plan to promote industry.

Vandelli in fact held the belief that agriculture was important in terms of improving his country.<sup>70</sup> Therefore, in the first place, he argued “that the fortune

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66 Cunha, op. cit., p. 41.

67 Apud Cunha, op. cit., p. 142.

68 Domingos Vandelli “Memória sobre a preferência que em Portugal se deve dar à agricultura sobre as fábricas”. in: Vandelli, op. cit., p. 143-152. I shall not discuss here the small differences between this text and the others (also published in this book), which came from a written version held in the Arquivo Histórico do Ministério das Obras Públicas and entitled “Memória sobre a preferência que se deve à agricultura e quais fábricas agora convém”. For the purposes of this text, the conclusions of the first text are clear and do not differ from the handwritten text. Vandelli, op. cit., p. 153-162.

69 Idem.

70 José Vicente Serrão considers a link with Vandelli to the movement of ideas then in vogue impossible to establish. According to the author, Vandelli was eclectic and ranged from “the defence of private economic rationality and the defence of public utility regulated by the state, including the assertion of liberal principles [...] and the appeal of protectionist measures”. José Vicente Serrão. Introdução. In: Serrão, op. cit., p. XXXV.

of the State, and that of Humanity, except the savages, who live from hunting and fishing, is in the hands of the cultivators”. Secondly, that the production of the land was the only true wealth. Thirdly, “that consumption is the only agent which gives value to production, which stimulates it, and understands it, and multiplies it”. Furthermore, “that the land will be worked better in accordance with the value of its produce, and consequently the crops will be more abundant”.<sup>71</sup>

In this article, the author reaffirmed his immediate solutions to the physical causes of the decline of agriculture. But as we have seen, he advocated the existence of moral causes which referred - in one way or another - to the question of law, the body of law concerning the right to land, namely an agrarian law. It is understandable, therefore, that in spite of the controversy surrounding the theoretical affiliation of Vandelli (for some he was a representative of physiocracy in Portugal),<sup>72</sup> he had a keen vision of the agricultural reality of the country and was aware of the Portuguese backwardness in relation to other States. Colbert’s system was in fact quoted by Vandelli, as the author stated at the very beginning of this text that “during the last reign Colbert’s system was followed, providing considerable sums to manufacturers without at the same time losing sight of agriculture”.<sup>73</sup> He thus reiterated that agriculture could not be neglected in the name of a manufacturing boost in the country. Moreover, he seemed to be aware that, to overcome the backwardness and even to break the state of decline of Portuguese agriculture, it was necessary that the bases of property be established.

This latter statement makes sense when trying to understand the author’s text entitled “Plan for an Agrarian Law (*Plano de uma Lei Agrária*)”, in which Vandelli wrote extensively about the agrarian issue in the country. The text was drafted shortly after his appointment to the Board of Trade in 1788, and in reply to a request from the Chairman of the Board about the *sesmarias* law.<sup>74</sup>

The Board of Trade (*Junta do Comércio*) was established on 30 September 1755, replacing the *Mesa do Bem Comum e dos Comerciantes*, which had been formed in 1720. Its aim was to increase trade and combat smuggling, “playing a guiding role of extreme importance in the economic sphere of Portuguese society”.<sup>75</sup>

Vandelli informs that he only offered to write a plan for agrarian law because he was carrying out an order received from the President of the Board

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71 Vandelli, op. cit., p. 148.

72 Ibidem, p. 145.

73 Ibidem, p. 142.

74 Domingos Vandelli. op. cit., p. 110, note a.

75 Francisco Falcon. *A época pombalina*. São Paulo: Editora Ática, 1982, p 450.



of Trade. Before him, Manuel de Faria, Count of Ericeira,<sup>76</sup> Dom Luis da Cunha, Alexandre de Gusmão “and many other national politicians” had already proposed the “most effective means to promote agriculture”.<sup>77</sup> In this sense, he was placed on an equal footing with the individuals mentioned and had a complete notion of the importance of his task.

As in his other texts and with other authors of the period, Vandelli argued about the need to facilitate the transportation of agricultural products, complained about the heavy taxes paid by the farm workers and argued about laws pertaining to hunting, fishing and others. He knew the charges farm workers had to pay and the manner in which the richest appropriated the lands of the poorest, after making loans for seeds or money. Because of this, he advocated the establishment of public bins, barns or “hills of mercy”,<sup>78</sup> practices found in Prussia, Germany, Italy and Granada. Furthermore, according to Vandelli, there was a barn in the city of Évora, “which could well be given the name hill of mercy, if the profit of 4 bushels per *moio* for the farm workers was not considered excessive”.<sup>79</sup>

Similar to the other authors of his time, he also stated that “no other nation in their legal codes, or in their archives, have so many wise agrarian laws, measures and representations of the people to make agriculture flourish, than this kingdom”.<sup>80</sup> But he also considered that the “non-observance of them had led agriculture to this unhappy state”.<sup>81</sup> Vandelli was emphatic about the law, because - he said - “it is not enough to have good laws, but it is necessary to observe them”.<sup>82</sup>

The right to property is one of the key points of the author’s argument. He acknowledged the right to peaceful possession, legitimising the permanence of the farm worker in the place occupied. However, he stated that if the lands possessed did not have deeds and if the “Crown, or some particular individual had the legal right to them, and if they were not paying anything, then they should be made to

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76 It is possible that Vandelli made reference to the 4th Conde de Ericeira, D. Francisco Xavier de Meneses, “responsible for supporting a number of academies, where the pleasure of the enjoyment of baroque literary texts blended with the appreciation of curiosities produced by science”. <http://www.instituto-camoes.pt/CVC/ciencia/e46.html>, consulted on 8 August 2006.

77 Vandelli, op. cit. p. 109.

78 Ibidem, p. 116.

79 Ibidem. “Moio is an old unit of measure for dry products, equivalent to 15 bushels, that is, 21.762 hectolitres”. Dicionário Aurélio.

80 Ibidem, p. 112.

81 Ibidem.

82 Ibidem.

pay those contributions, which others have to”.<sup>83</sup> This does not mean to say that Vandelli defended the use of common pastures – in fact, the contrary. In arguing for a notion of full and individual freehold, he considered it fair that “all enjoy complete and unlimited ownership of their lands”. He also stated:

that each should make use of his pasture, how he wishes, as is the habit in France, and other countries, where the estates are open, and only a small sign of grass or hay on the ends of them, is enough, such that none dare place their livestock on the land of others, because this would be severely punished.<sup>84</sup>

When referring to the purchase of lands, he declared that purchasing was uncertain and it was necessary to follow the French example and especially the Republic of Venice,

where there is a public place, in which the seller along with the buyer announces the sale, displaying the deeds and mortgages where present and if during a time laid down law no creditors or others having rights over the said goods appear, the contract is concluded, and at no time is the purchaser disquieted, or deprived of the purchased lands.<sup>85</sup>

In other words, Vandelli was complaining precisely of the absence in Portugal of a “land market”, with clear rules and regulations, which would enable the institutionalisation of land under a markedly liberal viewpoint. It is not by chance that Vandelli made explicit reference to the issue of the demarcation and registration of land, which expresses an accurate perception about the land disputes of the period and the failure of justice to respond to disagreements. It was necessary to ensure the right of ownership, inhibit lawsuits and “ensure buyers regarding the peaceful possession of their purchased goods”.

There was therefore a proposal to establish a secure property deed, to build a legal mechanism to prevent legal lawsuits putting property titles on hold, via a dedicated mechanism for buying and selling. Furthermore, he argued that to

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83 *Ibidem*, p. 117.

84 *Ibidem*.

85 *Ibidem*, p. 118.

settle quarrels<sup>86</sup> and lawsuits, it was recommended that each municipal authority recommend two sworn praiseworthy individuals, appointed by the municipal councils, not only to monitor, but also to approve purchases.

To obtain a deed of ownership and to establish a way of ensuring that the mechanism of buying and selling land, implied the demarcation of property, to set physical boundaries so that the land could be sold or purchased so as to have a defined physical presence, not subject to doubts or conflicting interpretations concerning, for example, where it actually terminated, or what would be the starting point of the land border. It is of little wonder that Vandelli argued that the book entry and demarcations should be made using topographical maps, “not only helpful to individuals to counter lawsuits, but also to the Minister of Finance so as to be able to calculate taxes”.<sup>87</sup> Once again, he used examples from other nations to legitimise his argument: the plan of the Empress of Russia, the plans of the provincial administrations of France, and the Italian regions of Piedmont and Milan.

The reference to Russia seems to show that the Italian Vandelli was not only aware of the proposals in the regions of the Italian peninsula and France, the latter being a recurring source of his inspiration, but was also aware of the reformist projects of Catherine of Russia. At the time she took office - in 1762 - Vandelli was already a man of prestige and had received an invitation from the Russian court to settle in Saint Petersburg in 1763 to carry out the post of professor of natural history.<sup>88</sup> He declined the invitation, accepting the convocation of the Portuguese court a year later.

Despite his refusal, Vandelli undoubtedly knew of the 1785 Charter of Rights, Freedoms and Rights of the Russian Nobility, - therefore, three years before the invitation that the Board of Trade made to him to carry out his agrarian plan for Portugal. That letter acknowledged that “the nobility had unlimited

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86 When referring to the damage caused by claims, which were notoriously lengthy, he stated that it was the duty of justice to avoid them, that “seldom are they executed, nor is the jurisdiction method simplified to reduce claims”. The paragraph ends with the statement that this is what is to be expected of the new code. According to Serrão, Vandelli was referring to the preparation of the new Code which would end up incomplete, namely the Draft Code of Public Law and the Draft Code of Criminal Law, by Pascoal de Mello Freire. *Ibidem*, p. 119, note d.

87 *Ibidem*, p. 121.

88 According to José Vicente Serrão, he declined the invitation, but accepted the invitation to settle in Portugal a year later, in 1764. José Vicente Serrão, *op. cit.*, p. XIII.

ownership of their estates and enjoyed, in addition, guarantees of civil rights”.<sup>89</sup> It is interesting to note that the charter represented an effort by Catherine to consolidate an alliance with the landed gentry, especially after the 1773-1775 peasant rebellion.<sup>90</sup> Accordingly, Vandelli used as support a Russian example to demonstrate the need to establish clear criteria for the full consolidation of land ownership, since he was probably aware of the potential threats arising from the discontent of the impoverished farm workers.

For him, it was not enough to delineate, it was necessary to create a land registry, and in addition maps of the population, livestock, incomes and consumption, as well as taxes and land values.<sup>91</sup> In addition, in a short statement, he added: “this registry also should examine the deeds of the majorats, and bonds, which if they do not exist, are to be considered free”.<sup>92</sup>

Vandelli touched a sore point, in including in his proposal to set up a register to also add the deeds of majorats and bonds. The Portuguese society of the *Ancien Regime* was based on the existence of a number of mechanisms that endorsed multiple interpretations of the right to land and various forms of land appropriation. Vandelli did not question them directly, but demanded that they be based on legal deeds. It is not surprising that the majorat was the example highlighted by the author.

The majorat was a characteristically Iberian instrument and only disappeared with the legislative reforms of nineteenth century liberalism.<sup>93</sup> In Portugal proofs of nobility were not required – up to Pombaline legislation – for a majorat. This is a way of stating that it would have been a practice of the dominant agrarian groups that could have been extended to other groups of farm workers. The institution presupposed the transmission of assets to the oldest son, to avoid the divisibility of the land. However, according to Nuno Monteiro, until the Pombaline legislation of 1769-1770, “there was a great diversity of succession rules, including majorats

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89 Richard Pipes. *Propriedade e liberdade*. Rio de Janeiro: Record, 2001, p. 229. For a more detailed study on the Russian agrarian situation in the eighteenth century, see Michael Confine. *Domaines et seigneurs en a Russie. Vers la fin du XVIII siècle*. Paris: Institut D’Études Slaves de L’Université de Paris, 1963. I would like to thank Daniel Aarão Reis for indicating this valuable reference.

90 *Ibidem*.

91 As we shall see, there is a striking similarity between Vandelli’s proposal and that presented by Francisco Mauricio de Sousa Coutinho, in terms of his criticism of the system of sesmarias in Brazil.

92 *Ibidem*, p. 121.

93 Nuno Monteiro. Morgado. In: Nuno Luís Madureira. *História do trabalho e das ocupações*. Vol. III. Conceição Martins & Nuno Monteiro (organizadores), *A agricultura: dicionário*. Oeiras: Celta, 2002, p. 76.

for the second born, those chosen, or freely nominated”. What is important to highlight is that “majorats involving the male and the first born were always the most common”.<sup>94</sup> The legal provisions which endorsed the first born led to the emigration/moving away of generations of children who were not the first born.<sup>95</sup>

It is interesting to note that in sharp contrast with the European criticisms regarding constraints on freehold and even the Pombaline law itself which did not fully examine the institution in considering it to be “a strict amortization of property, contrary to fair use of the holding [...] as against the multiplication of the family [...] contrary to justice [...] contrary to public interest”,<sup>96</sup> Vandelli chose not to directly criticise the instrument, but reprimanded it in terms of its weakest point: the question of the legality of the deeds.

It is also understood why Vandelli had not made a direct criticism of the numerous forms of bonds, many originating from a majorat. After all, the foundation of a house or majorat was

associated with the perpetuation of the surname of a lineage and its respective coat of arms, with the subsequent successors keeping the assets related to this and the administration thereof in its entirety, but with several pious obligations and also providing food or dowry (for marriage or for entry into ecclesiastical careers) to collateral descendants.<sup>97</sup>

94 Ibidem, p. 77. See also “Os vínculos da propriedade e a propriedade vinculada”. in Miriam Halpern Pereira (dir.). *A crise do Antigo Regime e as cortes constituintes de 1821-1822*. Vol. 5. Benedicta Maria Duque Vieira. *A justiça civil na transição para o Estado liberal*. Lisboa: Edições João Sá da Costa, 1992, pp. 40-62.

95 For an analysis of the phenomenon of Portuguese emigration in the eighteenth century, see: Russell-Wood. *A emigração: fluxos e destinos*. In: Francisco Bethencourt & Kirti Chaudhuri. *História da expansão portuguesa*. Vol. III. Lisboa: Círculo de Leitores, 1998. pp. 158-168.

96 Nuno Monteiro, op. cit. p. 79. Also according to Monteiro, the Pombaline legislation regularized the rules of succession of majorats and “the possibility of removing small income links, and the ‘qualified nobility’ requirement and minimum levels of income, which varied from one province to another”. In a classic work, Falcon also stated that when the law of 3 August 1770, which regulated the institution of majorat, “considered the institution contrary to the fair use of the estate that the owner has due to natural right; contrary to justice and equality that these assets should be divided among the children; contrary to the multiplication of families, contrary to the mobility of goods, i.e., its commercial side; contrary to the public interest, because of the funds from the real estate transfer taxes (sisas) [...]”. Francisco Falcon, op. cit., p. 406.

97 Ibidem, p. 78.

In short, Vandelli made a clearly political choice. He harshly rebuked the existence of common pastures, defended the consecration of full and individual freehold, but did not directly blame the majorats and its corresponding bonds.

He thus operated by using a discourse marked by a link to the past, legitimising in some manner the maintenance of a dynamic of land appropriation that resembled “a bizarre blanket made up of many scattered bits of land obtained through various legal deeds”.<sup>98</sup>

If the connecting thread of Vandelli’s analysis was based on the issue of ownership, what should finally be understood is the relationship he established between ownership and *sesmarias*. In other words, what did he propose for legislation concerning *sesmarias*, given that he was specially invited to produce a text on the issue?

Firstly, he remembered compulsory cultivation, in line with King Fernando’s actual law. Secondly, he reiterated his view on the laws of the kingdom, given that “this law has not been implemented for a long time”.<sup>99</sup> In the intention of tying the property to the requirement to cultivate it, Vandelli found another loophole to indirectly question the institution of the majorat. Supported by the proposed agrarian law of Castile, the author stated that since the land was uncultivated and in the spirit of King Fernando’s law, “they should be detached from the aforementioned majorat so that the administrators can dispose of them as free goods”.<sup>100</sup>

As far as Vandelli was concerned, here was a proposal to encourage and update the law of *sesmarias*, encouraging the occupation of uncultivated land and reiterating the obligation to cultivate. Therefore, he proposed that those who opened up uncultivated land should be exempt from any kind of payment for 20 years. Furthermore, he argued that all land not cultivated capable of producing some produce should annually pay “a tax proportional to the produce which it could yield if it was cultivated”.<sup>101</sup> In other words, he not only imposed an obligation, but also a tax on those who chose to keep the land uncultivated.

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98 Carl Hanson. *Economia e sociedade no portugal barroco: 1668-1703*. Lisboa: Publicações Dom Quixote, 1986.

99 Vandelli, op. cit., p. 123.

100 Ibidem, p. 124. According to Vicente Serrão, in footnote b of this text, Vandelli “was paying attention to the behaviour of the illustrious Spanish agrarian circle”. Ibidem, p. 113, note b.

101 Ibidem, p. 124.

There was also the attempt to transfer part of the land that served as common pastures, originating from common land, lands of the districts or municipalities, for those interested in growing them, by selling them or leasing them.

There was also the argument that “take away grazing privileges from pastures and a number of them will be leased”.<sup>102</sup>

The game reserves were “a mechanism to appropriate resources vital to the livelihoods of the rural communities (woods, firewood, pasture woodland, etc.).” and became “an instrument of power over the land”.<sup>103</sup> Furthermore, according to Cristina de Melo, throughout the *Ancien Regime*, the legal form of hunting ground transformed into an extremely burdensome formula of manorial possession, given that, in addition to keeping the onus on the production due to the lord of the land, “it also forbade the use of the wild resources that served as a complement to agriculture and livestock farming in rural communities living within the game reserves”.<sup>104</sup>

Constrained in one way or another to undermine the rural foundations of sustenance in the *Ancien Regime*, based on the dynamics of secular land appropriation, Vandelli did not criticize them directly, but questioned them in indirect ways: the need to cultivate the land to break the path of the decline of Portuguese agriculture.

The *sesmarias* were, for the author, a possible gateway for the implementation of a certain view of property, subjecting it to compulsory cultivation, and establishing deadlines - in two or three years - so that uncultivated land would be “deemed vacant again from the lessor to whom it was allocated”.<sup>105</sup> It was - as with the others in the kingdom - very good, though not applied.

However, Vandelli knew little about the system of *sesmarias* itself. By making explicit reference to the lands of Brazil, he appeared to ignore

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102 Ibidem.

103 Cristina Joanaz de Melo. “Couteiro”. In: Nuno Luís Madureira. História do trabalho e das ocupações (org. Conceição Martins e Nuno Monteiro). A agricultura: dicionário. Oeiras: Celta, 2002, p. 305.

104 Ibidem, p. 306.

105 Vandelli, op. cit., p. 125.

the agrarian reality of the colony, when pronouncing on the issue of Indian lands and the determinations of the Directory.<sup>106</sup>

As far as the concession of the *sesmarias*, he merely stated: “The lands in Brazil have been given in *sesmarias* with the approval of His Majesty and if, during 4 years, are not cultivated, they should be taken, and given to those who would make use of them.”<sup>107</sup> He understood them in this way because Vandelli finalized his analysis of law and renting in the belief that the law - as had been proposed - matched his perception of property, since it implied a control mechanism guided by the need for cultivation by the owner or - it mattered little - by another.

Domingos Vandelli had carried out a careful examination of the agrarian question in Portugal and, like other memoirists, emphasised the issue of taxes and the need for compliance with legislation and the requirement to cultivate. Both in this and in his other writings, he carried out a “programme of action based on a descriptive and empirical dimension which culminated in a strategic option for Portuguese economic development”.<sup>108</sup> His rich analyses on the problems of the lawsuits which concerned the issue of the administration of justice and the need for demarcation and the creation of a land registry for Portugal show us that this author was aware of what was happening in the Portuguese countryside, and the clashes and disputes which had become recurrent, leading to the perception at that time that - despite the good laws of the kingdom - they were not activated to put an end to the conflict of interpretations on the right to land.

The plan for an agrarian law also shows the dilemmas Vandelli - an emblematic figure and illustrious individual - faced. He was sure that a land registry had to be set up, properties demarcated and criteria for the sale and purchase of land established.

But to carry out the project, he could not hurt the social and economic bases of the *Ancien Regime* because this would involve challenging the land occupation matrix, that is, the various and confusing forms of ownership. Therefore, it was not by chance that he chose the law on *sesmarias* as the

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106 “The settlements, which are established in Brazil or other conquests, should be made by locals and the country’s first inhabitants. And in Brazil comply exactly with the Directory, which his highness King José I ordered, abolishing the tax however, that the Indians paid for the sixth part of the fruit, which they cultivated, and all the types, which they purchased, that were not edible, with there being plenty of resources to reward and support the aforementioned directors”. Ibidem, p. 126.

107 Ibidem.

108 José Luiz Cardoso, “Um caso exemplar: Domingos Vandelli”, in: Cardoso, op. cit., p. 61.



best of the laws, as it rebuilt a link with the past, did not question multiple and confusing forms of territorial appropriation and could be implemented as a basis of Portuguese property, in the midst of a society marked by the real or imaginary perception of its agricultural decline and the need to revitalize production – that is, cultivation.



## LAW IN DISPUTE: POSSESSION AND PROPERTY IN THE LATE EIGHTEENTH CENTURY

In the late eighteenth century, the Portuguese peasantry acted in many different ways to issues related to their rights as laid down in certain foral charters, their abuse by their landlords, and the lack of clarity of those regal documents. A wide range of legislation existed for the varied forms of ownership “distant acquisitions, secular possessions, charters granted by the monarch, hereditary leases to donataries (*donatários* - some authorized, others arbitrarily set up)”, which brought a series of social agents to the main scene of the fight who - in one way or another – questioned ancient privileges and criticised landlords. There was in fact a complete dissociation between ownership and exploitation of land. Contracts of a generic type “corresponded to *forais*, foral charters, i.e. documents which regulated, from a legal point of view, the relationship between the landlord or donatary and all the people on the lands who came under his stewardship”.<sup>109</sup> For Serrão, the contractual system implied a precarious relationship with the land, “inhibiting the producers from making lasting investments, to a greater or lesser degree depending on the type of contract, or even increasing production”.<sup>110</sup>

In the counter current of the social movement that supported the common ownership regime and use of pastures,<sup>111</sup> the memoirists probably saw these actions by the peasants as a clear expression of agricultural decline. Inserted in a context in which it was stated that “the basic principles of legal despotism, according to which the sovereign has to exercise a guardianship

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109 José Serrão. O quadro econômico. In: José Mattoso (dir.), *História de Portugal: O Antigo Regime* (coord. António Manuel Hespanha). Lisboa, 1998, p. 79.

110 *Ibidem*, p. 80.

111 As is known, actions to defend the lands in common use formed part of the path of resistance - multiple and complex – of the eighteenth century peasantry. The same denominator is found in various peasant movements. For an analysis of custom and land rights, see E. P. Thompson *Costumes em Comum*. São Paulo: Companhia das Letras, 1998.

and protective authority”,<sup>112</sup> the memoirists noted the existence of recurring conflicts over land. They were even aware of the need to amend legislation concerning the right to land, but the restoration of harmony and the reorganization of society were tasks for the sovereign who, in translating the natural principles of positive laws, would build a system of law and government that would act in “accordance with the rules concerning the economic activity of men”.<sup>113</sup>

Perhaps it was difficult for the memoirists to realize that the actions of the peasants were also guided by a conception of law, laid down in many charters - such as those relating to the use of common lands - as well as being marked by the principle of defence through guardianship and protective authority, with their actions being directed at municipal despotism and legal conflicts.<sup>114</sup>

The Crown sought to reorder its territory and operated in order to delimit the power of landlords, imposing limits and establishing rules for the continuation of the majorat, for example. At the same time, it sought to respond to existing conflicts regarding land, as in the Royal Charter of 14 June 1784, the aim of which was to update the boundaries of properties and holdings and confirm land titles.<sup>115</sup> Furthermore, the prudent actions of the administration, here recognizing the right to common use, there safeguarding the interests of the landlords, were parts of a situation where the King had to establish and re-establish harmony among the vassals, who were parts of the same society, guided by law.<sup>116</sup>

But the multiple interpretations of the right to land brought to light what it was necessary to hide: rights in confrontation would lead to injustices.

It is not difficult to understand how and why justice turned into a stage to play out injustices, since the interpretations advocated by farmers often ran contrary to their landlord. If this perception was not always so

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112 Jose Luis Cardoso. *Pensar a economia em Portugal: Digressões históricas* Lisboa: Difel, 1997, p. 124.

113 *Ibidem*, p. 134.

114 José Tengarrinha. *Movimentos populares agrários em Portugal*. Vol. I: 1751-1807. Lisboa: Publicações Europa-América, 1994, p. 110.

115 *Ibidem*.

116 “Much more than the present-day, modern society was [...] founded on law. In the sense that law and justice (and not opportunity, expertise, political policy) constituted the fundamental legitimisation of Power and the exclusive standard of ‘good government’. Manoel Antonio Hespanha. “A resistência aos poderes”. In José Mattoso, (dir.). *História de Portugal*. Vol. 4: O Antigo Regime (coord. de António Manuel Hespanha). Lisboa, 1998, p. 394.

evident to the memoirists, it came to light in the arguments of the lawyers. The main jurists were aware of what was happening. Mello Freire - for many the greatest interpreter of the Pombaline spirit - did not fail to point out:

The great powers of the kingdom, the *donatario landlords* with jurisdiction over lands often find it easy to extend their rights, with appalling results for their vassals and subjects, and their spirit of arrogance along with the obsequious ministers appointed by them [...].<sup>117</sup>

The society of the *Ancien Regime* “giving weight to the emphasis on harmony and an organic unit in its self-produced representations – experienced a deep endemic situation of conflict”.<sup>118</sup> The riots were caused, according to Hespanha, due to the crisis over supply and the issue of taxes, and there were no leaders, despite their enormous violence. The author furthermore states, “the resistant groups in the society of the *Ancien Regime* had a particularly effective instrument – that of law”.<sup>119</sup>

A means of transporting social conflicts, “law facilitated another effective resistance strategy - that of bureaucratic chicanery”.<sup>120</sup> For this author, there were also more subtle forms of resistance: silence, lies and escape. The first was understood as “tactically refusing to participate in the official mechanisms of official power”.<sup>121</sup> Furthermore, this type of ‘passive resistance’ was, in particular, the typical strategy of ‘rustic’ individuals, i.e. that utilised by peasants who were still immersed in an oral communitarian

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117 Manoel d’ Almeida e Sousa de Lobão, *Notas de uso pratico e criticas, addições, illustrações, e remissões. Sobre todos os Títulos e todos os && do Livro 2º das Instituições do Direito Civil Lusitano do Doutor Pascoal José de Mello Freire. Parte III*, Lisboa: Imprensa Régia, 1818, p. 39. ed., revista e ampliada, Lisbon: Fundação Calouste Gulbenkian, 2000. He was Professor of the Faculdade de Leis of the University of Coimbra and author of *Historia Iuris Civilis Lusitani*, published in 1778, and of *Institutiones Iuris Civilis Lusitani*, published between 1780 and 1793. For an analysis, see Nuno J. Espionosa Gomes da Silva, *História do direito português: Fontes de direito* 3<sup>a</sup> ed., revista e ampliada, Lisboa: Fundação Calouste Gulbenkian, 2000.

118 Antonio Manoel Hespanha, “A resistência aos poderes”. In José Mattoso, op. cit., p. 393.

119 Ibidem, p. 394.

120 Ibidem, p 395.

121 Ibidem.

culture”.<sup>122</sup> Using the literature and theatre of the time, Hespanha emphasises the part of the suspicious peasant, who is made to look foolish.

Hespanha’s conclusions are not, however, sufficient to demonstrate the perceptions of law and of the individuals on the land and are opposed to that which Tengarrinha states in his work on popular movements at the end of the *Ancien Regime*. It is necessary, first of all, to historically contextualise the role of law in the *Ancien Regime* and avoid comparisons between the sixteenth, seventeenth and eighteenth centuries. Regarding the latter, it is difficult to believe that the actions of the peasants were still guided - if they were ever only guided - by silence, lies and escape.

Therefore, if we combine the perception of the memoirists regarding the issue of law to the evidence of the peasant protests in their multiple and complex instances, it is possible to understand that, despite the *Ancien Regime* being guided by law, there was a growing distrust in the possibility of the Crown ruling on the claims, and thus establishing the harmony it wished to impress on the central battlefield of the fight. Without breaking with the vision of their own time, the jurists - in particular Mello Freire - sought to reflect on agrarian legislation, trying to find some kind of basis to encounter the solution to the conflicts.

The second half of the eighteenth century was a turning point for Portuguese law, and for some the start of a true history of law, particularly after the promulgation of the Law of Good Reason (*Lei da Boa Razão*), of 18 August 1769. According to Paulo Merêa, the Ordinances already contained limits on the use of Roman law, which should only apply when there was “a lack of national law (except for the preference of canon law in certain matters)”.<sup>123</sup> Likewise, Braga da Cruz also considered that “despite the abuses that courts often committed, sometimes applying Roman law with contempt for national law, it can be said that, at least in principle, the priority given by the Ordinances to national laws, customs of the Kingdom and the styles of the Court was never called into question”.<sup>124</sup> Thus, in one way or another the *Lei da Boa Razão* constituted a break (or if so wished, a break in continuity), since from 1769 the law expressly ordered the mandatory use of national, rather than Roman, law.

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122 Ibidem.

123 Paulo Merêa. “Direito romano, direito comum e boa razão “. In: Boletim da Faculdade de Direito, vol. XVI (1939-1940), Coimbra: Editora de Coimbra, 1940, p. 541.

124 Guilherme Braga da Cruz. “O direito subsidiário na história do direito português”, in: Revista Portuguesa de História. Tomo XIV. Coimbra: Faculdade de Letras da Universidade de Coimbra, 1974, p. 253.

Forming part of the transformations brought about by the Marquis of Pombal, the *Lei de Boa Razão* did indeed have a profound impact on Portugal and its colonies. Expressing the ideas of a period, “heavily influenced by modern rationalism”, the law sought to “harvest within natural law the justification for a written reason (*ratio scripta*) in the image of right reason (*recta ratio*)”,<sup>125</sup> as the expression of an interpretation and restoration of the “true sense of the legal system of the past, thus respecting a tradition that did not consider law as an entirely human construction”.<sup>126</sup> It is also the manifestation of supreme will, through terms like the following: I make known (*Faço saber*), Whereas I (*Considerando Eu*), I wish (*Quero*), I order (*Mando*), This is My Will (*He Minha Vontade*), Order (*Ordem*) etc.”.<sup>127</sup>

I hereby make known for those who read my Charter Law, that for many years this has been one of the most important objects of attention, and care in terms of all the refined nations of Europe, to beware with wise providence, abusive interpretations which offend the majesty of the Laws, take away the reputation of Magistrates, and have perplexed the justice of litigants, such that in law, and the domain of the assets of my Vassals there cannot be that probable certainty, which only public peace can conserve among themselves.<sup>128</sup>

And he continues:

Whereas I have the obligation to procure for the People, that which the Divine Omnipotence has put under My Protection, every possible security regarding their property, and thus establishing union, and peace among families, so that no one disturb others with unjust lawsuits, which are often driven by

125 Joaquim Veríssimo Serrão. *História de Portugal*. Vol. VI: O despotismo iluminado (1750-1807), 5 ed., Lisboa: Editorial Verbo, n/d., p. 87.

126 Carlos Marques de Almeida, *Reflexão epistemológica sobre a Lei de 18 de agosto de 1769 (Lei da Boa Razão)* Masters Dissertation in Legal-Historical Sciences, Lisbon, Faculdade de Direito da Universidade de Coimbra, 1991, p. 19.

127 *Ibidem*.

128 Apud José Homem Corrêa Telles, *Critical Commentary on the Lei da Boa Razão*. In: *Auxiliar Jurídico: Apêndice às Ordenações Filipinas*. Lisboa: Fundação Calouste Gulbenkian, 1985, vol. II, p. 445.

frivolous pretexts taken from extravagant niceties, with which those who advise them, and hereby endeavour those wishing to understand the Laws more clearly, and less susceptible to intelligences, which ordinarily are opposed to the spirit within them, and finding within them literally words exclusively with meaning that contain such seditious and harmful broodings.<sup>129</sup>

For Carlos Marques de Almeida, this law henceforth strengthened the process of the depersonalisation and objectification of power, weakening, in turn, the traditional identification of the prince with the State and the Administration”.<sup>130</sup> Furthermore, the law laid bare that all the activities of the sovereign “were founded, not on personal prerogative, but on behalf of the State, of which the Prince was the first servant”.<sup>131</sup>

The clashes concerning the *Lei da Boa Razão* and its multiple interpretations show its importance in the very construction of the law and history of law in Portugal.<sup>132</sup> Its application still nowadays constitutes one “of the most complex problems involving practical research difficulties within the legal archives”.<sup>133</sup>

Be that as may, it is hard to imagine that the law did not cause an impact on Portuguese law and in particular its agrarian law (*avant la lettre*). However, neither its application nor its impact can be seen as a linear process of the adaptation of a law that, once enacted, would resolve - once and for all - the multiple interpretations present in courts. As an arena of

129 Ibidem.

130 Almeida, op. cit., p. 38.

131 Ibidem.

132 For an analysis of the interpretations concerning the law, see Arno Wehling, Maria José Wehling, “Cultura jurídica e julgados no Tribunal da Relação do Rio de Janeiro: A invocação da Boa Razão e da doutrina. Uma amostragem”. In: Maria Beatriz Nizza da Silva. *Cultura Portuguesa da Terra de Santa Cruz*. Lisboa: Estampa, 1995, pp. 235-247.

133 Ibidem, p. 238. According to Arno Wehling, Correia Telles when counting the Rulings of the Casa de Suplicação between the enactment of the *Lei da Boa Razão* and 1880, he calculated 58 rulings, a number he did not consider as especially important, concluding that there was little compliance with the law. Wehling, however, showed that in considering the reign of D. João V (1705-1750) “63 rulings were published and during that of D. José, until the promulgation of the *Lei da Boa Razão*, another 26, which therefore does not make the opinion of Correia Telles seem to hold water, for whom the 58 rulings at the end of the eighteenth century showed little application of the new legislation”.



struggle, it would at the same time be subject to interpretations from jurists and magistrates in courts and be held hostage to the constitution of a new generation of lawyers, that would legitimise the legal conflicts.<sup>134</sup>

The greatest interpreter of the Pombaline spirit, Pascoal José de Mello e Freire, produced a compendium of the history of Portuguese law – the *História Iuris Civilis Lusitani*, published in 1778, and the *Institutiones Iuris Civilis Lusitani*, between 1780 and 1793, a four volume publication on Portuguese law.<sup>135</sup>

He belonged to the Council of Queen Mary I, was a Judge at the *Casa de Suplicação*, doctor and retired professor at the Faculty of Laws of the University of Coimbra and also a member of the Board of the General Committee on the Examination and Censorship of books and a full partner of the Lisbon Royal Academy of Sciences.<sup>136</sup>

Among many other duties, Mello Freire also belonged to the General Council of the Holy Office, the highest body of the Portuguese Inquisition. Chaired by the Inquisitor General (appointed by the king since the creation of the court, from 1536 to 1540), it was composed of deputies and inquisitors. By the time of Pombal, the Inquisition had become very decadent and subservient to the State, but it was still prestigious to have a position in the Holy Office.<sup>137</sup>

The jurist was also part of the *Casa do Infantado*, an institution that had been set up in the second half of the seventeenth century to manage part of the patrimony of the family of the kings of Portugal. The house became one of the largest manorial institutions, extending over a vast territory and raising huge revenues, mostly from agricultural sources. It was created as an endowment for the Infante D. Pedro, becoming the “patrimonial institution of the second children of monarchs with the same privileges as the House

134 Braga da Cruz reminds us that the execution of the law can only be understood alongside the formation of new generations of jurists. “And this therefore was what was intended with the reform of legal studies carried out in 1772 and integrated into the wider framework of the Pombaline Reform of the University of Coimbra.” Braga da Cruz, *op. cit.*, p. 300. Also established was “the new treatment given by the Lei da Boa Razão to the problem of subsidiary law and the new rules of hermeneutics that also contained the same ideological orientation, and which the Statutes of the University, three years later, completed and developed” *Ibidem*, p. 304.

135 Nuno Espinosa da Silva. *História do direito português: fontes do direito*, *op. cit.*, p. 402.

136 Silva, *Diccionario Bibliographico portuguez*, *op. cit.*, Tomo VI, p. 350.

137 I would like to thank Ronaldo Vainfas for this information on Portuguese institutions. For an analysis of this General Council, see Francisco Bethencourt, *História das inquisições*. Lisboa: Círculo de Leitores, 1994, pp. 33-71.

of Bragança”.<sup>138</sup> It was dissolved in the reign of D. Pedro IV in 1834, and its assets integrated into the National Treasury, except for some palaces.

He was also a member of the board of the *Bula da Cruzada*, which dated back to the Middle Ages and which granted graces and privileges to those who had fought against the Moors. In the Portuguese case, for example, one of the *Bulas de Cruzada* was awarded to the Burgundy dynasty, ruled by Sancho I, in the twelfth century, with ecclesiastical revenues being passed over to the king as an incentive for the wars against the Moors. Others were also granted, including during the Avis dynasty. The Board of the *Bula da Cruzada* – of which Mello Freire formed part – was, like many others, a body responsible for administering the collection of such income, despite the crusades having ended centuries previously.<sup>139</sup>

Mello Freire died in 1798, but his influence in the Portuguese legal field remained unchanged, because his works were adopted to “serve as a compendium of lessons for the subject of National Law” in the law degree at the University of Coimbra.<sup>140</sup> There are those who still claim that his works would become the “cornerstone of the legal and socio-political organization in which we live today”.<sup>141</sup> He would have been not only the “creator of national law as a science and technique, but also a genuine reformer of institutions”.<sup>142</sup> Despite exaggeration, it is certain that Mello Freire played a unique role in the consolidation of Portuguese law, and it is important to also remember that he was the author of the draft Civil Code and Criminal Code requested by D. Maria I.

Mello Freire expressed at the same time, both the imprint and the boundaries of the *Ancien Regime*. He believed in the power of the legal system for the consecration and harmony of society, of which he formed an active part. He recognized in the person of the king the humanity to love his vassals and administer justice without distinction. The king had to safeguard privileges, without prejudice to the people and with respect for property. He feared freedom above all, as desired by the “more radical individuals”. When responding to the criticisms that had been made regarding the Public Law draft, he replied:

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138 Joel Serrão. *Pequeno dicionário de história de Portugal*. Porto: Figueirinhas, 1993, pp. 353-354.

139 *Ibidem*, pp. 207-208.

140 *Ibidem*, p. 351.

141 Vitor Antonio Faveiro. *Pascoal de Mello Freire e a formação do direito público nacional*, Coimbra: Ansião, 1968, pp. 16-17.

142 *Ibidem*, p. 18.

In this regard where so many books have been written in France, and have been read by the same peasants, and imprinted in the heart of all of them a sham love for their homeland, that is, of freedom, and a deadly hatred of despotism, that is, the monarchy, which led to so much ruin of Royal power in that kingdom, which can never be recovered, or at least not without major harm.<sup>143</sup>

And furthermore:

History teaches us, and now France experiences this, how harmful the freedom to think and write has been at all times, as well in regard to matters of religion, and the State "[...] And for much of that primary necessity, for which in the State there are certain ministers and censors, who have in the proper bounds one or other freedom, and which are of such a character, that they do not address the voices of the Libertines, who they treat either as ignorant, or as barbarians."<sup>144</sup>

Thus, Mello Freire was recognized as a man capable of dealing with the danger of freedom, producing works that enshrined a national law, at the service of the king and society as a whole. However, his nature was to place humans at the same level, since he admitted that they were all part of the same association, it was not possible to conceive of the legitimacy of the involvement in power of every individual. He was, in short, the manifestation of a jurist mindful of his duties in maintaining the *status quo*. He was also an illuminist, within the frameworks of what is usually called enlightened despotism. He feared France, its Revolution and all that it meant. He feared the freedom revealed by its most radical interpreter, Rousseau. Regarding the latter, he stated:

The first man who, having enclosed a piece of ground, bethought himself of saying *This is mine*, and found people simple enough to believe him, was the real founder of civil society. From how many crimes, wars and murders, from how many horrors and misfortunes might not any one have saved mankind, by pulling

143 Apud Faveiro, op. cit., nota 5, p. 40.

144 Ibidem, p. 41.

up the stakes, or filling up the ditch, and crying to his fellows, “Beware of listening to this impostor; you are undone if you once forget that the fruits of the earth belong to us all, and the earth itself to nobody.”!<sup>145</sup>

In taking on the task of reflecting on the subject of civil law and, therefore, on the basis for property, Mello Freire produced three volumes entitled “*Notas de Uso Prático e Críticas*”, which were organized by Lobão in the first twenty years of the nineteenth century.<sup>146</sup>

Manoel de Almeida e Souza, known by the nickname Lobão, due to living in an area with the same name, a village near Viseu, graduated in law in 1766, preferring the practice of law to a judiciary career. He wrote several works on case-law, Roman and canonical law.<sup>147</sup> He was, however, best known for editing the “*Notas de Uso Prático*”, which sought to express the ideas of Mello Freire.

An intricate composition, the case-study texts are marked by numerous citations in Latin and reference several judges of the time. It is also difficult to know where Lobão’s view in the discourse is introduced but, be that as may, the latter sought to recover, throughout most of the three volumes, the perceptions of Mello Freire.

With regard to the subject of particular interest to this work, the first volume can be highlighted, regarding the reflections on *Sesmarias* (which will be considered below) and on Custom, and, in the third volume, the conclusions concerning the differences between ownership and dominion.

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145 Jean-Jacques Rousseau, *A origem da desigualdade entre os homens*, Coleção Grandes Obras do Pensamento Universal. São Paulo: Escala, n/d, p. 57. (English Translator’s Note: translation taken from Public Domain Translation revised and abridged by Clark Wolf, 2005 available at <http://www.public.iastate.edu/~jwcwolf/Papers/RousseauSmall.htm>)

146 Manoel d’Almeida e Sousa de Lobão *Notas de uso pratico e criticas: adições, ilustrações e remissões: Sobre todos os titulos, e todos os do livro primeiro das instituições do direito civil lusitano do Doutor Paschoal José de Mello Freire. Parte I* Lisboa: Imprensa Régia, 1816. Idem; *Notas de uso pratico, e criticas: adições, ilustrações e remissões, Sobre todos os titulos e todos os && do livro segundo das instituições do direito civil lusitano do Doutor Paschoal José de Mello Freire, parte II.* Lisboa: Imprensa Régia, 1818; *Notas de uso pratico, e criticas: adições, ilustrações e remissões: Sobre todos os titulos, e todos os && do livro terceiro das instituições do direito civil lusitano do Doutor Paschoal José de Mello Freire. Parte III.* Lisboa: Imprensa Régia, 1825.

147 Silva, *Diccionario bibliographico portuguez. op. cit., tomo V, p. 351.*

Let us start there, since the interpretations of Freire help us to reflect on the issue of land rights in Portugal at the end of the eighteenth century.<sup>148</sup>

The numerous text passages from Freire and his inferences show us how difficult it was to define clear principles that encapsulated the difference between possession and ownership.

The kingdom of Portugal had enacted several laws on the subject and there was - as already stated - multiple forms of ownership of land. Maybe it was not a free decision for Mello Freire to simplify the definition of possession, fleeing - as stated by Lobão - from the “variety of opinion analogous with the word possession”.<sup>149</sup> However, he considered that, since possession had been acquired legitimately, if one would presume that it was always kept “even if only civilly in mind, while this is not shown to have been interrupted by another person”.<sup>150</sup> In this sense, perhaps it was not very fortuitous that he disregarded - as Lobão also did - the fact that, in the Portuguese kingdom, not only was control transmitted to the heir, but also possession, with all its effects, according to the *Alvará* of 9 November 1754 and the Ruling of 16 February 1786.<sup>151</sup>

But later, when referring to ownership transferred by law, Lobão stated:

Mello reminded us here of the *Alvará* of 9 November 1754, [...] and also reminded us of the legal ownership transferred to the Head of the Household under Ordinance L. 4. T 95. When Mello wrote, I suppose that this was before the Ruling of 16 February 1786, which explained the aforementioned Charter, as Mello does not cite this Ruling, or its substance. As Mello was drawing up a new law opposed to the principles of Roman law, he should not have been so concise.<sup>152</sup>

In other words, it was possible that the author was unaware of the 1786 ruling, but, in order to simplify an overly complex question, he utilised more superficial interpretations on the theme, with the intent solely of justifying the *Lei da Boa Razão*.

148 Mello Freire had an enormous influence on the studies of the nineteenth-century Brazilian jurists, but up to this moment I am unaware of a study on the importance of his thought to the history of Brazilian law.

149 Manoel d’Almeida e Sousa de Lobão, op. cit. parte III, p. 85.

150 Ibidem, p. 88.

151 Ibidem, p. 93.

152 Ibidem, p. 104.

Regarding the loss of possession, the confusion was not less, since there was “such a variety of laws, and interpretations, that nothing certain can be stated, which is applicable in practice”.<sup>153</sup>

Among the many possibilities of losing possession were those originating from possession *ex defecto rei*, as well as the prohibition of the thing and also *in consequentian actionis exercito in iudicio*.<sup>154</sup>

The commitment of Mello Freire to produce a more modest interpretation concerning possession, founded on the principles of *Boa Razão*, even ran into a long tradition concerning immemorial ownership, probably one of the hallmarks of the disputes over land. There was recognition - both in the former, as in modern, law, Lobão reminds us – of the effects of immemorial prescription. Laws only rejected it in express cases.

1. when this goes against the Royal Treasury, the Laws of Customs, *Sisas*, *Terças*, Income from the Veins and Mines Councils; 2. it was also rejected when the “donataries and lords of the lands sought to usurp Royal jurisdiction or expand Grants; 3. for the prescription of middlemen and 4. if in its name charters are demanded for free lands given in *sesmaria*, or the excess of general lands.<sup>155</sup>

This stated that the right to ownership could not be superimposed over the king’s right to his land, but it is also important to note that payment of rent on lands given in *sesmarias* could not be imposed.

Thus, in line with the principles defined in the various former laws, immemorial possession acquired the status of control, because it was assumed that it had been acquired by “original deeds that time has consumed”. It further presupposed “the grace in everything that is grantable” and “good faith”.<sup>156</sup>

Now its recognition brought to the centre of attention the issue of the form in which this should be proved. The clashes were not insignificant and the spirit of the *Lei da Boa Razão* showed its limits. Its essence was that there was no memory of its beginning in the memory of the living and presupposed the presence of witnesses more than 56 years of age who could testify in favour of the keeping of possession, guided “in all their memories

153 Ibidem, p. 93.

154 Ibidem.

155 Ibidem, p. 183.

156 Ibidem, p. 184.

by listening to their ancestors, people of credit and who had never seen or heard otherwise”.<sup>157</sup>

However, as one more of the many arenas of struggle expressed in the law, immemorial possession was not destroyed when documents were submitted by the opponent, but it could be disproved by witnesses who had seen the opposite “or had heard contrary from their ancestors.” In confrontation between witnesses what was testified was only the “existing memory of the beginning”.<sup>158</sup>

Practices and ancient rights that were often linked to the notion of an immemorial possession were activated in the growing protest lawsuits against the equally growing lawsuits involving agrarian individualism. Resistance and protests became the hallmark of the peasants who sought to defend themselves against the fencing of uncultivated land and hereditary leases, formerly used in common.

In her study of rural life in a manorial system, Margarida Neto highlights the diversity inherent in the *Ancien Regime* in relation to changes in the countryside in the eighteenth century. Thus, the increase in population, the introduction of new techniques and intensification and the search for new acreages led to multiple protests. Moreover, the concept of ownership from the *Ancien Regime* implied “the exercise of ownership rights over the same asset by different persons or entities”.<sup>159</sup> In the case of Coimbra - the main focus of her work - “landlords had extended their control networks into vast spaces, absorbing allodial owners [...]”.<sup>160</sup>

In analysing the judicial proceedings for the Coimbra region, Neto highlighted the conflicting character of the *Ancien Regime*. Quarrels motivated by disputes over spaces offering firewood, manure and pastures had become particularly intense from the end of the seventeenth century.

Disputes against landlords in the area of Santa Cruz had been significant from the beginning of the thirteenth century until 1834.

Numerous challenges in other districts were carried out against the leasing of municipal common land. Farmers protested against this practice since “the commons were indispensable for grazing their cattle and obtaining manure, without which the land produced little”.<sup>161</sup> The conflicts can be

157 Ibidem, p. 351.

158 Ibidem, p. 186. And furthermore: “The immemorial is not destroyed, even when deeds appear otherwise with dates going back beyond 100 years”. Ibidem, p. 185.

159 Margarida Neto, *Terra e conflito: Região de Coimbra (1700-1834)* Viseu: Palimage Editores, 1997, p. 10.

160 Ibidem.

161 Tengarrinha, op. cit. Vol. I, p. 158. Tengarrinha analysed various protests in this respect.

understood as a struggle to maintain a custom (a custom which, as we have seen, was criticized by the memoirists) increasingly threatened by efforts to develop rational principles involving the individualization of the agrarian space, which they took on, however, with a series of national, ancient and immemorial laws, which legitimised the actions of the farmers. Thus, “the complexity of the fabric of the rural society of the *Ancien Regime*, generating solidarities and hostilities with multiple meanings, is irreconcilable, therefore, with a schematic and linear view of the social and political behaviour of those working the land that has sometimes been produced among us”.<sup>162</sup>

Building a legal system that would meet the spirit of the *Lei da Boa Razão* could not imply a *tábula rasa* concerning a series of laws, rulings that - despite future intentions - legitimised, in one form or another, the action of the farmers, many of them impoverished by costly legal disputes. Moreover, in disputes over the law, the peasants used the past (invented or not, it matters little) to legitimate - in that present - their right to the land. The memoirists insisted on referring to the notion of the good laws of the kingdom, but it is possible that the peasants also had remembered some legal principles which enshrined what they considered to be theirs.

Perhaps then we can also understand Mello Freire’s proposal to define custom. Considered “the most ancient of all positive Laws”, preceding “any written law”, custom “is much sweeter and more pleasing to the People, that give themselves freely and voluntarily to it, instead of receiving written law from a higher authority that did not consult them”.<sup>163</sup>

For Mello Freire, custom was also a “Law consisting of many similar acts approved or tolerated by the Sovereign [...] it forces itself as Law, not by words, but by facts.”<sup>164</sup> It is also necessary that the facts by which customs are set be fair and reasonable, that they are not contrary to natural law and public law, “in a word, that they can be authorized by a just law”.<sup>165</sup>

An idea consolidated from the late seventeenth century onwards, natural law is deposited in the rights found in nature. In the Middle Ages, this was the product of the creative mind of God, therefore, natural law was revealed by the sacred texts. At the beginning of the Modern Age, nature was now seen as the rational order of the universe, and natural law was understood as “the set of laws on human conduct, which, along with the laws of the universe, are inscribed in that universal order, even contributing

162 Ibidem, p. 191.

163 Manoel d’Almeida e Sousa de Lobão, op. cit., parte I, p. 20.

164 Ibidem.

165 Note from the text : “Up to here this is in accordance with the Law of 18 August 1769, paragraph 14”. Ibidem, p. 21.



to its composition and which can be known through reason”.<sup>166</sup> However, as the founding base, law grounded in nature could not have real validity, since it only requires awareness, because – through this line of reasoning – everyone has the right to do what they wish. For Hobbes, here would lie the legitimate basis of the sovereign, since positive law, founded on natural law, has the manifest intention of regulating principles already present in the state of nature. In this way it can be understood how it was important to reflect on custom.

Hobbesian or not, what is certain is that Mello Freire had to face the issue of customs, those which – for him – were considered as approved or at least tolerated by the sovereign. The conclusions of Mello Freire and Lobão contain Dunod’s arguments, “that a law which at the outset is fair in the eyes of the legislator may prove to be unfair and burdensome due to variations through time, customs, etc.”.<sup>167</sup> In other words, the author, supported by Dunod, sought to circumscribe custom, because, just like Hobbes, he argued that the sovereigns “have the right to interpret natural laws, and determine their meaning” .<sup>168</sup> After all:

The laws of nature forbid theft, murder, adultery, and all the various kinds of crimes. However, it is necessary to determine, by means of civil law, and not natural law, what is meant by theft, murder, adultery, and crime. Indeed, not every subtraction of something owned by someone else is theft, but only that which is his or her property. Therefore, determining what is ours and what belongs to others is something that depends precisely on civil law.<sup>169</sup>

It is understandable why the notion that the *Lei da Boa Razão* would have cleared up the confusion about custom is present in the text by Mello Freire and the addenda by Lobão. The Law “only rebukes custom diametrically opposed to a clear law”, not rebuking an interpretative observance of the law in the part in which it is doubtful”. Custom is thus accepted in the absence of a clear law and what is not opposed is that “as

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166 Norberto Bobbio. *Locke e o direito natural*, 2 ed. Brasília: Editora da Universidade de Brasília, 1997, pp. 31-32.

167 Manoel d’Almeida e Sousa de Lobão, op. cit.

168 Bobbio, op. cit., p. 43.

169 Thomas Hobbes, apud Bobbio, op. cit., p. 43.

regards the particular customs of the Peoples, and corporations, when there is no opposing Law, if it does not have worth as Law, it has the force of Law".<sup>170</sup> In other words, Mello Freire could not ignore that custom was at the same time a praxis and a law.<sup>171</sup>

The complexity of the agrarian space, the multiple forms of land ownership, laws and charters which recognized that possession could not be reduced solely on behalf of a "greater" law, defining rational interpretations. There were royal decisions that legitimised possession, enshrining it as a legitimate form of land occupation.

The charter of 9 July 1767, for example, determined that "no one can have their ownership taken from them, without being heard".<sup>172</sup> In addition, the charter of 9 November 1754, confirmed by the Ruling of 16 February 1786 recognized the transmission of patrimony due to ownership "with all its natural effects".<sup>173</sup>

The defence of a custom of common ownership that was lost in the process of landownership individualization was the result of a fight later lost by the peasants of the modern world, despite the different forms of contestation which took place in various areas. The recognition of the custom, the grounds for which had been identified in 1642 by Coke - common use and immemorial possession - and Carter, in 1696, on four grounds - "antiquity, constantness, certainty and reason"<sup>174</sup> - were recurrent in a number of countries, in terms of defining and subsequently imprisoning custom in national laws.

Supported by the notion that custom is related to immemorial possession, it was, often "unwritten beliefs, sociological norms and practices alleged in practice but never recorded by any regulation".<sup>175</sup> No wonder then that it was possible to "recognize the customary rights of the poor and, at the

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170 Manoel d'Almeida e Sousa de Lobão, *op. cit.*, p. 22.

171 Thompson, "Costume, lei e direito comum", *Costumes em comum*. São Paulo: Companhia das Letras, 1998, p. 86.

172 Alvará de 9 de julho de 1767. *Auxiliar Jurídico: apêndice às Ordenações Filipinas*. Vol. II, Lisboa: Fundação Calouste Gulbenkian, 1985, p. 578.

173 Charter of 9 November 1754 and Ruling of 16 February 1786. *Posse Civil*. What the deceased had in their life, now passes with all natural effects into free goods to the legitimate heirs in writing. Possession of inheritance, periods and bonds passes to the successor or heir of the deceased of the former owner under provision of law with all natural effects. *Auxiliar Jurídico*.

174 Thompson, *op. cit.*

175 *Ibidem*. p. 88.

same time, create obstacles to the exercise of the same".<sup>176</sup> In this sense, it can be "seen as a place of class conflict, involving the interface of agrarian practice with political power".<sup>177</sup>

What then happened in eighteenth century Portugal was - despite the differences - similar to that which had occurred in the English countryside, decades before. Land ownership was increasingly subordinated to contracts, to take on the qualities and functions of capital and, at the same time, and in its name, enshrined as individual property, undermining common rights of use by the lower sectors of the population.<sup>178</sup>

The political economy, according to Thompson, helped and favoured the law, instituting a legitimising and legalising vision of the idea that for the consecration of the perfect property an owner is required. In England, in the 1780s, both the law and economy, "considered properties coexisting on the same land with extreme impatience".<sup>179</sup> In short,

the notion of absolute rural property, which triumphed in England in the late eighteenth century, contained a legal aspect and a political aspect. The rural property required a landowner, developing the land required work, and, therefore, subduing the earth also required subduing the poor labourer.<sup>180</sup>

However, exactly because the law, or rather, the laws, always produce disputes, Mello Freire could not hurt his own principles, thus ignoring the historicity of customs and their legitimacy before the law. Thus, it is understood why the jurist could not produce something new, which would allow the completion of the quarrel. To destroy the legitimacy of the occupation of common land, more than a new code was needed. It was necessary, first of all, to delegitimise that habit, so that society could finally naturalise the notion that land ownership is an inviolable right, without limits.

It can also be understood why Mello Freire was concerned to expose the contradiction between the Philippine Ordinance, Book 4 (which deals with *sesmarias*) and the Law of 23 July 1766. Firstly, he highlighted the conflict over interpretations which existed in the Philippine Ordinance and the Law of 26 July 1766, in its second paragraph. According to the

176 Ibidem. p. 89.

177 Ibidem. p. 95.

178 Ibidem, p 132.

179 Ibidem, p 135.

180 Ibidem, p 136.

author, the former would allow the maintenance of *sesmeiros* on lands with a single deed, the actual *sesmaria* letter. The latter would require a number of procedures, i.e. a Provision from the Palace Justice, based on information derived from the “District Council, Nobility, and People, Bids made at auction, etc.”.<sup>181</sup> Furthermore, for this author, this would create the greatest obstacle to increased farming in the kingdom,

either the Councils do not require the *Sesmeiro*, which Ord. L.4. T43 reserved for the appointment of the Sovereign; nor are there examples of supplications to the Pinhal and Torre de Moncorvo Councils, as Fr. Joaquim mentions in his Comment below the word *Sesmaria*, and for this reason, since *sesmeiros* on the lands are missing, today Ord. L.I.T. 66 && 17 are hereby revoked, and for the aforementioned L of 1766, an appeal in that manner should be made to the *Desembargo do Paço*; a step that discourages many; since this never proceeds without contradictions [...].<sup>182</sup>

In other words, Mello Freire recognised the changes brought about by the law of 1766, which led to a series of bureaucratic requirements so that the submitter would have to have in their possession a document concerning the *sesmarias*. The measures of 1766 were a proposal for State intervention as an effective control over the granting of land in an effort to ensure the principle that governed the law: the requirement to cultivate. Hence the determination that the District Council, the Nobility, the People would be heard. However, Mello Freire was aware of the legal results of this effort to control. The clashes between *sesmeiros* or applicants and their opposites would have to be decided in that institution, and a land claim was thus becoming increasingly costly.

However, the lawsuits and claims that one of the anonymous authors analysed some pages ago were rooted in confrontations and interpretations that, far from resolving conflicts, perpetuated them, thus embodying a sense of injustice present also in the analysis of some memoirists. But they did not admit the legitimacy of customs, based on past laws, nor the idea that the demands of the peasants were legitimate.

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181 Manoel d’Almeida e Sousa de Lobão, op. cit., parte I, p 239.

182 Ibidem.

The memoirists, as well as the lawyers, longed for a clear legal system that would liberate the land – and not the workers – from their legal barriers. The strongest claims of the memoirist Bernardo Lemos and the anonymous author were the possible radical expression of the mentality of those who advocated the recovery of Portuguese agriculture, based on rational and individualising assumptions in relation to land rights. They did not wish to have more claims and demands, disputes and rancour. Not because such claims brought to the light of day the customs of the peasants, often claiming the old laws and traditions, but rather because disputes were the most visible face of the decline of Portuguese agriculture, the destruction of which they sought to avoid. Vandelli longed therefore for the Civil Code of Mello Freire. One of our anonymous authors aspired for clear principles in the definition of land rights. Thus, the public manifestation of social conflicts was part of a project to “provide solutions socially recognized as impartial, by enshrining the symbolic effect of the legal act as a practical, free and rational implementation of a universal and scientifically based standard”.<sup>183</sup>

It is thus understandable why Vandelli, like other memoirists, would update the law on *sesmarias* and why this reappeared in Mello Freire’s conclusions.

In one of his works entitled “Anthology of Texts on Finance and Economics”, Mello Freire had devoted a few pages to reflect on the agrarian laws. For him, “the Portuguese were always fervently devoted to agriculture, the main nerve of the Republic, since laws still exist from the beginning of the kingdom, many of which to promote and grant numerous privileges to farmers”.<sup>184</sup> Among them, “deserving of special recollection were the most celebrated agrarian laws that the Ordinances gave the special title *Das Sesmarias*”.<sup>185</sup> These were the “fields delivered by public authority to those taking care of them, distributors, or *sesmeiros* to those charged with taking care of those fields”.<sup>186</sup>

This means that, despite his intention in enshrining new principles, he recognized in the law of *sesmarias* an important role in the consolidation of the agrarian laws of Portugal.

It was an ancient law, countersigned in the codes of the kingdom, serving the interests of producing a legal system in a country marked by the crisis of its agriculture. It could be consecrated as an ownership deed,

183 Pierre Bordieu. A força do direito. In: O poder simbólico, Lisboa: Difel, n/d, p. 228.

184 Pascoal de Mello Freire. Antologia de textos sobre finanças e economia, Lisboa, 1966, p. 20.

185 Idem, p. 22.

186 Ibidem, p. 23.

imposing the obligation of cultivation as a way to meet the needs of an impoverished population. The *sesmarias* could operate in this new sense, as the most complete expression of the richness of Portuguese law and past concern for the destiny of the country.

However, in the late eighteenth century, the Portuguese crown had serious problems of a no lesser nature to deal with in its efforts to establish clear legal principles regarding the question of land ownership. In the overseas territory, in Portuguese America, a legal system based precisely on the *sesmarias* law of King Fernando had been established, and expressed the most visible face of the difficulty in defining ownership and property in areas still subject to further expansion. The lack of knowledge about how this was put into practice in the colonies and its multiple meanings were visible in the analysis of memoirists such as Bernardo de Lemos and Vandelli. The social imagination had, however, enshrined the notion that the institution of private property was possible in the free colonial lands, without problems arising from old customs and practices, considered to be the cause of the ills of agriculture in Portugal.

In the overseas colonies, however, the royal concessions of *sesmarias* did not involve any conditions on the use of land that concerned other rights over the same property. The land was bestowed by the Crown to be cultivated, this being the only requirement for the application to be granted. The *sesmarias* would come, in the metropolis, to express the ideal law for the enshrinement of the principles of private ownership of the land. The men who defended it in the late eighteenth century, and with such vigour, were the expression of an *Ancien Regime* marked by an Enlightenment of extreme wealth. In a counter-vision of full and absolute property, they denied the customs of the poor, but at the same time imposed limits on landowners.

They thus well exceeded their own goals, reinventing the law of *sesmarias* within the frameworks of the crisis in agriculture in Portugal.

There were, however, those who, in the exercise of power, had a less generous vision of the *sesmaria* system and its implications in the colonies. In the processes involving the concession, in the everyday bureaucratic referrals, they pointed to the limits of the system and its future implications. This is what we shall see below, from the reflections of D. Rodrigo de Sousa Coutinho and his brother, Francisco Mauricio de Sousa Coutinho.

PART 2  
*SESMARIAS AND POWER I  
IN THE MARIANO PERIOD*



THE *ALVARÁ* OF 1795: EMBLEMATIC EXAMPLE OF THE MARIANO PERIOD

THE GOVERNOR FRANCISCO MAURICIO DE SOUSA COUTINHO AND THE  
SYSTEM OF *SESMARIAS*





## THE 1795 CHARTER: EMBLEMATIC EXAMPLE OF THE MARIANO PERIOD

The so-called *Mariano* period corresponds to the reign of Dona Maria I, 1777-1816, even though the queen in fact only ruled until 1792 – when, a prisoner of her own madness, she was replaced by her son. The period is also known by the name of *viradeira*, corresponding to the change in the policy of the Pombaline government, freeing hundreds of victims of that period and thus personifying an example of contesting the decisions from the reign of King José, father of Maria I.

Recent studies, however, have relativized this notion of *viradeira*, as it was limited to rehabilitating members of the nobility, persecuted by Pombal, and can be summed up as “acts of individual reparation that were almost always entreated to recover the memory or the good name of parents and friends”.<sup>1</sup> Moreover, as opposed to Pombaline centralism, the government of Dona Maria I carried out “collective work, for the solution of problems of a general order or for individual requests long awaiting a fair decision”.<sup>2</sup>

As far as laws and the administration of justice were concerned, the *Mariano* reign was marked by the attempt to reorganize the system of laws in force, examine the subsidiary laws and constitute a new code, which did not mean doing away with existing ordinances, but producing a new reformulated organisation of existing legislation. Thus, over the period, various measures for the administration of justice were enacted, such as the Law of 19 July 1790, which envisaged a new ordering of judiciary districts.

In short, despite the myth of the *viradeira*, the *Mariano* period represented continuity with the Pombaline period, such that the actions of the Queen in practice held to the previously espoused principles. In this way, the creation of the Royal Academy of Sciences, the retention and even elevation of Pombaline reformers, such as José Seabra da Silva, demonstrate that it

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1 Joaquim Verissimo Serrão, *História de Portugal*, vol. VI: O despotismo iluminado (1750-

1807), 3 ed., Lisboa: Editorial Verbo, n/d, p. 295-296.

2 *Ibidem*, p. 339.

is necessary to differentiate, as José Subtil alerts us, the reform movement from the political actor, which means that Pombaline principles survived even after Pombal.<sup>3</sup>

In line with this, the reign of Queen Mary I sought to reform legislation in line with the Law of Good Reason (*Lei da Boa Razão*), which, as we have seen, involved the attempt to produce a new code, and in which Mello Freire was incontrovertible proof of the continuation of Pombaline precepts, which involved establishing a new way of considering the role of the State, beyond the person of the king.

This new look at the role of the State comes from the taking of new positions in relation to the colony of Brazil, and also reflected the continuance of some of the changes initiated by Pombal. Thus, the appointment of Dom Rodrigo de Sousa Coutinho to the post of Minister of State and Secretary of State for the Navy and Overseas Dominion (*Ministro e Secretário de Estado da Marinha e Domínio Ultramarino*) in 1796 (where he remained until 1801) was perhaps the best evidence of the strong influence of *Pombaline* principles.<sup>4</sup>

However, to understand the role of Dom Rodrigo (and his brother, Francisco) in the context of Overseas policy, it is necessary - above all - to analyse the meanings contained within the *Alvará* of 1795, which sought to regulate the granting of *sesmarias*. By carrying out a detailed investigation of the twenty-nine Articles of that order, it is possible to outline the intentions of the Crown, committed to standardising access to colonial lands.

Firstly, it is worth noting the scant attention given to the *alvará* of 1795 by historiography. The most plausible reason for this is the fact that it was revoked a year later. Among the many laws and charters made void after its enactment, it is not surprising the lack of interest in this out of many others that quickly passed into oblivion. However, a closer look at the *Alvará* of 1795 raises issues important to understanding the proposals and limits of the *Ancien Regime* in relation to the territorial occupation of its main colony Brazil.

Secondly, the *Alvará* was undoubtedly the most important of a series of decisions to regulate the process of granting *sesmarias*. It should be

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3 José Subtil, “No crepúsculo do corporativismo: Do reinado de D. José às invasões francesas (1750-1807)”, in: José Mattoso, *História de Portugal*, 4º vol. (coordenação de Antonio Hespanha), *Antigo Regime*. Lisboa, Editorial Estampa, 1998, p. 415.

4 According to the Marquis of Funchal, “Dom Rodrigo was brought up under the eye of Pombal who intended him to be a minister for the Prince Dom José”. *Apud* José Luiz Cardoso, *O pensamento económico em Portugal*, Lisboa, Editorial Estampa, 1989: Antigo Regime p. 127.

remembered, for example, that the resolutions of 11 April and 2 August 1753 determined that “the lands given in the *sesmarias* which contained settlers cultivating the soil and paying rent to the *sesmeiros*, should be considered as given [in *sesmarias*] to the real cultivators”.

The *alvará*, promulgated on 3 May 1795, was the result of consultations with the Overseas Council regarding the irregularities and disorders related to the administration of *sesmarias* in Brazil. Its extensive preamble, which is worth quoting in full, stated that:

I, the Queen, make known to all those reading this Royal Charter, that, having been present in the Overseas Council to hear speak of the abuses, irregularities and disorders that have raged and are raging, throughout the State of Brazil, on the sensitive subject of its *sesmarias*, with these until now not having had their own, or particular, legal regime that I have hereby regulated as to their granting, in contrary to what has hitherto been granted by a *sesmaria*, and thus abbreviated and in fact through that regulated, taken from the charters of the ancient initial donataries that the [August] Kings my Predecessors mercifully made through certain of their respective Captaincies, so that all those charters, nor yet the frameworks, and foral charters, which were made and sent to the regency, whereby the administration of my royal estate of the aforementioned state did not deal with, and neither could deal with both in due time and decisively on this matter, and the most important, useful, and convenient to the common interests of all my faithful vassals, inhabitants in those vast domains and resulting in the lack of legislation and provisions on the one hand harmful, and with very serious damage to the rights of my Royal Crown, and on the other hand consequences no less damaging to the public interest in equality that must, and should always involve the same land distributed among its residents, coming to this state of such irregularity [of] distribution that many of these residents have not been able to manage to obtain their *sesmarias* through my mercy or that of the governors, the captains-general of the State of Brazil, whereby the strength of these objections and by whom without any right to challenge, others on the contrary have seized, and seize, and take possession of them without mercy, and without the legitimate licence they should

have to validate the titles of their possessions emitting such objectionable abuse in this regard that even most of the same *sesmarias*, even those authorized with the relevant licences and confirmations never even have had divisions or certain limits established through judicial delineation as have been required by many repeated orders that have been issued to all those *sesmeiros*, the order for this serving such useful purpose with the lack of compliance that they have had in the same State of Brazil, being indeed harmful and such lack and tolerance has notoriously resulted in so many and such odious disputes, in court, between a large part of my aforementioned vassals and, as experience shows, they do justify the same complaints that have real meaning in my Royal Term on the same subject with the ordinary resources not being enough in terms of my Royal courts and the ministers appointed in this court and in Brazil and the actions requested by the complainants in my Royal presence so as in this way to avoid similar new and lengthy legal disputes commonly dominated by malice and bad faith that wilfully and illegally do not make use of land where their titles are not respected or it costs them to let them be given to those to whom they rightly belong through the competence and legitimacy of their charters, the damages for which are serious, with harmful consequences that prejudice the financial resources of some, and make inevitable ruin of others who do not have enough strength, nor possessions to keep going for many years and with the costly expenses a lawsuit often imposes and so many other times based on hate, opinion and whim and with myself wishing to help with all these inconveniences, and others that have been presented to me, and once and for all ending those same abuses that are and have been until this moment the origin of the aforesaid complaints, and confusions that are found throughout the State of Brazil through the aforementioned *sesmarias*, to this end

with the ruling of my Overseas Council I hereby determine with regard to these respective matters the following.<sup>5</sup>

The words of the preamble are enlightening. The occurrence of endless conflicts, hatreds and grudges between *sesmeiros*, the lack of legislation that could establish clear limits for the granting and demarcation of *sesmarias* were some of the intentions of the royal charter, showing – just in itself – the efforts of the Crown to regulate concessions from *sesmarias*. However, the charter tells us more. It also expressed the belief that the solutions to the conflict depend on a royal decision, a State personified by the Queen, capable of finding the rational principles to define and delimit the actions of the *sesmeiros*. The Queen ordered that the norms established by Charter be followed in order to produce the harmony desired by all. In doing so her words expressed the principles consecrated in the Law of Good Reason, based on the notion that it is possible to establish a new rationality for the concession of land, by simply drafting a law that detailed the steps to be followed by the subjects. The Charter thus becomes a detailed project to legally regulate the granting of land and the re-ordering of the colonial territory. This was an extremely ambitious project, revealing the intentions and limitations of those times. Based on those principles, 29 articles were established, which deserve a more detailed analysis.

The first article requires that everyone, in each of the captaincies of the State of Brazil, comply with the royal solutions and orders that the Queen and her predecessors have made in terms of conforming with the grants of the lands from the *sesmarias*: the terms, their limits, as well as their measurements and demarcations. It is also recalled that decisions opposite and contrary to what has been determined here should not be made, since the *alvará* would form the legal framework to process and regularise grants, measurements and delineations.

In the second article, the governors and captains-general are ordered to process and regularise grants, according to the Charter Law of 3 March 1770, “so that before the granting is established they check and ensure the

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5 IHGB. Alvará de 3 de maio de 1795. *Sesmarias* do Rio de Janeiro: textos de concessão, confirmação e regulamentação das doações de *sesmarias* no Rio de Janeiro. (Séc. XVIII) copiados nas Seções Histórica e Administrativa do Arquivo Nacional e no Arquivo de Prefeitura do antigo Distrito Federal. Em 16 cadernos manuscritos. [Lata 765, pasta 3]. I would like to thank my dear Carmem Alveal for the gift of this document.

I shall discuss the laws prior to the 1795 Charter in the following chapter, in order to analyse the re-updating of the conflicts and the efforts of the Crown to resolve these quarrels.

Plea with regard to each of the parties: the state and nature of the terrain, and the extended lands and finally reach an agreement over that which is contested”.

The following article has a retroactive effect, since it obliges the demarcation of all *sesmarias* within a period of one year. It is forbidden to take hold of and cultivate the land without that “essential requirement” being satisfied, with a fine pertaining to the land.

The requirement of demarcation is accompanied by the determination expressed in the fourth article. Regularization involved the staking out of the land and compliance with bureaucratic procedure. The presence of the governors and captains-general was required for the issuing of the legal certificate, with this later being heard in the Overseas Council. The notion that a legal “authentic” certificate be produced is clearly expressed, once the demarcations have taken place.

The fifth article reiterates the demarcation requirement and focuses on a key aspect of the regularisation process, namely that the *sesmeiros* who are already in possession of their lands must accept the demarcation condition since “they are undoubtedly obliged to comply on their part with that fitting and strict obligation to correctly determine the limits of their lands”. The article also requires that governors and captains make the *sesmeiros* comply with these orders and that they carry out the demarcation of all the *sesmarias*. It orders that the governors and captains give back to the Crown lands that are not

demarcated through omission or through the refusal of their owners who intentionally and maliciously, in bad faith have so far prevented or at least not required the aforesaid demarcations and that these would have an effect if they set a period of two years for their completion and fulfilment of the requirement and if it is verified concerning what up to now has been tolerated.

The following article seeks to order the territory in relation to the population as a whole. The notion of equality in the granting of lands is linked to the non-liberalisation allowing no limits for lands closer to trade and where there were a greater number of residents. In these places, the grant had to follow “an unalterable equality” and ordered that “the governors and captains-general of the State of Brazil in the contours of their captaincy and villages” did not grant, to each of its settlers, for a distance of six leagues around them”, “more than half a league squared, in order for there to be this deserved equality among all the settlers”.

Arguments in favour of the redevelopment of the territory were also expressed in the following articles. In the seventh and eighth articles, as well as establishing the maximum limit of the granting of a league at the front and one from the back, they reinforce previous decisions regarding the granting of land along the roads and navigable rivers. In such cases, it was only possible to grant half a league in front,

giving up another half that until then they were permitted at the back of the same lands such that through this action there would be a larger number of people settled in these deserts, routes, and a greater increase in cultivation and of public interest, a greater number of *sesmeiros* to make the effects and purposes of that cultivation more advantageous. Finally, the greater and no less useful public benefit of having their present and future roads repaired, with this being a requirement of the aforementioned *sesmeiros* with regard to their respective lands in front.

Control over logging, and tolerance in regard to the irregularities in terms of its felling formed the subject of the ninth and tenth articles. It is hereby ordered

that henceforth the seaports and the neighbouring districts and coasts completely reserve those woods, where due to their quality and abundance, the precious woods for my Royal service can most conveniently be felled and logged, and with there being in the future a ban on all states and those same districts of the places and woods where one can easily check the felling of the aforesaid woods and forbid that these places, and those in all or in part can be given over any more in a *sesmaria*.

In the 11<sup>th</sup> chapter, the attempts to limit the extent of the land to be granted for each *sesmeiro* shows the difficulty in untangling rights and duties, and the operating limits of royal power concerning land ownership. The article begins by stating that as “there is a certain limit where the *sesmeiros* cannot have more land than can be cultivated by themselves and their slaves” and that the maximum limit for this is three leagues. On the other hand, the same article recognizes the existence of “*sesmeiros* who are such powerful farmers that a *sesmaria* of three leagues is insignificant

to move forward and increase their cultivation”. The continuation of this stipulation is extremely confusing, establishing- it would seem - that each new concession cannot exceed half a league, and it is also forbidden that each *sesmeiro* possesses “more than one granting of lands whether this be by way of inheritance or purchase”. It is however ordered that

Remaining in force my Royal orders which have regulated the extension of the grants of the lands of *sesmeiros* with each of the *sesmeiros* having two or more *sesmarias* as long as they have the means and number of slaves to cultivate these and other lands and with them being required within a period of two years to request the Overseas Council to confirm orders otherwise waived those *sesmarias* will be confirmed solely in the event that fully and legitimately stated that these *sesmeiros* have both possibilities and the number of slaves they have or will come to have to cultivate all those lands even though these be distinct and separate *sesmarias*.

The subject of the next article is the attempts to regularise the situation of the lands of the *sesmeiros* which stem from an inheritance title, gift “or other manner authorising their legitimate possession”. It is stipulated that the *sesmeiros* “who do not have the possibility and enough slaves to cultivate one or another *sesmaria* then they be required within two years to sell them or alienate them, so that the people who can cultivate them can increase, which is to the benefit of the public”. This imposition is accompanied by a clear threat: those who do not follow the provision to cultivate their lands will be deprived of them; it is laid down that “these same lands revert to my Royal Crown, in order to give them to those who will deal with them and increase them for the benefit of the state and its residents”.

The different forms of ownership and the provisions concerning them are also the subject of Article 13. The Portuguese administration was aware that many lands owned in the name of *sesmarias* were the result of a process involving the transference of patrimony, and land purchases and sales. Thus, “so that none of those *sesmeiros* have a letter granting one of those lands as a pure and legitimate *sesmaria*, when their abuses are incompatible with the rights of my Royal Crown”, it is laid down that



those *sesmeiros* who own land with the aforementioned denomination of *sesmarias* without any title other than the daily use of their possessions, purchases, donations, are obliged to submit the titles of the same lands to their governor, and captain-general within the pre-established period of two years, since after they have been heard concerning their right and legitimacy the *Ouvidor* (Judge) and the Purveyor of the Treasury shall then hand over *sesmaria* letters and just as solemnly consider the land grants of each of the captaincies of Brazil to make known in all of them the number of *sesmarias*, and the quality and quantity of their *sesmarias*.

Once again the threat of punishment is expressed, since

but if there be one, or some of these *sesmeiros* who do not request these as they should, and I send to them the relevant titles of their letters within the aforesaid period, they will forthwith be deprived of the land they possess which shall be incorporated in those of my Royal Crown. And so that none of them claim ignorance: I likewise command the governors, and captain-generals and captains in the districts of their governments to make public announcements of all that I determine in this regard.

To carry out the project to give *sesmaria* letters to those who do not have them, the following article establishes that

there be books to register the aforementioned *sesmarias*: I hereby order that in all the Boards, and the Purveyors Office of the Royal Treasury of the State of Brazil there be two books initialised where I order be registered the *sesmarias* of each of the aforementioned captaincies and their districts, one for registering the letters granted by the governors, and captains-general, and another for those favours, those confirmed letters.

It is reiterated once again, that failure by the *sesmeiros* to comply with the registers will result in the transfer of their lands to individuals “who more readily fulfil the conditions of this or that *sesmaria* letter”.

Article 15 restates the obligation to register, and also orders all the district councils of the State of Brazil have a book freely published by the judges of their respective districts, so that

all the *sesmaria* letters of their districts should be written down and registered; because it should be so in terms of how the district council judges rule concerning the granting of *sesmarias*, regarding their own districts, with which they must undoubtedly be acquainted and aware of whether or not the lands that are requested are vacant so that they are able to be informed of what is submitted to them for a plea of justice and for the purpose of their report.

The attempts to prevent the occurrence of further litigation can be understood in the light of the provisions of Article 16, which states that the governors and captains should only grant *sesmarias* to individuals who submit a certificate stating that the lands sought are thought to be vacant and, as such, have not yet been granted,

with such certificates taken from the aforementioned books of the Boards, Purveyors' Office or district councils in order that they do not duplicate the granting of the same land as has often happened, thus leading to these disorders, lawsuits and odious matters which are very harmful to public tranquillity.

The occurrence of conflicts is laid bare in the following article:

I hereby order and because it is not fair that in congratulating all my faithful vassals of the state of Brazil allowing them to [...] the *sesmeiros* do not [...] fulfil the obligations of their grants and unless what is left of them and their titles disturb and bother their neighbours [...] I hereby order and command that these demarcations remain within the competence of the district judges to which these *sesmeiros* belong and that they now take the place of the Purveyors of the treasury after the extinction of each one of the districts of Brazil: as however the

work and their personal obligations to the courts and other similar diligences make it difficult for them to entirely fulfil their duties [...] I hereby order that all the district councils of the state of Brazil annually propose to their respective governors, and captain-generals 3 [people] with letters of education who are residents within the same counties and with a good and healthy conscience as the Judge of these demarcations in the first instance, and among them also the said governors and captain-generals annually appoint who seems suitable for such ministry [...].<sup>6</sup>

He continues:

I hereby command that those captaincies and districts where there are no literate individuals with the aforesaid quality that the Royal Resolution of 17 June 1761 is practised and observed, in which it is determined that where there is a lack of treasury prosecutors then private Judges from these areas make become Private Judges may carry out the Justices that so and thereby services can be provided to some other captaincies and other *sesmeiros*.

The following articles seek to further untangle the demarcation processes. Firstly, there is the assertion that they are summary, as well as the possible suspensions. There is also the need that the confining boundaries are given in the demarcation registration, with those deemed as unacceptable those which do not show “title confirming their *sesmaria* or at least a certificate stating that the decision regarding the confirmation of their charter is pending in the Overseas Council”. In the later articles it is stipulated that the demarcation, once initiated, can only be halted in the event of “private appeals which will be summarily determined by known fact without the presence of a Judge, for the sentence of which the parties

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6 Earning a quarter of fees which are currently paid to the stewards, giving appeal and grievance procedures for the district magistrate and for the Crown with regard to that given by the notaries serving the Public and Judiciary through a rigorous and unavoidable distribution of clerks for the aforesaid demarcations with wages and paths that their endeavours would earn in other causes and diligences as occurred in the ordinance resolution of 27 November 1761 in an appeal consultation that was successful against the Overseas Council by officials of the District Council of Vila Nova da Rainha”.

may bring a relevant appeal and be heard in terms of their devolutive effect”. In other words, the *alvará* recognized the right of defence and could not prevent appeals, in cases involving disagreement as to the form of the demarcation. Confusing grievance procedures are recognised and, not surprisingly, Article 22 stipulates

that appealing concerning the Judge’s demarcation considerations regarding any administrative order or incident shall involve the appeal case being separate, since “ [...] otherwise the aforementioned demarcations will never end as experience shows and has shown in other same or identical cases that are either undecided or sustained with the demarcation process finally concluded only after many years.

In the following articles the same principle is reiterated,<sup>7</sup> and the *sesmeiros* are compelled to demarcate their lands, and also obliged to contribute part of the costs. The threat to those who refuse this task is again embodied in the loss of land.

The confusion of titles and extensions is once again remembered in the article. Likewise, disputes between neighbours are recognised, such that “each of them should request a *sesmaria* letter [...] with questions or legal doubts occurring between those two or more *sesmeiros* about the fairness of their ownership or their rights” and they are ordered to carry out and regulate the legislation rules and provisions laid down by this *alvará*. As with the following article, this seeks to solve the doubts of adjoining lands with or without lawful title. The titled *sesmeiro*, that is, the one with the

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7 23rd I hereby order that where *sesmeiros* who appear in the demarcation process with title, or without it, since it is pending and awaiting its confirmation with the Overseas Council who hinders or prevent the law regarding the measurement and demarcation of lands be indecisive: in both cases the Judge involved in the demarcation will order that they prepare or have prepared their appeals in a separate case and giving immediately the intention of that sentence even though it is embargoed until improvement is shown in everything or in part revoked, or confirmed. 24) I hereby order that in general this legislation does not incorporate the *sesmeiros* who shall have demarcated and shown their *sesmarias*, because their own and their other neighbours processes are underway, may deduce their rights by forming appeals to the demarcations that they effect in prejudice to their *sesmeiros*, whose objections should and may have an ordinary ruling from the Judge and be sentences according to the legitimacy of their titles, law and possession, allowing these parties the relevant resources that they may bring and action according to the laws and right”.

*sesmaria* letter, has no right to enter the land of his non-titled neighbour, because he cannot enforce that right.

Finally, in its last article, the poverty of some district councils regarding the incurring of expenses in carrying out all the steps required by the *alvará* is recognised. In view of this,

I finally hereby order that within a distance of six leagues inclusive around the contour of the cities and villages, that the councils with a lack of income for their expenses, each one of them be granted a concession of four leagues of land squared to be administered by the officials of the same councils, and the income for this to be used for expenses [...] and those respective officials may lease parts of the aforementioned lands [...] and with so much to rule on in terms of the ordinance of my Kingdom and my other *Alvarás* and orders they may dispose of these leases whose mercy I grant them without third party prejudices and the officials of all the aforementioned councils may request their *sesmaria* letters from the respective governors and captains-general if as such they may ensure the rights of my Royal Crown and public utility, as well as in the same way grant further *sesmarias* in the state of Brazil.

As I have stated in previous research, “unsuccessful in its target and abolished the following year, the *Alvará* [...] shows how the reality of ownership and the liability of demarcation and cultivation of the *sesmarias* played an important role in the conflicts among the Portuguese Crown, landowners and colonists established in Brazil”, (Motta, 1998).<sup>8</sup> I now regard the *Alvará* - despite its abolition - as more meaningful than I had previously thought. It also expresses the limits of the Crown’s intervention in land matters in the colonies, showing that its provisions were inserted within a vision which entailed submission of the *sesmeiros*, understood as vassals of the queen. Its constitutive logic – very much in accordance with the Law of Good Reason - intended to scrutinise all matters involving disputes, in the belief that a legal ordering of the territory and that being ordered by the Queen was enough to stop or at least slow down the confusions arising from extremely old concessions, with loose boundaries and multiple forms of ownership of the land. The notion that it was possible to produce, and

<sup>8</sup> Márcia Motta. *Nas fronteiras do poder*. Rio de Janeiro: Arquivo Público do Estado do Rio de Janeiro/ Vício de Leitura, 1998, p. 124 & 125.

update a document – in this case the *sesmaria* charter - as a legitimate title of occupation, implied the belief that the *sesmeiros* would be willing to meet the legal demands, execute orders, accept liability and limit, as I said, their own dominions.

Its numerous determinations, carefully expressed in each of the twenty-nine articles, reveal an attempt at a policy to scrutinise the granting of lands in Brazil. The Charter also lays bare the Crown's knowledge concerning the confusion of boundaries, the tangles of laws and their various interpretations, one could say, about the history of the occupation of places. In seeking to reorder the land under its dominion, it tried to control the responsibilities for granting a legitimate title, a document stamped by the Queen as undeniable proof of dominion.

In December 1796, the *alvará* was abolished by a decree, since

“the impediments and inconveniences that can possibly result from [its] immediate execution [...] or because the current circumstances are not the most appropriate for assuring safe establishment of the vast properties of my vassals in the provinces of Brazil, or by the absence of geometers that can fix secure measurements [...] or finally, by the many processes and causes that might arise in attempting to implement such healthy principles [...] without previously having prepared everything that is indispensable for them to have a full and useful application.”<sup>9</sup>

What would be the “current circumstances” that would make the attempts to order the territory of the main Portuguese colony improper? Certainly, the Napoleonic wars were directing attention. This is a rather difficult historical conjuncture since on 18 August of that year, 1796, Spain had secretly signed the Ildelfonso treaty with France, in which Spain declared war against England. Thus was inaugurated the growing confrontation between Portugal and France, which would culminate in the transfer of the Portuguese Court to Brazil a few years later. The Council was aware that the operationalisation of the measures imposed by that law would make many farmers unhappy, jealous of its power in the lands of the “State of Brazil.” This was not the time, therefore, to enforce the words of the Crown in relation to the actual cultivators, the legitimate occupants of the donated land confirmed through the grace of the Queen.

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9 Decree of 10 December 1796.

What is interesting in all of this is that, despite its suspension, *sesmaria* letters began to be confirmed by the Overseas Council, as had been established by the *alvará*. Thus, as we shall see, Registration Books for *Sesmaria* Letters were opened, which remained as such until 1822, despite the transfer of the Court to Brazil in 1808 and the new impositions from this data.<sup>10</sup>

However, it is not easy to uncover the deeper reasons for the suspension that project. It is possible that the summoning of Dom Rodrigo de Sousa Coutinho to the position of Secretary of State for the Navy and Overseas Domain (*Secretário de Estado da Marinha e Domínio Ultramarinos*) would have had some influence in the decision, revealing more pressing domestic problems waiting for a solution.

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<sup>10</sup> I will discuss the *sesmaria* letters of the period in the next chapter.

## Dom Rodrigo de Sousa Coutinho: Perceptions of power overseas

The eighteenth century put “man at the centre of his world view of the mechanism around which it organises its reflection”.<sup>11</sup> Some became protagonists of this new time, “spokesmen of a new discourse”, in a century where cosmopolitanism, and the transformation and circulation of new ideas deepened.<sup>12</sup> In Portugal and their main colony, at the end of that century two “enlightened” individuals sought to discuss issues involving the relationship of the kingdom with the colonial lands, presenting proposals and criticisms of the actions of the Crown. These were the brothers Dom Rodrigo de Sousa Coutinho<sup>13</sup> and Francisco de Sousa Coutinho. Both sought to discuss issues relating to *sesmarias*.

Complex personality, the subject of “different value judgments”, in the words of Andréa Silva,<sup>14</sup> Dom Rodrigo was eldest son of Dom Francisco Inocêncio Sousa Coutinho, one of the most important members of the Pombaline administration, having been governor and captain-general of Angola and the ambassador to Spain and a descendant of one of the old

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11 Michel Vovelle, “Introdução”, in: Michel Vovelle, (direção), *O homem do iluminismo*, Lisboa, Presença, 1992, p. 7.

12 *Idem*, p. 17.

13 There is considerable bibliography on Dom Rodrigo. Amongst others: Andréa Mansuy Diniz Silva, *Portrait d’un homme d’État: D. Rodrigo de Sousa Coutinho, Conde de Linhares: 1755-1822: Les années de formation: 1755-1796*. Lisboa/Paris: Fundação Calouste Gulbenkian, 2002; Andréa Mansuy Diniz Silva, “Introdução”. In: Dom Rodrigo de Sousa Coutinho, *Textos políticos, econômicos e financeiros (1783-1811)*. Tomo I, p. XI-LII, Coleção de Obras do Pensamento Econômico Português, Lisboa: Banco de Portugal, 1993; José Luís Cardoso, “Nas malhas do império: A economia política e a política colonial de D. Rodrigo de Sousa Coutinho”. In: José Luís Cardoso, (coord.), *A economia política e os dilemas do império luso-brasileiro (1790-1822)*. Lisboa: Comissão Nacional para as Comemorações dos Descobrimientos Portugueses, 2001; Nivia Pombo Cirne dos Santos, *Dom Rodrigo de Sousa Coutinho: pensamento e ação político-administrativa no império português (1778-1812)*, Master’s dissertation in History. Niterói: Universidade Federal Fluminense, 2002.

14 Andréa Mansuy Diniz Silva, “Introdução”, Coutinho, *op. cit.*, tomo I, p. XII. The biographical information in the text is supported by the introduction by André Diniz, one of the most important researchers into the thinking and development of Dom Rodrigo.



Portuguese noble houses.<sup>15</sup> His son was born in 1755 and was baptized Sebastião José Carvalho e Mello (Marquis of Pombal). He studied at the University of Coimbra, reaping the benefits arising from the Pombaline reform, and qualified in various branches of knowledge. He was the Ambassador in Turin between 1779-1796, where he acquired “knowledge, and particularly the theoretical bases characteristic of the European Enlightenment, which he used throughout his political career”.<sup>16</sup>

Called to return to court in July 1796, he was appointed Secretary of State for the Navy and Overseas Dominion (*Secretário de Estado da Marinha e Domínio Ultramar*), and sought to apply his knowledge accumulated over various years of study and diplomatic career to carry out “an ambitious set of projects to reform and modernise Portuguese society and the economy in the context of the difficult financial and diplomatic then being experienced”.<sup>17</sup>

In the early years of his mandate, Dom Rodrigo dedicated himself mainly to finding means to unravel the complex financial situation of the Portuguese Crown.<sup>18</sup> This was perhaps the reason for the suspension of that *alvará* in 1795.

It is also possible that Dom Rodrigo influenced the decision to suspend the *alvará*, in the wake of the establishment of a more substantial policy concerning Brazil. After all, he was aware of the impact of the Brazilian economy and colonial trade in “maintaining the economic balance of the kingdom as a whole”.<sup>19</sup> While advocating “a vision of the Empire based on two basic principles: political unity and economic dependence”,<sup>20</sup> Dom Rodrigo may have sought to find the most effective means to establish a project for regularising the lands of the colonies that did not put at risk the constitutive pillars of the Empire that he strongly defended.

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15 According to the encyclopaedia *Luso Brasileira de Cultura*, “As governor, he was the one who, after Paulo Dias de Novais, sought, as a donatary, to create a new Brazil in Angola, attempting to turn it into an occupied “Kingdom”, with a balanced administration”. *Enciclopédia Luso-Brasileira de Cultura*, Lisboa, Editorial Verbo, vol. 6, 1967, p. 223.

16 *Idem*, p. XXXVII.

17 José Luís Cardoso, “Nas malhas do império: A economia política e a política colonial de D. Rodrigo de Sousa Coutinho”. In: Cardoso (coord.), *A economia política e os dilemas do império luso-brasileiro (1790-1822)*, Lisboa: Comissão Nacional para as Comemorações dos Descobrimentos Portugueses, 2001, p. 66.

18 *Idem*, p. 77ff.

19 *Ibidem*, p. 79.

20 *Ibidem*, p. 79.

Although he wrote little on *sesmarias*, there are some passages from his writings that reveal his perception of the problem. In other words, Dom Rodrigo was aware of the obstacles to be overcome in order for the proposals contained in the *Alvará* to become effective.

In his “Memoir on the Improvement of the Domains of her Majesty in America”, written in 1797 or 1798, therefore soon after the suspension of the *Alvará*, Dom Rodrigo expounded his views on the political system that “it would be useful for our Crown to embrace for the preservation of its vast domains, particularly those in America, that so do form the greatness of our august throne”.<sup>21</sup>

In his defence of a kingdom, in its full meaning, beyond the territory of Portugal, Dom Rodrigo unravelled some of the problems to be overcome to further consolidate the Overseas Empire. Among many, of note is the careful choice of governors (we should recall here that his brother was the governor of Pará), since “the distance of such governance requires the confidence of a great power and jurisdiction, and they must be subject to a great responsibility that will be in their hands”.<sup>22</sup> In the same manner, the choice of magistrates should also be meticulous, and establishing the limits of their jurisdiction, and independent of “those judged”.<sup>23</sup> In defending the adoption of a complete division of magistrate and administrator posts for the treasury, he claimed that: “whether it concerns amendments, and corrections that require our Code concerning America, or a more convenient form of the courts where the parties have become aggravated and call for a better administration of justice”.<sup>24</sup>

The argument for the need to establish a new code was accompanied by an emblematic example, that of the *sesmarias*.

Who does not see and feel how necessary it would be to take the arbitrary way in which the *sesmarias*, and grants are given; and secure these and conserve them after they have been acquired through use of registry books; in this way the conservation of our forests, woodlands and trees can be regulated.

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21 D. Rodrigo Coutinho, “Memória sobre o melhoramentos dos domínio de sua majestade na América” (1797 ou 1798). In: *Textos políticos, econômicos e financeiros: 1783-1811*, Tomo II, Coleção de Obras Clássicas do Pensamento Econômico Português, vol. 7, Lisboa, Banco de Portugal, 1993, p. 43.

22 *Ibidem*, p. 51.

23 *Ibidem*.

24 *Ibidem*. p. 52.

By making explicit reference to the lands containing the mines, he continued:

[...] In the same mines establish luminous systems for the division of waters, for the ore purification and to prevent misunderstandings and deceitful processes often suspending the fruitful work of extraction, and also ensure the good faith of mortgages through an inalterable registry.<sup>25</sup>

In other words, Dom Rodrigo was basing himself, at least in part, on the same arguments that had been announced along with the promulgation of the *alvará* and indirectly was defending the same propositions.

In one of his warnings to Dom Fernando José de Portugal, governor and captain general of the captaincy of Bahia, dated 1 October 1798,<sup>26</sup> Dom Rodrigo was even more incisive. Firstly, he stated that in Brazil, especially in the backcountry, “they practise some vexations that oppress the cultivators of the land, and discourage agriculture”.<sup>27</sup> He was referring to the requirement of the farmers to give up their slaves for royal services as well as the prices paid by the royal treasury that, in his view, should be paid at current prices. He also stated that a stricter law should be passed for the embezzlement of the blacks to Montevideo. He argued for stimulating the export of rum to the ports of Africa and demonstrated the utility of establishing a public square in the main cities of Brazil.<sup>28</sup>

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<sup>25</sup> *Ibidem* p. 52.

<sup>26</sup> D. Rodrigo Coutinho, “Aviso de 1 de Outubro de 1798”, in *op. cit.*, p. 42-44. The document was also sent to the governors of São Paulo, Pará, Maranhão and Pernambuco, according to the copy of the original kindly given to me by José Luis Cardoso. The document was answered by the Count of Linhares on 28 December 1798. In this document, he stated that the disputes were endless, since many lands granted in *sesmarias* had been previously granted to others, and explained the problems of the concessions. Arquivo histórico ultramarino documentos avulsos rj caixa 171, doc, 104. 28 de dezembro de 1798.

<sup>27</sup> *Ibidem*, p. 42.

<sup>28</sup> *Ibidem*, p. 43-44. The issue of public terraces was emblematic of the administration of Dom Rodrigo and his father when he was administrator of Angola. It shows, in my opinion, all the efforts to form a kingdom able to meet not only the interests of the Crown, but to produce a common good, thus enshrining the notion of a Sovereign provider of welfare for his overseas subjects.

D. Rodrigo also mentioned that there was news of the existence of “a large number of vagrant individuals, who leave their farms to go and dwell in the cities, with severe damage to agriculture, and their own interests”.<sup>29</sup> He thus requested that steps be taken to avoid this evil.

The Secretary also reported that news about another problem had reached the kingdom:

It is also stated that often in Brazil *sesmarias* have been given to people who do not have the means, nor the industry to advantage of them, and then perpetuate a right that is absolutely not worthwhile to them; on the contrary, this practice impairs the neighbours of the same *sesmarias* and the others that have the means and that could receive the *sesmarias*.<sup>30</sup>

Again Dom Rodrigo made reference to the problems caused by the way in which *sesmarias* were granted, relying, at least in part, on the conclusions presented in the 1795 legal statute. However, he does not make any reference to that *alvará*, recommending only to

follow in this regard what is so commendably prescribed in our Ordinance, and remember that even if *sesmarias* are provided, they should be lost as soon as they are not cultivated, and should be transferred to more skilled hands which have enough means to make value from them.<sup>31</sup>

In other words, Dom Rodrigo emphasizes cultivation as a legitimate criterion for the occupation of lands by the *sesmeiros*, and recognises the need to suspend the granting of lands to those who do not cultivate them.

The brother of Dom Rodrigo, Francisco Mauricio de Sousa Coutinho, would be more forceful in his criticism of the *sesmaria* system and the *Alvará* of 1795 which sought, as we have seen, to regulate that form of appropriation.

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<sup>29</sup> *Ibidem*, p. 43.

<sup>30</sup> *Ibidem*, p. 43.

<sup>31</sup> *Idem*, p. 44.

## GOVERNOR FRANCISCO MAURICIO DE SOUSA AND THE SYSTEM OF *SESMARIAS*

### Brief notes on his career path

The life and political activity of Francisco Mauricio de Sousa Coutinho are less well known than his brother. We can make use of some notes made by the Marquis of Funchal, who made extensive notes of him in his book and some sparse information, found here and there concerning a man who, despite his importance, lived in the shadow of his famous brother.

According to the Marquis, Francisco was the fourth son of Dom Francisco Inocêncio de Sousa Coutinho and would have embraced a “sea life”.<sup>32</sup> During the revolt of the blacks in Caiena in 1793, and then as governor of Pará, he took care to prevent the spread of rioting in the territory of the Portuguese colony. Also as governor, he consolidated the importance of the captaincy of Pará for the Royal Navy, due to the logging in the region.<sup>33</sup> While governor, and if we are to believe the words of Varnhagen, he became the enemy of Barcelos Manuel Gama Lobo, who was in charge of the region of Rio Negro, who there “had governed for eleven years”,<sup>34</sup> being the victim of intrigues and jealousies that were attributed to the brother of the Minister Dom Rodrigo”.<sup>35</sup> Although accused of being a despot, Varnhagen attributes the organisation of public education to him “aimed at the city’s three humanities classes and two literacy classes, in addition to thirteen classes on the main settlements [sic] of the Amazon”.

He also sought to create a course in mathematics to train surveyors and bookkeepers.<sup>36</sup>

Following the trail of the Marquis’s notes and the brief commentary by Varnhagen, there is a lot of information gathered from loose documents

32 Marquez de Funchal, *O conde de Linhares*: Dom Rodrigo Domingos Antonio de Sousa Coutinho. Lisboa: Typographia Bayard, junho de 1908, p. 10.

33 *Idem*, p. 11.

34 Varnhagen, Francisco. *História Geral do Brasil*. Vol. 3, tomo V. São Paulo/ Belo Horizonte: Edusp/ Itatiaia, 1981, p. 67.

35 *Idem*.

36 *Ibidem*, p. 68. My italics.

of the Overseas Council regarding Francisco de Sousa Coutinho, showing his importance and his commitment as governor of the captaincy of Pará between 1790 and 1803.

Francisco had a huge role in the discussions about the region's natural resources, issuing a considerable number of informative texts and reports on problems related to the administration of the captaincy. In 1793 he sent the then secretary of State for the Navy and Overseas, Martinho de Melo e Castro, a memoir "in which VS [Francisco] describes the situation of this captaincy with great intelligence and insight, and the means that have been adopted and should be adopted for its security".<sup>37</sup> The then secretary was busy with the preparations for a squadron that was to depart on the day that he responded, but he undertook not only to answer not only that letter, but also the numerous letters sent by Francisco on the situation of the captaincy.

Francisco de Sousa Coutinho also carried out several expeditions to delineate the territory of Pará, particularly in relation to the captaincy of Mato Grosso. He furthermore described the coasts and rivers of the captaincy,<sup>38</sup> attempting to carry out a cartographic description of the area. In this sense, he can be considered as an explorer, in the sense that would be given to the word in the late eighteenth century, eliminating the pejorative military connotation and attaching it to the notion of scholar.<sup>39</sup>

Francisco, as the Marquis had noted, sought to safeguard the Portuguese territory from the uprising of blacks in Caiena in 1795, which then made the attack the French on the border regions with Pará more difficult and

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37 Ofício de 10 de junho de 1793. Projeto Resgate. Pará. Arquivo Histórico Ultramarino [Doravante AHU]\_ACL\_CU\_013, Cx. 103, D. 8157.

38 Among others: 1 de junho de 1791 OFÍCIO do [governador e capitão general do Estado do Pará e Rio Negro], D. Francisco [Maurício] de Sousa Coutinho, para o [secretário de estado da Marinha e Ultramar], Martinho de Melo e Castro, sobre a expedição de reconhecimento ao rio Araguari, a cargo do ajudante da praça [de São José] do Macapá, Manuel Joaquim de Abreu. Projeto Resgate. Pará AHU\_ACL\_CU\_013, Cx. 101, D. 7977. 10 de dezembro de 1792. OFÍCIO (minuta) do [secretário de estado da Marinha e Ultramar, Martinho de Melo e Castro], para o governador e capitão general do Estado do Pará e Rio Negro, D. Francisco [Maurício] de Sousa Coutinho, sobre o conteúdo de uma carta remetida ao governador da capitania do Rio Negro, [Manuel da Gama Lobo de Almada] a respeito da partida das expedições para o trabalho de Demarcações dos Limites Territoriais dos domínios portugueses e espanhóis, nomeadamente junto ao rio Japurá. Projeto Resgate. Pará. AHU\_ACL\_CU\_013, Cx. 102, D. 8103.

39 Marie Noelle Bourguet. "Explorador". In: Michel Vovelle (direção). *O Homem do Iluminismo*. Lisboa: Presença, 1992, p. 210.

sent a pilot – João Franco - “ in command of a smack to watch the sea and shores from Rio Cassipure and *Ilha Grande de Joanes* up to the shallows of Tigiosa”.<sup>40</sup> In that letter, sent on 3 April 1796, he stated categorically:

This news I take as true, and as such which were expected, unless by means of war in a foreign country, or use the blacks in defence, because after creating equality, liberty and fraternity, and admitting them into the exercise of public office, and forming a regular body and various militias, arming, and training them without choice or distinction [...] being put to the real situation, and consequently having to fight the French over a long period with hunger, and with the rebellion of Negroes, I do dwell that I cannot think of worrying this Colony, deprived of that same Black Corps, which it has always had, still doubting that it had so many weapons as it is said they took [...].<sup>41</sup>

He was deeply involved in defending the importance of the captaincy of Pará to the kingdom, in issuing, for example, in a letter to his brother, then Secretary of state for the Navy and Overseas, a memoir about the importance of the navigation of the Amazon River for the defence of the captaincy of Pará and the development of trade activities in the region.<sup>42</sup>

Francisco de Sousa Coutinho pleaded with the government for the phasing out of the Indian Directorate, which was carried out through the royal charter of 12 May 1798.<sup>43</sup> According to Patrícia Sampaio, he had proposed that this be immediately applied throughout the colony. However, “with the lack of guidelines to replace it, the Directory remained as a legal

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40 Ofício de 3 de abril de 1796. Projeto Resgate Pará. AHU.ACL- CU-013, Cx107. D. 8431.

41 *Idem*.

42 Ofício de 20 de setembro de 1800. Projeto Resgate. Pará AHU\_ACL\_CU\_013, Cx. 118, D. 9081.

43 Enciclopédia Luso-Brasileira, *op. cit.*, p. 224. I will return to this theme below.

benchmark, in effect unofficially operating in various regions”.<sup>44</sup> Be that as may, the aforementioned charter, despite having been created to be applied throughout the colony as a whole, remained in force in the region until the outbreak of Cabanagem in 1835.<sup>45</sup>

Also according to Patricia Sampaio, the charter’s origins were closely linked “to the long and detailed information provided by the governor of Pará, Francisco de Sousa Coutinho, regarding the evils, inefficiency and many abuses practised in the region due to the misapplication of the dictates of the Directory”.<sup>46</sup> However, despite its failure, the Royal Charter of 1798 shows the commitment of Francis in carrying out his duties as a servant of the kingdom, drafting proposals for the reorganization of the issues involving the Indians.

After his governance, he returned to the Kingdom during the period marked by the threat of Napoleonic forces, participating in “the opposition which was carried out against his older brother,”<sup>47</sup> who favoured an agreement with England. His political option, according to the Marquis, would have dramatic results for the path of Francisco. “And since in the prime of his life and with such brilliant and proven ability, he was not employed nor consulted on any important affair of State, and even, according to the harm to the aristocracy, one can say that he was deprived of the honour owed him of commanding the fleet in which H.R.M. went to Brazil”.<sup>48</sup>

His return to Brazil in 1807, as a passenger, not did remove his ostracism.<sup>49</sup> He was appointed a member of the Supreme Military Council,

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44 Sampaio, Patrícia. *Espelhos Partidos. Etnia, Legislação e Desigualdade na Colônia*. Universidade Federal Fluminense. Doctoral Thesis, 2001, p 220. See also by the same author: “Viver em aldeamento. Encontros e confrontos nas povoações da Amazônia Portuguesa, século XVIII” in: Lara, Silvia & Mendonça, Joceli (organização). *Direitos e Justiça no Brasil*. Campinas: Editora Unicamp, 2006, p. 23/57.

45 *Idem*, p. 25.

46 *Ibidem*, p. 221.

47 Funchal, *op. cit.*, p. 12

48 Funchal. *Idem*.

49 If we believe in the words of Funchal, Francisco Mauricio de Sousa Coutinho would have been one of the 15 thousand individuals who left the Court heading for Brazil on 29 November 1807. For a summary of the political conflicts of the period, see: Maria Lúcia das Neves Bastos Pereira & Humberto Fernandes Machado. *O Império do Brasil*. Rio de Janeiro: Nova Fronteira, 1999.



but “there continued to vegetate during 16 years of political idleness”.<sup>50</sup> Francisco Mauricio de Sousa Coutinho died in Rio de Janeiro on 19 November 1820, “from an attack of the head”.<sup>51</sup>

Whatever the reasons for his political defeat, since we can be certain here of the arguments of the Marquis, Francisco Mauricio de Sousa Coutinho accumulated many enemies during his governance of the captaincy of Pará. Considered a despot by Vainhagem, he was, in fact, the target of criticism and documents under the custody of the Overseas Council show us that his career as a politician and civil servant was marked by intense conflicts.

In 1796, in a letter sent to the Queen by the *Juiz de Fora* and the Orphans of the city of Belém of Pará - Luiz Joaquim Frota de Almeida - the judge reported the litigation between Manuel Valério Ribeiro and Caetano Jerônimo Rodrigues and complained of the interference of the governor in issues involving his exclusive remit.<sup>52</sup> In December of that same year, Francisco sent a Letter to the Queen complaining of insults made by the same individual and requested that steps were taken to re-establish the truth.

If this being true then I do receive the punishment deserved, and verifying this false, as they are, should Your Majesty act in conformity with this, as appropriate, so that after the seven years of existence in such a hardworking government and critical juncture, despite the more rigid and austere demeanour, it and my reputation should not forever be tarnished with scandal for all these people, who are still not deceived by this fraud, knowing that nothing is on my conscience, nor to their service, nor to that of Your Majesty in judging me worthy and suffering such that I am not able to hold this in.<sup>53</sup>

On 31 August 1797 it was the turn of the Professor of the chair of Philosophy in Pará who complained of proceedings against him made by Francisco and requesting the Queen that he be allowed to return to Lisbon,

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<sup>50</sup> *Ibidem*.

<sup>51</sup> Vainhagem, *op. cit.*, nota 64, p. 69. Despite numerous attempts, I have not found the inventory of Francisco Mauricio de Sousa Coutinho.

<sup>52</sup> Carta de 24 de março de 1796. Projeto Resgate. Pará AHU\_ACL\_CU\_013, Cx. 107, D. 8424.

<sup>53</sup> Ofício de 18 de dezembro de 1796. Projeto Resgate. Pará. AHU\_ACL\_CU\_013, Cx. 108, D. 8515.

“in order to be free of the guilt attributed to him in the *Correição do Crime da Corte*”.<sup>54</sup>

His fights with the *juiz de fora* Luiz Joaquim Frota de Almeida deepened that same year of 1797. In a letter issued on 6 December 6, Francisco de Sousa again complained of insults and offences against him, accusing him of being “the head of the rebels”.<sup>55</sup> Through that document, we also learn that the governor also had a large and important enemy, the Bishop of Pará, Dom Manoel de Almeida Carvalho. In 1801, Francis sent to the then Secretary of State for the Navy and Overseas, Dom João Rodrigues de Sá e Melo, the Viscount Anadia, a letter which reported the measures taken against the despotism of the bishop, in his administration of his Bishopric.<sup>56</sup>

At least on this occasion it seems he was victorious in his quarrel with the bishop. This set of documents contains the statement:

Copy of a letter written to the governor and captain general of the captaincy of Pará dated 16 October 1802. You deserved the royal approval for the prudence with which your excellency behaved with the Bishop of this Diocese about the deed practised by the vicar of Bragança to the council of that Vila, mentioned in Letter number 80, and that the said fact by itself deserved little consideration, with all that often happens [...] that can produce unhappy consequences, motivated by vanity or fanaticism, or by jealousy of jurisdictions.<sup>57</sup>

However, disputes between the Bishop and Francis continued. On the eve of his departure from office, and his return to Lisbon, where he would depart on the frigate São João Príncipe, on 28 September 1803.<sup>58</sup> the Bishop had sent on 30 and 31 August a letter to the Prince Regent and a letter to the Secretary of the Navy, complaining and requesting steps to repair the actions of Francisco. Firstly, the Bishop requested that “the guilty

54 Consulta em 31 de agosto de 1797. Projeto Resgate. Pará. AHU\_ACL\_CU\_013, Cx. 110, D. 8627.

55 Ofício de 6 de dezembro de 1796. Projeto Resgate. Pará. AHU\_ACL\_CU\_013, Cx. 110, D. 8655.

56 Ofício de 28 de novembro de 1801. Projeto Resgate Pará. AHU\_ACL\_CU\_013, Cx. 121, D. 9273.

57 *Idem*.

58 Ofício de 28 de setembro de 1803. Projeto Resgate. Pará. AHU\_ACL\_CU\_013, Cx. 127, D. 9744.

should have legal proceedings initiated for various crimes, protected by that governor.” In the letter, the Bishop stated:

The strict obligation to help the impetuous current of the most baleful freedom of conscience in these calamitous times for the purity of Christianity and the firmest stability of these Dominions of Pará does move the respective Diocesan to instantly request effective and earnest arrangements worthy of the unfailing Justice and Religious clemency of Our Royal Highness.<sup>59</sup>

In his dispatch the next day, the Bishop complained once again about the governor’s attempt to remove him from the Bishopric “for reasons that are still ignored in the certainty that I have never failed him with respect and courtesies, or acted against another priest (probably friend or close to Francisco) that “with an arrogant character very similar to Luther with the presumption of being a philosopher” he has distributed anonymous letters.<sup>60</sup> 110

When faced with important enemies, concerned with repairing his mistakes, Francis left his post as governor of the captaincy of Pará in 1803. What little we know about it demonstrates, however, that his behaviour throughout those years was characterized by the intense defence of his proposals for the improvement of the economic activities of the captaincy, guided by an “enlightened” path stating that in addition to his character - Despot for some - Francisco was a servant of the kingdom<sup>61</sup> and as such sought to answer the requirements of a state in control of its colonial territories, the knowledge of their natural wealth and, as we shall see, in the preparation

59 Carta de 30 de agosto de 1803. Projeto Resgate. Pará. AHU\_ACL\_CU\_013, Cx. 126, D. 9726.

60 Ofício de 31 de agosto de 1803. Projeto Resgate. Pará. AHU\_ACL\_CU\_013, Cx. 126, D. 9731.

61 According to Carlo Capra, the terms *fonctionnaire* and *bureacratie* appeared for the first time in France at the end of the eighteenth century. For the author, “this was not the transition to capitalism, but the strengthening of the military and fiscal requirements of States, the trend towards increasing control of territory and a tighter social discipline, the evolution of criteria for the legitimation of power [ that] make up the appropriate framework for a historical consideration of bureaucracy and officialdom, at least within the European area”.” Carlo Capra. “O Funcionário”. In: Michel Vovelle, *op. cit.*, p. 254.

of a proposal for the regularization of the main Portuguese colony. As a servant of the crown, he sought to do justice in the task with which he had been entrusted, and following what he believed to be the role of governor.

The Decree suspending the 1795 *Alvará* requested that

this be sent to the governors of the captaincies of Brazil to inform them of the way in which they could most easily and comfortably, avoiding new issues and cases, that might be put into practice what was established there and harvest the keenly expected result without any inconvenience or sensitive concession.<sup>62</sup>

The text produced by Francisco de Sousa Coutinho in response to the request made by the Crown is critical to understanding the vision of power of a man who ran the governance of one of the captaincies. It is also possible to consider that his views on the *sesmaria* system may have influenced the actions of his brother in running the State Department of the Navy and Overseas Dominions, since Francisco had been part of the colonial administration since 1789, when he served as governor for Pará, so seven years before the appointment of Dom Rodrigo to the post of secretary.

Thus, in response to the decree which revoked the *Alvará* of 1795, Francisco de Sousa Coutinho wrote a thorough text, dated 26 July 1797, on the subject of *sesmarias*. In this text, Francisco dissects all the articles of the aforementioned *Alvará*, to propose a revision of the system of *sesmarias*, more in keeping with the colonial reality.

Firstly, he argues that all the documentation referring to *sesmarias* should be reformulated in one single volume, since he was sure that much of this was loose, and many of them were also not registered. Furthermore, when they did exist [records] “lawyers and prosecutors were not allowed to resolve, or enter the offices of the governing bodies, in the accounting offices

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62 Carta de 27 de julho de 1797. Carta do [governador e capitão general do Estado do Pará e Rio Negro], D. Francisco [Maurício] de Sousa Coutinho, para a rainha [D. Maria I], propondo medidas para se solucionarem os problemas resultantes da concessão de *sesmarias* de terras localizadas naquela capitania. AHU\_ACL\_CU\_013, Cx. 109, D. 8605. This document was published in the IHGM Magazine Revista IHGB: “Informação de D. Francisco de Sousa Coutinho, Governador e Capitão-General do Pará. Sobre As Medidas Que Convinha adoptar-se para que A Lei das *Sesmarias* de 5 de Outubro de 1795 produzisse o desejado efeito” 26 de Julho de 1798. Revista IHGB. Tomo 29, parte 1, ano 1966, vol. 32, p. 335 a 351.

of the boards, or in other notary offices”.<sup>63</sup> He recognised that combing all the laws pertaining to the topic would produce a bulky document, but despite “this defect” it involved “legislating on established properties, and to establish in the territory that an extension may be slightly less than that occupied by the principal kingdoms of Europe”.<sup>64</sup> For him, what mattered is that the “law affects and should affect all the properties” and that it produces “a strong effect in the minds of the most important and useful vassals, who are the farmers”. It is the clarity of its principles, Francisco states, since in being so

everyone can understand them, so that they do not worry, that they do not consider themselves lost or delivered into the hands of the prosecutors and scribes, so that they are not sacrificed through their ignorance, and finally not to forsake their sites, and the establishments they have set up.<sup>65</sup>

In defence of the principle of cultivation as the legitimising element of granting *sesmarias*, Francisco emphasised that for the provisions of the second article to work, where it is laid down that the governors and captains-general process and regularize the grants, more is necessary than laid down there. After investigation, and where the result would be the loss of the land by the *sesmeiro* who is not cultivating it, it is necessary, once the land has been returned and there is no opposition from third-party proceedings, that the lands be individualised in both quantity and quality, in terms of slaves and tools and the provisions needed to start their use. Thereafter, the District Council shall appoint

praiseworthy individuals to one the one hand evaluate the value of the requested lands, the goods that form part of it, and the extent to which it comprises of virgin forests, meadows, high and low, and fields: and on the other hand the extension of each part that the applicant shall be required to cultivate and provide value with the means presented [...].<sup>66</sup>

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63 *Idem*, p 336.

64 *Idem*.

65 *Idem*. p. 336-337.

66 *Ibidem*, p. 337-338.

Francisco Coutinho is reticent on the provisions regarding the demarcating and devotes paragraphs to demonstrating the reasons for his doubts. He is clearly convinced of the difficulty of the measuring, as laid down in the fifth article of the Charter, even if it is done by people in the profession “analogous to the work of this nature”.<sup>67</sup>

He also clearly disagrees about the limits of concession of the *sesmarias* and states:

half of a league squared seems to be an area of two million two hundred and fifty thousand fathoms squared. A farmer who has about one hundred slaves of various ages and both sexes and chooses thirty of each sex capable of work, most of which will be able to understand their clearings in such way to take advantage of them, and that he can give the time needed to reap the benefit, might cultivate two hundred fathoms in the front with equal measure in the back, according to what I could gather in this respect, and from what I heard from people who have confidence in their intelligence, though they still doubted that they can achieve so much.<sup>68</sup>

He continues:

But to do a safe calculation, imagine the double, and consider forty thousand fathoms squared, eighty [thousand] of which a farmer can cultivate annually; in this way, dividing that area of two million and two hundred and fifty thousand fathoms squared by this eighty thousand, the quotient of twenty eight indicates that the farmer subject to the referred circumstances, with half a league squared of land, will have enough to clear and to work for twenty eight years, even though he makes two clearings per year, each one with two hundred fathoms in square; if making only one of this same size, he will have land for fifty-eight years [...].<sup>69</sup>

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67 *Ibidem*, p. 339.

68 *Ibidem*, p. 340.

69 *Ibidem*. p. 341.

His criticism of the permission to grant the *sesmeiro* such large areas was neither devoid of meaning, nor was it even just an abstraction. Francisco Coutinho possessed a solid knowledge of colonial agriculture and made explicit reference to the production of manioc, rice and sugarcane in relation to the land actually occupied. He was also aware of the concessions in other territories and was able to make a brief comparison with the Dutch colony of Surinam, “[...] where the colonists have a maximum concession of five hundred acres of land”.<sup>70</sup>

As a public servant of the kingdom, however, Francisco Coutinho was aware that *sesmarias* had to continue to be granted, even though the procedure then adopted was contrary to his view on the matter. On 31 October 1795, he himself had granted to José Feliz Dias da Motta ““a surplus of vacant lands in the vicinity of the cattle ranch that José Feliz Dias da Motta possessed on the island of Marajó”, which involved the granting of “two leagues in front, more or less, with the those of the back to be found up to the Mondongos”.<sup>71</sup>

Be that as may, his criticism of the bases of the concession was grounded on the notion that they should have been based, since the beginning of colonization, on a “well understood economy”. As the Governor of Pará, he had had to face the invasion and destruction of the forests and the lack of respect shown towards the innumerable royal decisions in this area. Therefore, he was cautious. It was not enough to enact a new decree, or even a new regulation. To demarcate the land and preserve the forests, it was necessary to have “anticipated general recognition of all the rivers, and the lands between them, or a general, more exact, and individual map, which certainly is impossible to drawn up in a short period of time, and without which all is arbitrary”.<sup>72</sup> We know that was exactly what he had

<sup>70</sup> *Ibidem*, p. 341.

<sup>71</sup> Requerimento de 31 de outubro de 1795[?] Requerimento de José Félix Dias da Mota para a rainha [D. Maria I], solicitando confirmação da carta de data e *sesmaria* de terras localizadas na ilha do Marajó, principiando junto ao lago do Alçapão. Projeto resgate. Pará. AHU\_ACL\_CU\_013, Cx. 106, D. 8383.

<sup>72</sup> “Informação de D. Francisco de Sousa Coutinho”, *op. cit.*, p. 342.

tried to do when he had produced so much information concerning the mapping of rivers.<sup>73</sup>

The different forms of appropriation and the provisions in their regard were the central object of article thirteen of the *Alvará* which merited considerable analysis as to the reasons for its failure. Francisco categorically stated that there were very few lands effectively demarcated and – it is worth saying – if the demarcations were not affected by “intelligent and suitable people for such tasks, there might be a large alteration, and the *discussion about the legitimacy of titles or of the [lands] conceded by the donatary that was his, or by the government, might endure for centuries[!]”*.<sup>74</sup>

In several places, such as in the villages of Macapá and Bragança and the settled islands, the distribution of lands “was made among them in the same way in which it is practised in the kingdom and the islands.”<sup>75</sup> Francis was certainly aware that the process involving the occupation of Pará had involved the exclusive use of the majorat since around 1795. Antonio Fernandes Alves had requested exactly this type of bond. According to that same Antonio, he was the heir following the will of his uncle, Captain António Fernandes de Carvalho who

passed away in the city of Pará, where he had been resident, with the aforementioned deceased individual being the possessor of many important estates and lands, located in that state, many of which had a reduced level of cultivation, which he introduced to his will, bound by the regular Majorat and designating the first administrator the petitioner and his descendants as stated in the document copied in the attached

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73 Among others. Ofício de 1 de julho de 1791. Ofício do [governador e capitão general do Estado do Pará e Rio Negro], D. Francisco [Maurício] de Sousa Coutinho, para o [secretário de estado da Marinha e Ultramar], Martinho de Melo e Castro, sobre a expedição de reconhecimento ao rio Araguari, a cargo do ajudante da praça [de São José] do Macapá, Manuel Joaquim de Abreu. Projeto Resgate. Pará. AHU\_ACL\_CU\_013, Cx. 101, D. 7977. Aviso de 14 de setembro de 1796. 1796, AVISO (minuta) do [secretário de estado da Marinha e Ultramar, visconde de Anadia], D. Rodrigo de Sousa Coutinho, para o [governador e capitão general do Estado do Pará e Rio Negro, D. Francisco Maurício de Sousa Coutinho], sobre a realização de uma descrição geográfica e topográfica do Estado do Pará, com seus limites, povoações, actividades económicas, militares e financeiras para ser enviada para a Secretaria de Estado da Marinha e Ultramar. Projeto Resgate. Pará. AHU\_ACL\_CU\_013, Cx. 108, D. 8490.

74 “Informação de D. Francisco de Sousa Coutinho” *op. cit.* p. 345, author’s italics.

75 *Idem.*



certificate, and in order to establish the aforementioned bond a licence from H.M. is required.<sup>76</sup>

Moreover, Francisco also sought to find a way to ensure the right to land for the Indians, because he at the least stated that

all of the Indians arranged in settlement villages have their small farms, not obeying the dispositions of the Directory [of Indians]; and those who live dispersed, as well as others already mixed, also live by various rivers and districts in the same conditions; and all of them, by their rusticity and ignorance, deserve particular arrangements[...].<sup>77</sup>

The governor reiterated his concern about the fate of those lands, arguing that the prosecutor representing the Indians solicit letters with a date, and “if they give it free, or just give to every settlement, or by each river they can live freely”.<sup>78</sup>

If we remember his activity when the Charter of 12 May 1798 was promulgated, as mentioned above, we can note that his proposal for the issuing of indigenous lands was written after his draft revision of the system of *sesmarias*, edited, as I have already indicated, on 26 July 1797. According to Patricia dos Santos, “the letter proposed by Coutinho reconsiders the principles guaranteeing territorial occupation through the stability and of the peoples and inhabitants regularly established there, enjoying the same ‘justices and privileges’”.<sup>79</sup> According to this author, “this is the point that opens up the law: the restitution of rights to the settled Indians - especially freedom - so that they are no different from the others vassals of His Majesty, directed and governed by the same laws that govern all the subjects of the

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76 Requerimento de 13 de novembro [ant 1795-] Requerimento de Antônio Fernandes Álvares de Carvalho para a rainha [D. Maria I], solicitando confirmação da instituição de um morgado que lhe foi deixado em testamento por seu tio, o capitão Antônio Fernandes de Carvalho. Projeto Resgate. Pará. Requerimento de Antônio Fernandes Álvares de Carvalho para a rainha [D. Maria I], solicitando confirmação da instituição de um morgado que lhe foi deixado em testamento por seu tio, o capitão Antônio Fernandes de Carvalho.

77 “Informação de D. Francisco de Sousa Coutinho, *op. cit.*, p. 345

78 *Idem.*

79 Sampaio, Patricia, *op. cit.*, p. 225.

monarchy”.<sup>80</sup> Therefore, when carrying out his draft review, Francisco produced a draft with greater scope, since the regularisation of land occurred in the midst of the consecration of a vision guided in the knowledge that the freedom of the Indians went with the regularisation of their property.

Worried about scrutinising the entire concession process, Francisco also argued that, in many cases, such as the island of Joannes, what was first necessary to be done was to make an exact map, determining the common public lands for the cattle from the farms, as well as the drinking troughs and places for the shipments of animals. After that, it was also necessary to summon all the farmers with or without title. Thus:

by the chronological order of the legal titles each one should be informed, not of the totality of the lands mentioned in their property document, but of the lands proportional to the number of heads they possess, since nobody informed the authorities about how the lands were obtained, and otherwise all the lands according to the law would be void.

He continued: “After these, those who hold titles should be similarly identified, along with those who had titles, or those who had illegal, or false titles, which should then be given all the legitimacy deserved [...]”.<sup>81</sup> In other words, for Francisco it was not possible to untangle all the regions with one and the same general procedure, since there were cases in which it was not even possible to find farmers who had fulfilled the royal provisions. Some furthermore, had illegal, fantastic! titles – or, in other words - forged titles.

Francisco Coutinho was very careful in his defence of the demarcation of land, even though as governor he was constrained to grant lands according to the law, as when he authorized the occupation of three leagues in length and one in width in Rio Carará for Captain Estevão de Almeida e Silva, on 10 September 1796, three months before the suspension of the *Alvará*.<sup>82</sup> He was aware that the process was lengthy, costly and needed qualified people

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80 *Idem*.

81 “Informação de D. Francisco de Sousa Coutinho, *op. cit.*, 346

82 Requerimento de 10 de setembro de 1796. Requerimento do capitão Estevão de Almeida e Silva, [morador na vila de Alcântara da capitania do Maranhão] para a rainha [D. Maria I], solicitando confirmação carta de data e *sesmaria* situada nas proximidades do rio Carará. Projeto Resgate. Pará. AHU\_ACL\_CU\_013, Cx. 108, D. 8489

to accomplish the project. For him, without the implementation of prior actions, the law could only end up exciting

larger disorders as ordinarily occur without sufficient motive, but being sufficient enough that someone would want to demarcate [his lands] as soon as the demands begin, with animosities and hatred then materializing, which have serious consequences.<sup>83</sup>

Demarcation is to impose limits on the action of others and the governor of Pará recognised that this work laid bare the fact that his final result - demarcation itself - was the result of a detailed process attentive to multiple forms of occupation. It was not, therefore, a task to be put into practice by judges, and graduates, and could not be inserted into judicial ordinances. This was not the case of an isolated property being demarcated, where

there is no doubt that a guide with his compass, and a fathom cord, could draw a quadrilateral on the ground, and where all four sides are practically equal; though even then there may be many differences in the way to draw a perfect square that is regularly conceded, because he does not have the ordinary principles necessary to determine the base from which it should be measured.<sup>84</sup>

Thus, in this case, the *sesmeiro* would be given the extent of his concession, after which the minister could give him legal possession. The whole damage resulting from this measurement would be reduced to a few fathoms of land lost or gained.

The problem was demarcating on contiguous and large tracts of land. In these cases, “though without bad intentions, the guide cannot avoid committing injustices”.<sup>85</sup> For Francisco Coutinho, the task of demarcating these areas required the involvement of a geometer, “the help of trigonometry to measure the geographical delineation of the coast, and the map of the country”.

83 “Informação de D. Francisco de Sousa Coutinho, *op. cit.*, p. 346.

84 *Idem*, p. 347.

85 *Ibidem*.

The presence of an astronomer was necessary, who could rectify by repeated astronomical observations “the exact position of the main points of the same tract of land, and its respective map, so that geometry could rectify and refine this, correcting the imperfection of his senses, of his instruments, and of his measurements.” He also stated that after the verification of the legitimate titles and having determined the extensions of the home of the *sesmeiro*, there was another task that had to be carried out by the geometers, namely “accommodating them on the chart,” that is, plot the *sesmarias*, “and then competently divide and mark them on the land”.<sup>86</sup>

One of the consequences of modern rationalism was undoubtedly the consecration of mathematics as “a prototype of the intelligibility of reality”.<sup>87</sup> Thus, “mathematical procedures enabled not only the rationalisation of physical nature, but also the formulation of a prototype of the coherent organisation of thought, which transforms geometry into a real paradigm”.<sup>88</sup> It is possible to infer that Francisco Mauricio de Sousa Coutinho was aware of the discussions in the field of knowledge of mathematics.

In his study on the life led by Dom Rodrigo, Andréé Silva pointed out that one of his closest friends was José Anastácio da Cunha. This professor of Mathematics was appointed Professor (*Lente*) in Geometry at the University of Coimbra in 1773, at the age of 29. He was proposed by Marques de Pombal and remained there for five years. A great reader of Hobbes, Voltaire and Rousseau, Anastácio da Cunha was the embodiment of a great intellectual, and “c’est sa culture mathématique et scientifique qui le révéla comme un génie”.<sup>89</sup> The intense exchange and friendship between these two friends meant that the mathematician not only shared a friendship

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86 *Ibidem*. p. 347/348.

87 Simões, Pedro Jose Calafate Villa. *O conceito de natureza no discurso iluminista do século XVIII em Portugal*. Doctoral thesis in Philosophy, Faculdade de Letras de Lisboa, 1991, p. 121.

88 *Idem*.

89 Diniz Silva, Andréé Mansuy. *Portrait d’un homme d’État*: D. Rodrigo de Sousa Coutinho, Comte de Linhares. 1755-1822. Vol. I. Lês année de formation 1755-1796. Lisboa, Paris; Calouste Gulbenkian, 2002, p. 55.

with Dom Rodrigo, but introduced him into “dans le cercle de ses frères et soeurs, ou il fut unanimement estimé et adopté”.<sup>90</sup>

The main work of Anastácio da Cunha, “Mathematical Principles” was first published in instalments in 1782, in Lisbon, where he was a teacher at the Casa Pia, since, by virtue of certain accusations, he had been removed from the University of Coimbra.<sup>91</sup>

If from Andréa Silva’s study it is possible to assert the enormous influence exerted by Anastácio da Cunha on the life of Dom Rodrigo, by extension it can also be concluded that this influence spilled over to his younger brothers. Furthermore, according to this author, it fell to Dom Rodrigo the task of “lui enseigner la géométrie et toutes les mathématiques nécessaires dans la Marine”.<sup>92</sup>

It is no wonder, therefore, that for Francisco Coutinho, it would be possible only with the use of knowledge of geometry and astronomy to carry out a proper demarcation of the colonial lands. And as such it is possible to understand Varnhagen crediting Francisco with having been the driving force in setting up the subject of mathematics in the captaincy of Pará, with the intention of training surveyors.

For him, this was the primary reason for the suspension of the *alvará*, because without such arrangements it would not be possible to “perform or understand any demarcation”.<sup>93</sup> Without the presence of geometers and astronomers, the magistrate could only, at most, judge the legitimacy or not of titles, since

the most proper way to avoid legal issues and questions, is that while the geometers and astronomers in charge of demarcation make measurements and any necessary observations, in any district, the magistrate who follows them under the same diligence, calls the inhabitants, and requires them to produce

90 Furthermore, according to Andréa Silva, José Anastácio da Cunha was hunted by representatives of power due to his ideas, in the *Viradeira* period. *Idem*, p. 57. Denounced by the Inquisition, Anastácio da Cunha never returned to the post of professor at the University of Coimbra.

91 For a brief biography, see: <http://www.educ.fc.ul.pt/docentes/opombo/seminario/acunha/index.htm>. Accessed on 19 September 2006.

92 *Idem*, p. 63.

93 “Information from Dom Francisco de Sousa Coutinho, *op. cit.*, p. 348.

their titles, checks that they are legal, declares those that are not, but considers the establishments they possess, and that they should be saved for them[...]”<sup>94</sup>

If on the one hand the *sesmeiros* could keep the extent of their lands which had been demarcated earlier, if they did not have anything adjoining, it was necessary to order the lands into areas, whose properties were entangled with each other, and whose botched demarcations produced injustices.<sup>95</sup>

In short, the governor of Pará sought to unravel the articles listed in the *Alvará* of 1795, in an attempt to propose solutions to problems arising from the concession and demarcation of *sesmarias*. In his findings he was clear that - if it was carried out - the *Alvará* would not untangle problems, but perhaps even aggravate them. Francisco Mauricio de Sousa Coutinho was aware that the Royal provision could do little in practice. It was a letter of intent with questionable effectiveness, since it ignored, among other aspects, that the process of land measurement was something extremely complex, involving various fields of knowledge, besides that of the law. But he also knew that his situation was very delicate, since one of the main functions of the governor was to grant *sesmarias*, in defiance of his criticism of the means of granting them.

It is thus understandable why Francisco continued to grant land in the manner envisaged by law, even after writing an acidic and harsh critique against the system. On 19 August, around 1800, he granted three leagues of land in length and one in width to Joana Francisco de Jesus Nogueira, located on the upper right bank of the river Turyaçu.<sup>96</sup> A little later, probably on 17 September 1801, he also granted Manuel Gonçalves Moura “one league approximately from the buoy of Iguarapé [...] to the

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94 *Idem*, p. 349.

95 *Ibidem*, p. 350.

96 Requerimento de 19 de agosto [ant 1800]. Requerimento de Joana Francisca de Jesus Nogueira, moradora na cidade [de São Luís] do Maranhão, para o príncipe regente [D. João], solicitando a confirmação de uma carta de data e *sesmaria*, de terras a si concedidas e situadas na margem superior direita do rio Turyaçu no Estado do Pará. Projeto resgate. Pará, AHU\_ACL\_CU\_013, Cx. 118, D. 9060.

front to the dry part or the canal which goes towards the aforementioned River [Pindubal] with another league in the back”.<sup>97</sup>

## Sesmarias and the ancien regime: internal borders and power

The conclusions regarding the *Alvará* and Francisco de Sousa Coutinho’s considerations are the key to the answer to understanding not only the importance of Francisco’s proposals, but also understanding how difficult it was for an employee of the kingdom to carry these out, and reorganise the process of granting lands in the captaincy. Granting lands through the *sesmaria* system was, above all, a political rather than a territorial concession. The granting, in expressing the power of the grantor, in this case the Crown, required the submission of those who received this, in the belief of a state that was grounded on the hierarchy present within the whole of society. If the state was, so to speak, the driver of harmony and justice, that does not mean to say that its agents could resolve conflicts arising from occupation, because the conflict was a structural one, precisely to promote submission, so that the *sesmeiros* could recurrently ask the Crown to solve a lawsuit between clashing parties or between *sesmeiros* with their documents relating to the same territorial space. The governors endowed the land, which was later confirmed by the Overseas Council, but this grant was located within a precise geographical demarcation.

It was increasingly obvious that the *sesmeiros* would react to royal edicts. But the *Alvará* – a singular effort to form a new regime – revealed the conflict that it wanted to hide, because along with it also came quarrels, hatreds and grudges between *sesmeiros*, and between many *sesmeiros* and the Crown itself. It was thus more preferable than the solutions to the conflicts formed part of the space of justice in individual lawsuits, where the political force of some would assure the territorial extension they sought to have sealed, at the expense of others.

The *sesmaria* was the instrument of colonisation and, in this sense, an instrument of power. However, the relationship between internal and external borders is not simple. All authority tends to limit its power within a territorial space and this circumscription reinforces authority, but also

97 Requerimento de 17 de setembro [ant 1801] Requerimento de Manuel Gonçalves Moura, para o príncipe regente [D. João], solicitando confirmação de carta de *sesmaria* de terras situadas nas proximidades do igarapé Iandiáguara, fazendo frente ao canal seco do rio Pindubal, na capitania do Pará. Projeto resgate. Pará. AHU\_ACL\_CU\_013, Cx. 120, D. 9231.

limits it. The Portuguese colonial empire was based on the conquest of colonial spaces which were supposedly unoccupied. If, as Jean Pierre Raison states, political power can establish its strength in various ways in setting up local limits<sup>98</sup>, it is certainly true that the non-establishment of precise internal boundaries between farmers may also reinforce this same power, especially when we consider that specifying such limits was not mooted in practice and the confirmation of the grant was given on the other side of the Atlantic, by the Overseas Council. Thus, the Crown expressed its ability to mediate, exactly because it did not assume – in a legal form - the need to rethink the ways of granting lands Overseas, so the *Alvará* was suspended only one year after its enactment. In addition, the proposals of Francisco de Sousa Coutinho, if implemented, would represent a break between the broader political interests involved in the relationship of the Crown with the *sesmeiros*.

Hated by important figures involved in colonial policy, bishop and judges, Francisco's proposed reform of the system of *sesmarias* went beyond the policy expressed in the notion of good government, and his performance as an employee of the kingdom. It was also, so to speak, an experiment in relation to the decisions made by the Crown to grant *sesmarias* and was also part of the broader political design of Francisco Mauricio de Sousa Coutinho.

For Hespanha “the governors of captaincies were independent in respect to the local (economic) government of their provinces, subject only to the governor general on matters relating to general policy and the defence of the State of Brazil as a whole”.<sup>99</sup>

The political career of Francisco de Sousa Coutinho shows us, however, that in practice things were a little more complicated. Francisco's proposal could only have signified his seriousness in enforcing the laws enacted by the Crown, in his attempts to contribute to good governance, including that of his brother Dom Rodrigo. However, in granting *sesmarias* - even after drawing up reform proposals - Francisco shows us not only that his independence regarding the major decisions of the Crown were quite limited, but also that his ability to implement his way of granting the *sesmarias* was

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98 Raison, Jean-Pierre. “Terra”. *Enciclopédia Enaudi*. Lisboa, Imprensa Nacional, Casa da Moeda, 1986, pp 117/137.

99 Hespanha, Antonio Manoel Hespanha. A Constituição de um Império Português: Revisão de Alguns enviesamentos Correntes”, in: Fragoso, João e outros. *O Antigo regime nos Trópicos: a dinâmica imperial portuguesa (séculos XVI-XVIII)*. Rio de Janeiro, Civilização Brasileira, 2001, p 177 e 178.



quite reduced. Thus, if the governors “like the king himself, could waive the law for a more perfect realization of their mission”<sup>100</sup> and this expressed itself in the creation of an “area of effective autonomous power”,<sup>101</sup> this autonomy would only become a reality if Francisco had not dared to dispute the economic and political foundations of the farmers, namely their land.

In other words, it was up to the governor - as one of his main tasks “to grant *sesmarias*, in the most traditional continuous and decisive manner and grant lands in Brazil [...]”.<sup>102</sup> They were the judges of the donataries [who] had to inspect the legality of the concession and land use, after its granting. With the continuous incorporation of captaincies into the direct administration of the Crown, whether by vacancy, or by purchase, the granting of *sesmarias* became up to the governors of captaincies, while the inspection of their legality was allocated to the *juízes demarcantes* proposed by the district council”.<sup>103</sup> However, what Francisco proposed was not just the outline of a new proposal, to formulate a new law relating to territorial appropriation, because he dared to question the occupation and territorial confrontations in the areas belonging to the *sesmeiros*, which was the task of the barristers and the *juízes demarcantes*. He even dared to state that they were not the central characters in establishing the legality of the occupation, but rather surveyors and astronomers, based on the certainty of rational principles which Mathematics enshrined with - we repeat - “a prototype of the intelligibility of reality”.

In registering his perceptions of the problem of granting *sesmarias*, Francisco Maurício de Sousa Coutinho took upon himself the task of contributing to a policy that reoriented the way that lands would be granted. But in doing so, he revealed the limits of his power as governor of the Captaincy of Pará.

The most interesting aspect of this story is not just the fact that the proposals in the *Alvará* reoriented land policy, despite the limitations of this approach. From that date, the books confirming the *sesmarias* would be in the custody of the Overseas Council, revealing new attempts to control the process of occupation. The most interesting aspect is to realise that the *sesmeiros* sought to attend to the Royal Orders and forwarded their request

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100 *Idem*, p. 175.

101 *Ibidem*.

102 *Ibidem*, p. 178.

103 *Ibidem*, p. 178/179.

for the confirmation of their lands. In other words, the threats announced by the *Alvará* had a practical effect: despite regional differences, many *sesmeiros* obeyed, even though such obedience hid a greater wish, which was to obtain legitimate title for the granting of lands. Analysing the land concessions during the Mariano period will therefore be the task of our next chapter.

PART 3  
*SESMARIAS:*  
EMPIRE AND CONFLICT



THE LAW OF *SESMARIAS* AND COLONIAL OCCUPATION:  
CONCERNING THE LAWS

CONCESSIONS DURING THE *MARIANO* PERIOD:  
REGIONAL MAPPING AND INDICATIONS

THE CROWN INTERVENES: THE EMBLEMATIC CONCESSIONS



## THE LAW OF *SESMARIAS* AND COLONIAL OCCUPATION: CONCERNING THE LAWS

The *sesmarias*, little discussed by Portuguese historiography and not very present in Portuguese history of the modern era, – it is good to remember – were part of the body of laws of the *Ordenações Filipinas* of 11 January 1603 and were discussed and updated through various royal charters and orders over the following centuries, until their extinction.<sup>1</sup> This was, in short, a law originally designed for the occupation of uncultivated land in Portugal which became the legal framework to consolidate overseas colonisation. How was the restructuring made – if indeed there was a restructuring – of a Portuguese internal law so as to become a law that sort to colonise new, supposedly virgin, lands?

The answers are not easy to obtain. There has been very little discussion about the legislation of *sesmarias* and their impact on the territories of Portuguese rule, except for the work of Antonio Vasconcellos Saldanha.<sup>2</sup> By stating that the granting of *sesmarias* would have been one of the cornerstones of the traditional colonial system, Saldanha wondered:

to what extent the constant recourse to the term *sesmaria* would mean, in the foral charters and the Captaincy donatary letters, an identification or full implementation of the system established in the fourteenth century, upheld in the *Ordenações Afonsinas* and then partially passed to the *Ordenações Manuelinas e Filipinas*.<sup>3</sup>

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1 It is true that the *Ordenações Filipinas* are an update of the *Ordenações Manuelinas*. “Instead of recasting the old and the new, the compilers mechanically joined and added Manueline laws and later precepts, making them often very difficult to understand”. Espinosa Nuno da Silva. *História do Direito Português. Fontes de Direito*. Lisboa, Fundação Calouste Gulbenkian, 3ª edição, 2000, p. 314.

2 Antonio Vasconcellos de Saldanha. *As Capitánias. O regime Senhorial na Expansão Ultramarina Portuguesa*. Funchal, Centro de Estudos de História do Atlântico, 1992.

3 *Idem*, p. 190.

In disagreeing with authors who tended to superficially consider the overseas system of *sesmarias*, “presenting it as merely a natural continuation of the metropolitan tradition of *sesmarias*”,<sup>4</sup> Saldanha sought to regain “the particular reason for its use and the diversity of its areas of application”.<sup>5</sup>

To do this, the Portuguese writer relied on the writings of Costa Porto, a Brazilian jurist who wrote one of the few studies on the topic. According to Porto, when comparing the Portugal *sesmarias* and those of Brazil:

[...] there was only one point in common: the existence of uncultivated, unused, untapped land. Everything else was different. In the first place, the reasons were different. in the Portuguese Kingdom, the lack of culture was caused by those idle gentlemen who, through their indolence, neither worked, nor let others till the land, hence the drastic solution of confiscating and then redistributing it among those who had no land, while in Brazil, there was a lack of labour, with not enough individuals, since the Conquest had occurred within a human desert.<sup>6</sup>

For Saldanha, however, if the various donatary letters

[...] referenced the provision of the *Ordenações* rather than any entirely original solution, this was because - despite the diversity of the metropolitan reality and the consequent ineffectiveness of certain Fernandine provisions regarding unknown virgin land - some traces of the regulation in force retained some validity in the new horizons the Portuguese opened up to colonisation, and thus the requirement to not allow land to be uncultivated loomed over all.<sup>7</sup>

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4 *Ibidem*.

5 *Ibidem*.

6 *Apud* Saldanha, *op. cit.*, p. 191.

7 *Ibidem*. p. 191.

What is certain is its continuation over time did not imply a linear process in the form in which grants were made. Over the centuries, and often through tortuous routes, it adapted to the complexity of the social fabric, trying to adjust to the demands of a society still being formed.

The *sesmaria* documents correspond to the multiple faces of the *Ancien Regime*, but its application and the various cases involving a final royal decision symbolize more than just an example of the vocabulary of that regime. They show the attempt of the Crown to submit the granting of lands to its determination, as the Ombudsman, the final decision making authority to achieve harmony among its subjects.

They - the *sesmarias* - should therefore be understood by contextualising them within their time, which provides some meaning to the words expressed therein. Despite some uniformity in the way they were granted, the documents underwent certain changes over this period which involved more than mere unimportant details, because they reveal the suitability tests of the legal instrument of the period.

It is at the intersection of sources, laws and processes that we can consider that documentation, and endow it with some coherence regarding its terms and words, which take on a new meaning and interpretation. Thus, for example, with regard to its enactment, the term *sesmeiro* referred to the person who donated the land, the officer of the Crown who therefore was encumbered with this task. To monitor compliance with the policy concerning the distribution of land for the original law, the king commanded that “two good men from the best that exist were chosen in each village, city or district”,<sup>8</sup> who were responsible for investigating the lands which were uncultivated, forcing the owners to till the land by a certain period or lease it.

Gradually, in the colonies of the Portuguese Empire, the term started to be used to refer to those who received the *sesmaria*. According to Costa Porto, the modification of the meaning of the term would have occurred in the colony and introduced in official documents, probably from 1612, in the letter of 28 September concerning the granting of the lands in Rio Grande do Norte.<sup>9</sup>

The term vacant land (*devoluto*), in its primary meaning, refers to returned, uncultivated land, which returns to the hands of the king to be once more given in a *sesmaria*. However, the term would become used to refer to free land, consistent with expansion into areas not yet occupied.

8 Costa Porto . *Estudo sobre o sistema sesmarial*, Recife, Imprensa Universitária, 1965, p. 34.

9 *Idem*, p. 41.

Therefore, the word referring to wasteland (*devoluto*) was applied to vacant land, land with no settlement, with no knowledge regarding an owner, and no trace of having at some time been occupied or where there were no information regarding the person to whom it had belonged.<sup>10</sup>

The same can be said when we match the document with the decrees and charters which sought to regularize the granting procedure. At the start of colonisation, the law regarding *sesmarias* was referred to as in its original spirit, without specifying the extent of the land to be granted. Gradually, and especially from the period of rule of the Filipes onwards, one can discern the first restrictive measures in the area being granted, due to the “abuses practised by Jerônimo de Albuquerque, in the distribution of *sesmarias* in Rio Grande do Norte”.<sup>11</sup> According to Costa Porto, the inhabitants complained to the King that “Jerônimo had acted partially and in a protectionist manner, making extremely large shares among children and relatives”.<sup>12</sup> The author further stated that the committee set up to oversee the distribution concluded that the accusation was groundless. Be that as may, after the Royal Charter of 28 September 1612, an attempt at controlling the land portions to be granted was made, at the same time as the word *sesmeiro* came to mean the one who benefited from receiving the grants.<sup>13</sup>

It is possible to surmise that until the middle of the eighteenth century, the Crown’s responses were guided by specific, regional, situations, without the clear intention of establishing a general ordinance for the whole land, taking into consideration the specific nature of Portuguese America. The general principles enshrined in the law regarding *sesmarias* seemed sufficient to do justice to the terms of the demands laid down by the Crown. However, the worsening of conflicts in some areas became worrying. In the Piauí region, for example, occupation in the middle of the seventeenth century involved the overlapping of various interests.

On the one hand, settlers coming due to the dynamic nature of the expansion of the border. On the other hand “the *sesmeiros*, almost always strengthened by Olinda e Salvador, requested land, legalised their domain and started earning money at the cost of the anonymous inland explorer”.<sup>14</sup> The conflict did not take long to reveal itself, and reached the Overseas Council which, in turn, suggested to the Governor of Pernambuco that

10 *Ibidem*, p. 179.

11 *Ibidem*, p. 83.

12 *Ibidem*.

13 *Ibidem*, p. 84.

14 *Ibidem*, p. 87



he sought to mediate between the interested parties, and ‘to bring different entities together, so that a breakdown does not ensue which is feared would lead to ruin, and make the parties understand that, in these their disputes, they should wait for legal recourse, and not opt for violent means which would be not only prejudicial in this case, but also disagreeable to Y.M., and while this statement be not sufficient to cause appeasement’, so do. Then for the *Ouvidor Geral* (Senior Judge)... with some people accompanying him... so that they are united and brought to peace, and proceed against the guilty parties who do not wish to do what is right.<sup>15</sup>

To solve the quarrel, the King enacted the Royal Charter of 1702, determining that the *sesmeiros* carry out the demarcation of their lands, threatening those “under penalty of expiration” who were not disposed to comply with that set down in law. Even so the conflict did not cease, in fact the *Ouvidor* (judge) of Maranhão – whose jurisdiction included the territory of Piauí – without considering otherwise - declared that the “non-demarcated grants had expired”. Following the reaction of the *sesmeiros*, the King decided to overturn the decision of the *ouvidor* who had only carried out “to the letter” that Royal Charter.<sup>16</sup>

The conflict did not end here. Furthermore, according to Costa Porto, in 1753, due to the Provision of 20 October, there was another attempt to resolve the quarrel between *sesmeiros* and occupants of the land of Piauí, based on two main procedures. The grants from the *sesmeiros* where

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15 *Ibidem* p. 87 & 88.

16 *Ibidem*. Costa Porto also stated that “With the Metropolis taking time to solve the incidents the Chamber of Vila da Mocha, nowadays Oieras, went to King John V in 1745 to complain against the extreme spiritual and temporal damage which had and currently was being experienced in this captaincy, with due or just cause with which the governors of Pernambuco... incorrectly gave in *sesmaria* a large quantity of lands to three or four private individuals, inhabitants of the city of Bahia, who, while cultivating some of them, left most of them as vacant land, without allowing anybody to settle on them, except those who at their cost and at the risk of losing their lives came across and defended themselves against barbarous people, then obliging them afterwards to pay them a rent of ten thousand réis for each place. Finally, we would ask Your Majesty to order “that the aforementioned intrusive *sesmeiros* cannot use the aforementioned leasings, nor request rent from the settlers within this captaincy of the sites which [...] they discover [...] but rather order that each of the aforementioned farms contribute each year with a limited rent [...] half for the benefit of the royal treasury and the other half in income for the District Council”. *Ibidem*, p. 88-89.

cultivation had taken place were reassessed, excluding land in the form of leases including hereditary leases. The *sesmeiros* could request new grants, for uncultivated and uninhabited lands, as long as they did not exceed three leagues in length and one in width.<sup>17</sup> Subsequently, the Provision revitalised the principles of the law of *sesmarias*, in recognising the dominion of the *sesmeiros* only in the actually cultivated areas, and those not cultivated by third parties. In addition, they imposed a maximum limit for the granting of lands.

The provision of 1753 represented one more of the numerous interventions by the Pombal government regarding a more substantive policy for the colony. As such, it should be understood as one of the first reformist proposals of Sebastião José de Carvalho e Melo, even before the measures to stimulate the commercial activities of the north and north western region, such as the setting up, in 1755 and 1759 of the *Companhia Geral de Comércio do Grão Pará e Maranhão* and the *Companhia Geral de Comércio de Pernambuco e Paraíba*.<sup>18</sup>

The provision, in short, represents an attempt to intervene and control the process of territorial occupation and was perhaps promulgated to solve the conflicts resulting from the events caused by the setting up of the patrimony of the *Casa da Torre*, the *sesmarias* of which extended within the areas of Bahia, Sergipe, Alagoas, Pernambuco, Paraíba, Ceará and Piauí.

The effort made to regulate the occupation, as seen in the establishing of a maximum limit for the granting of land, shows a recognition that the past history of occupation “without limits”, given the immensity of the domains and the complaints resulting from the overlapping of numerous *sesmarias* in the region was known to the colonial authorities, as Ângelo Pessoa has shown, in his study on the *Casa da Torre* of Garcia D’Ávila.<sup>19</sup>

The Overseas Council was aware that the granting of *sesmarias* was accompanied by possible quarrels and conflicting interpretations over the history of occupation of the place. It also seems logical to infer that the advisors were aware that the intensification of conflicts was related to the imprecision of the demarcations and the absence of regulation as to the maximum limit of land to be granted by the system. Intentions were made in this regard, but these were still not every effective. Even in 1695, through

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17 *Ibidem*, p. 90.

18 For a political and biographical analysis, see: Kenneth Maxwell, *Marquês de Pombal: Paradoxo do iluminismo*, 2ed., Rio de Janeiro: Paz e Terra, 1997.

19 Ângelo Emilio da Silva Pessoa *As ruínas da tradição: A casa da torre de Garcia D’Ávila: Família e propriedade no Nordeste colonial*. Tese de doutorado em História Social, São Paulo: Universidade de São Paulo, 2003.2003.

the royal charter of 27 December, it was stipulated that more than five leagues of land could not be granted. Two years later, through the Charter of 7 December, the maximum limit was reduced to three leagues. However, even though efforts had been directed at establishing a limit, in practice it was possible that a certain *sesmeiro* would request and obtain lands much greater than that regulated for, hence the return to the theme in the Provision of 1753 and its reworking in future legislation.

It is thus understood how and why the obligation to measure and demarcate could have been an addendum of so little importance in the first centuries of colonisation, as it could – at the end of the eighteenth century – have become an overly essential condition to stop the conflicts and lawsuits over lands, mainly in areas already densely populated and particularly rich, such as the captaincies of Minas Gerais and Rio de Janeiro. In this sense, it can also be understood why the criticisms expressed by Francisco Mauricio de Sousa Coutinho, regarding the promulgation of the *Alvará* of 1795, were not untimely and did not express a vision of a man beyond his time. They were the result not only of his accurate perception, but also reflected history, as revealed in prior laws which sought to regulate the dynamics of the granting of lands.

Be that as may, it is necessary to be attentive to the fact that the numerous laws promulgated in the eighteenth century, including the most important legislation, the above mentioned *Alvará* of 1795, did not appear in a void. If its most significant traits reoccurred, with the requirement to cultivate, the establishment of limits and the need to measure, this is because – despite the interests of the *sesmeiros* – it was not possible to make a *tabula rasa* of the foundations of the *sesmaria* system or even the frequency of conflicts managed by the system itself. Whether wishing it so or not, the *sesmeiros* were limited to complying with the law or at least remembering its constitutive elements. Thus, for example, ten years before the *Alvará* of 1795, another *Alvará*, that of 5 January 1785, determined that “the grants of the *sesmarias* always be granted on the essential condition that the lands be cultivated”.<sup>20</sup>

In addition, several of the Royal Charters and *Alvarás* enacted before that date would become constituent parts of numerous requests, showing each attempt to enshrine an appropriate legal instrument to the various realities of the Portuguese colonies, a provision more based on the numerous overseas situations. An example is the Provision of the Overseas Council of 15 March 1731, due to the discovery of the mines. This provision established the maximum limit of half a league square for the granting of *sesmarias* on

20 Ordenações Filipinas, livro IV, título XLIII Das *Sesmarias*, p. 823, nota 4.

land where mines were present or on the way to them.<sup>21</sup> Despite the relative failure of the *Alvará* of 1795, the indisputable fact is that this requirement was made explicitly during the *Mariano* period, as shown by the statistical data of the average requests for *sesmarias* in the captaincy of Minas Gerais, between 1793 and 1807. Of the 143 confirmed in the period, the following areas were requested:

#### DE MINAS CAPTAINCY. REQUESTED AREA

Area requested	Number of <i>sesmarias</i>	Percentage of the total
½ league squared	108	75.52%
1 league squared	8	5.59%
2 league squared	3	2.09%
3 league squared	4	2.79%
3 leagues of land	20	20.7%

AHU. Livro de Registro de Cartas de *Sesmarias* confirmadas do Conselho Ultramarino. Capitania de Minas Gerais. 1795/ 1798 – Códice 164. 1798/1801 - Códice 165. 1801/ 1804 – Códice 166. 1805 1807 – Códice 167. 1807/ 1823 – CÓDICE 168.

Also worthy of note is that when the farmers asked for three leagues, they were careful to report that they are “outside the records and places,”<sup>22</sup> or “since they are backcountry”<sup>23</sup> seeking to, at least in theory, respect the provision of 20 October 1753, which limited the size of the *sesmarias* to be granted to three leagues in length and one in width.<sup>24</sup> However, at least for Minas Gerais in this period, four *sesmeiros* ignored that provision, since they requested three leagues squares.

Be that as may, there was an attempt to comply with that established in law. Manoel Joaquim de Souza Xavier, for example, in 1782 asked for vacant lands in Rio de São Pedro, district of Macaé, Rio de Janeiro.

21 Laura Beck Varela. *Das sesmarias à propriedade moderna: Um estudo de história do direito brasileiro*, Rio de Janeiro: Renovar, 2005, p. 95.

22 AHU. Carta de *sesmarias* de Clara Leite Vieira. Ano de 1799, códice 165, folhas, 196/197v.

23 AHU. Carta de *Sesmarias* de Anselmo Lopes Vilas Boas. Ano de 1799. Códice 165, folhas 187 a 188v.

24 Costa Porto, *op. cit.*, p 73; Varela, *op. cit.*, p. 99. According to these experts, the provision of 1753 and the *alvará* of 1795 were the two main landmarks in the law concerning *sesmarias* in overseas colonies.

The Crown Prosecutor has determined that the granting of only half a league in front, with one of backcountry, cannot be granted, since it is against the provisions of the Royal Orders, which state that the *sesmarias* to be given in the Mining areas check with author and the highways to them may only be half a league square and in the backcountry areas 3 leagues.<sup>25</sup>

The *sesmaria* of Manoel Joaquim was confirmed on 8 January 1797, along with these limits on its size.<sup>26</sup>

The same happened with Antonio da Silva Bastos and Tomas de Aquino Duarte de Souza in 1799. They requested a *sesmaria* of ½ a league in the front and one in the back in Rio Imbé, Campos dos Goitacases, Rio de Janeiro. The Count of Resende approved the grant, but said:

[...] In the backcountry of Rio Imbé there were many uncultivated lands and without a *sesmaria* having already been granted, although several people had already requested one league each, and it was the case with the petitioners that the council of the Vila of the same Campos had, under my orders, determined in its information to the great People of that continent so that some would not stay without land whilst some would stay with one league squared, which should be the case with those *sesmarias* which had not yet been measured and demarcated, nor yet totally granted, such as in the aforementioned backcountry.<sup>27</sup> On 25 October 1801, over a year after the request, Antonio and Tomas had their request accepted,<sup>28</sup> and they were recognized as masters of those lands.

25 AUH. Carta de Confirmação de *Sesmarias*. Manoel Joaquim de Souza Xavier, Códice 165, folhas 99 a 100.

26 AUH. Carta de Confirmação de *Sesmarias*. Manoel Joaquim de Souza Xavier, Códice 165, folhas 99 a 100.

27 AHU. Carta de Confirmação de *Sesmarias*. Antonio da Silva Bastos e Tomas de Aquino Duarte de Souza, Códice 166, folhas 12 v a 13 v.

28 AHU. Carta de Confirmação de *Sesmarias*. Antonio da Silva Bastos e Tomas de Aquino Duarte de Souza, Códice 166, folhas 12 v a 13 v.

In the captaincy of Minas Gerais, mention of the Royal Order of 13 April 1738 was frequently made, which imposed the obligation to demarcate the land “with the neighbours for this purpose being notified and those who claim justice and also to populate and cultivate [...]”.<sup>29</sup> This Order established the requirement that in all the villages of the captaincy of Minas news

be published through announcements for all the inhabitants, that those who are found in possession of some lands in asking for *sesmaria*, that this be done in the manner of the Royal Orders, within a period of a year with the sanction that, after that period, no one can assert ownership, without the title of *sesmaria*; and if so the land will be given so possessed to those who request it.<sup>30</sup>

According to Angelo Carrara, the Royal Order of 1738 “led to a real land survey of the Captaincy from 1739 onwards”.<sup>31</sup>

The Order of 11 March 1754 was particularly frequent in densely populated areas, when the front of the land bordered a navigable river. According to it, ½ league of the area in front should be reserved for the convenience of the public, reserving “the sites of its neighbours who share this *sesmaria*, its slopes and public spaces, unless under this pretext they wish to appropriate too much at the expense of this District Council”.<sup>32</sup>

To sum up, at least during the *Mariano* period, mention of past laws seemed to confirm the effort to regularize the granting of land, despite the suspension of the *Alvará* of 1795. However, we are left with a question. Did the *sesmeiros* respond to the provisions of the *Alvará* or was it a meaningless set of provisions, the ineffectiveness of which had been understood by the landowners, even before its suspension in the following year?

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29 AHU. Carta de Confirmação de *Sesmarias*. Manoel Bento da Silva Ferreira, ano de 1799. Códice 165, folhas 92 e 93.

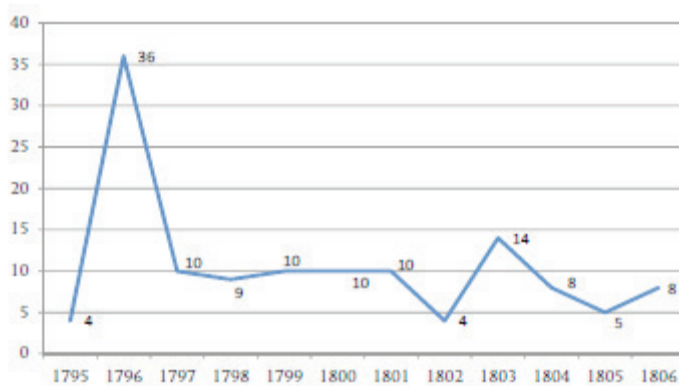
30 *Apud* Angelo Alves Carrara *Contribuição para a história agrária de Minas Gerais*: Séculos XVIII-XIX, Universidade Federal de Ouro Preto, Departamento de História, Núcleo de História Econômica e Demográfica, Série Estudos I, 1999, p. 19.

31 *Ibidem*.

32 AHU. Carta de Confirmação de *Sesmarias*. Manoel Bento da Silva Ferreira, ano de 1799, Códice 165, folhas 92 e 93.

The chart below can help us towards an answer.

#### LAND REGISTRATION REQUESTS (TOMBO DE TERRA) (1795–1802)



SOURCE: AHU. Livro de consulta de provisões, Tombos, código 109 (1795–1802). Código 110 (1802–1807).

It seems clear that the *sesmeiros* felt constrained to comply with the royal regulation, since in the year following the *Alvará* the Overseas Council received numerous requests for land registration, the aim of which being to measure and demarcate the areas occupied to obtain “a legitimate title”. Therefore, despite the potential autonomy of the local authorities, and the power of the landowners in dealing with their people, the undisputed fact is that the role of the Crown in ultimately determining who was the lawful occupant of a place was still recognised.

If in practice the system of possession corroded the system and became the mechanism for colonial expansion, from the legal point of view there was a document, the letter of *sesmarias*, which provided, under the framework of the law, full dominion of the lands. Therefore, if it is true that “royal power shared the political space with powers at different positions on the hierarchy,”<sup>33</sup> the Crown was the ultimate expression of power, because it gave the seal to confirm a domain. Moreover, if “the Crown’s legislation was limited and framed by legal doctrine (*ius commune*) and the local legal customs and practices,”<sup>34</sup> there is no doubt that - at least in regard to

33 Antonio Manuel Hespanha *op. cit.*, 2001, p. 166.

34 *Ibidem*.

territorial appropriation - such legislation was materialised in a document, namely the *sesmaria* letters. Consequently, it is consistent to state - as Arno Wehling has alerted us - that in ungovernable areas of colonial Brazil [...] power, including the ability to judge, was in fact exercised by ‘potentates, either directly or through their acolytes, such as the ‘*capitães do mato*’.<sup>35</sup> In this sense, the power practised by the strongest “revealed itself not only in the area of pure and simple wills, but in the establishing of personal bonds, such as cronyism and clientelism, which had a legal translation, albeit informal, distant from official justice, which would attribute to the landlord the function of arbitrator and enforcer of the judgment”.<sup>36</sup>

However, the intensification of conflicts and configuration of power, ratified as usual by the Law of Good Reason (*Lei da Boa Razão*) of 1769 could end up threatening the unchallenged power of the landowners. According to Cirne Lima, the custom of possession fulfilled some requirements of that 1769 law, such as rationality - cultivation - and the antiquity of occupation. Furthermore, as already stated, the custom of ownership itself found precedents in actual Portuguese legislation, the so-called right of *fogo morto*, and in the Roman tradition. Cirne Lima also argues that “the acquisition of vacant lands for possession in order to cultivate became an actual legal custom”.<sup>37</sup> In other words, possession now had legal acceptance, consolidating the trend to recognise, in the legal wording, the existence of the entity that occupied the land since the various decrees, resolutions and *alvarás* concerning *sesmarias*, in one form or another, safeguarded the interests of those who actually cultivated the land.

The recognition of the system of possession, based on the Law of Good Reason, provided justice to the many cries from farmers who were not *sesmeiros*. As for the complaint made to the District Council of Vila da Mocha, in 1745, the farmers<sup>38</sup> complained of the oppression and

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35 Arno Wehling; Maria José Wehling, *op. cit.*, p. 46.

36 *Ibidem*.

37 Cirne Lima. *Pequena história territorial do Brasil: Sesmarias e terras devolutas*, 4 ed., Brasília: ESAF, 1988, p. 76.

38 Farmers are those who could not call themselves *sesmeiros*, since they did not have a *sesmaria* document. In the mid-nineteenth century, the term *posseiro* (squatter) appeared, which only existed in the Portuguese spoken in Brazil. The term arose in opposition to the term *sesmeiro*, with the *posseiro* being farmers without a title, regardless of the extent of their land. For an analysis of the term, see Márcia Motta “Posseiros no oitocentos e a construção do mito invasor no Brasil. A coerção na ausência da lei”. In: Ângelo Adriano et al (org.), *Desvelando o poder: História de dominação: Estado, religião e sociedade*, Rio de Janeiro: Vício de leitura, 2007.



damages caused by disputes against the *sesmeiros* and highlighted “the great humiliation in the sentences executed against them which resulted in their expulsion from their farms, the collecting of rents and pensions from the aforementioned lands”.<sup>39</sup>

It is thus understood that the rural potentates worked along with the *Alvará* of 1795 while at the same time seeking to consolidate their power. They submitted themselves to the provisions of the Crown, but translated this according to their own interests. By doing so, they recognised that there was a place, a final decision-making body for the consecration of a domain, namely the royal seal. The document resulting thereof was not important, and did not even need to be used to expel or even exterminate communities of poor farmers, but it was essential to consecrate their power, their dominion over their lands, and in any disputes against their peers and against farmers with enough resources to also request a *sesmaria*.

We have to consider, however, that the appeal contained in the *Alvará* was not responded to in a uniform manner. On the one hand, as I have stated, despite the numerous interests and local networks, *sesmeiros* and potential *sesmeiros* shared the same goal, namely, obtaining the royal seal to consecrate their domain. On the other, the differentiated dynamics of occupation and distinct interests led to numerous responses.

## The paths to obtaining grants

The requirements expressed in the charters show the Crown’s attempt to limit and control the granting of lands as a proclamation of its power.

Many of them, as I have said, had been subject to *alvarás* and royal decrees prior to 1795. Administrative procedures to be followed for the granting of a *sesmaria*, for example, had already been established by the *alvará* of 3 March 1770. However, since 1795 and perhaps as a result of the efforts contained within that *alvará*, the conditions were now more apparent. As such it is possible to understand why the *alvará* of 1770 is remembered in the 1795 document.

Strictly speaking, the applicant requested the governor and the captain general to be granted a *sesmaria* in a given parish of the captaincy. Once the request was received, it was referred to the *ouvidor* (judge) of the captaincy, “as chancellor and minister of the *Junta da Fazenda* to arrange for the relevant investigations and due diligence of the law”.<sup>40</sup> The statements

<sup>39</sup> Porto, *op. cit.*, p. 89.

<sup>40</sup> Cirne Lima *op. cit.*

of claim were quite diverse. On some occasions, the plaintiff stated that he did not have the lands, but that he had the means of cultivating them (slaves, mostly). In others, the request was accompanied by information regarding the purchase or inheritance of the lands where the ultimate aim was to acquire a “legitimate title”.<sup>41</sup> The territorial definitions were vague and almost always bounded by a natural element, such as rivers or hills. In some cases, especially when the border was known, the application was accompanied by the names of those requesting the land through *sesmaria*. At other times, the request also included the information that the land to be granted should extend up to that of a known third party, thus limiting it by virtue of an existing owner of an adjoining parcel of land.

The governor then forwarded the request to the minister for justice for his knowledge of the request made by the farmer for that land and two copies were made of that letter. The royal prosecutors and those for the City Council were heard so as to endorse the request. In the case of Rio de Janeiro, there was a clear determination in this sense. It was ordered by royal charter of 23 February 1713 that “the *sesmarias* in the city should be granted by the Council”.<sup>42</sup>

Once the prosecutors and/or District Council had accepted it, the letter was registered at the office of state. The process was dispatched by the Overseas Council, who transcribed it. Later, it would receive the seal of the Crown.<sup>43</sup>

The *sesmaria* letters in the record books are full copies of the requests previously made to the governor. In the separate documents,<sup>44</sup> which contain the various requested items, there is also a type of opinion from the local judge, attesting that the land was measured and demarcated, and possession was given to the *sesmeiro*. There are also examples of a ruling from the notary stating that the measuring and demarcation of the *sesmaria* has been recorded in the registry.

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41 I will discuss this aspect in more detail below.

42 *Apud* Cirne Lima, *op. cit.*, p. 43.

43 The Chancery was a “Secretarial service where the royal diplomas were drawn up and expedited, since the beginning of the monarchy. The ample and varied duties of the chancellor-in-chief were defined in the ‘*Ordenações Afonsinas*’ and ‘*Manuelinas*’”. Joseph Serrao *et al*, *Roteiro de fontes de história portuguesa contemporânea*, Lisbon: Instituto Nacional de Investigação Científica, 1984, vol. 1, p. 159.

44 I am referring to the documentary archive of the AHU - *Arquivo Histórico Ultramarino* (Overseas Historical Archive), which is divided into captaincies, and which contain the applications. These documents were digitalised by the *Resgate* Project, with the exception of those of Rio de Janeiro, which is also nearing completion.

The document of the Chancery for the granting of the *sesmarias* expresses the vocabulary of the *Ancien Regime*. “I do hereby for good do you the mercy of confirming that which through this I confirm ... I have sent my Viceroy ... Purveyor of the Royal Treasury, Ministers and Individuals... who shall meet and keep this My Confirmation Letter and hereby meet and keep”.<sup>45</sup> The seal was thus the culmination of a bureaucratic process for granting lands.

The *Registro das Mercês* was established by the *Alvará* of 31 December 1547 to set down in registers all

land donations, *alcaidarias-mores*, rents, jurisdictions, letters and provisions for commendations, captaincies, offices and positions of justice, and for the treasury, annuities, privileges, and licences to sell and transfer annuities and other individuals, adoptions of children, relatives and servants, additions to rents and dwellings, marriage dowries, financial settlements and favours.<sup>46</sup>

According to Maria Beatriz Nizza da Silva, from the sixteenth century the Crown was concerned “to record the favours granted to vassals in an attempt not only to avoid fraud but also to control possible excess by certain subjects”.<sup>47</sup> After gifts and favours were granted, they had to be registered by the clerk of the Chancery and the stamp duty and any other required rights be paid. The author also states that the favours were regulated by the 1671 *Regimento de Mercês*, supplemented by the *Alvará* of 15 August 1706 and also the *Alvará* of 28 August 1714, reiterating the compulsory registration “so as not to forget all the favours carried out, neither in my Treasury nor the parties with any injury”.<sup>48</sup>

On behalf of the Crown, a document property was instituted, without any evidence in relation to the measurement and demarcation of the lands or their cultivation, only an opinion attached to the application, in which the judge or notary attested to the measurement and demarcation of the lands having been previously carried out. The bureaucratic procedure had presumed that the *sesmeiro* had indeed fulfilled the requirements of the

45 ANTT. Chancelaria de D. Maria I livro 50, p. 226V a 227 V.

46 ANTT Secretaria das Mercês/Registro Geral de Mercês. História Administrativa.

47 Maria Beatriz Nizza da Silva *Ser nobre na colônia*, São Paulo, Unesp: 2005, p. 77.

48 *Ibidem*.

royal *alvarás* and provisions. In other words, the Chancery recognized a right and vouched for a previous process that, in theory, corresponded to compliance with the provisions laid down in law. In this sense, despite the intensification of conflicts and complaints that reached the Overseas Council, the provision stood still tied linked to the notion that it was - first of all - a political and not a territorial concession. The Crown would vouch for a document - a *sesmaria* letter - an expression of the power of landlords that, in submitting themselves to the legal procedures for the granting of this, would through such grace receive a property document.

It is also worth remembering also that the measurement process was an extremely onerous affair.<sup>49</sup> At the beginning of the eighteenth century, a royal letter sent to the officials at the Chamber of Pará stated:

I, The King hereby send you greetings. Your Letter of 8 March this year has been seen in which you state the drawbacks that you have using rope to measure the dimensions of the *sesmaria* grants of lands of that Captaincy along the banks of the Rivers due to the difficulty in putting this into practice as well as the considerable expenditure that the parties expend in such measuring in being parts where only the native Indians are able to walk barefoot and often with water around the waist.<sup>50</sup>

It is thus understood that it was possible to ratify a right - at the limit- without regard to the differences between the original application for the grant and that decided by the Chancery. On 18 November 1790, for example, Domingos de Souza Maia requested a *sesmaria* on vacant lands in Paraíba Nova, in the North of Rio Gavião. The letter confirming the *sesmaria* was granted him on 14 December 1795.<sup>51</sup> The following year, on 13 August 1796, he received the royal seal, granting him a league and a half in the front and two in the back, when he had asked for a league in the

49 Even in the 1850s, and perceptions concerning the failure of the *Lei de Terras* (Land Act), many insisted on the following point: the absence of surveyors to demarcate ancient land grants and land under possession. To that effect, see Márcia Motta *Nas fronteiras do poder: Conflito e direito à terra no Brasil do século XIX*, Rio de Janeiro: Arquivo Público do Estado do Rio de Janeiro, Vício de Leitura, 1998.

50 IHGB. Carta régia aos Officiaes da Camara do Pará sobre os inconvenientes que propoem para se medirem por corda as datas de terras de *sesmaria* daquella Capitania os quaes se lhe não admitem. Lisboa, 28/10/1705 [Arq. 1.2.25 - Tomo VI, p. 87].

51 AHU. Carta de Confirmação de *Sesmarias*. Domingos de Souza Maia. Códice 164, folhas 115 V a 116.

front and the same in the back.<sup>52</sup> What was involved was that Domingos Maia had fulfilled the bureaucratic procedure involving a journey through various individuals, namely the governor general, the Crown prosecutor, the City Chamber and the Overseas Council. The differences between the area requested in the application and that endorsed by the Chancery did not deserve any comment regarding the concession.

There were, however, some very evident provisions in the letters granting lands. The first is obviously the requirement to measure and demarcate the requested area, reiterating something already present in previous legislation and the central argument of the *Alvará* of 1795, as was seen in the previous chapter. The requirement for demarcation in the letter forming part of the registry imposed an action which in theory should have been complied with when the application was forwarded. Thus, in many cases this is what had been done, though, as is known, without any indication of technical experts as to the precise delimitation of the site of the requested *sesmaria*. In many others, however, the request for confirmation does not have any document annexed to certify the measuring and demarcation.

In 1798, for example, Quitéria Maria de Jesus asked for a league squares in Cachoeira de Macacu, Rio de Janeiro. Under the royal provisions, “and before taking possession of them she will have them legally measured and demarcated, and for that purpose have been notified of the people with whom she would be dealing with regarding this”.<sup>53</sup>

The opinions were often present when forwarding the request for the concession, confirming that the land had been measured and demarcated. Thus, for example, Ana Feliciano de Paiva in 1803 requested the confirmation of *sesmarias* for lands that had been granted by the governor of Minas, located at the end of Sabará. Her application was accompanied by the opinion of the judge for the measurements of *sesmarias*, Tomás Coelho Bacellar, “graduate of the University of Coimbra”, which stated that on 25 September 1801 the Judge Papagaio had gone to the Leitão do Curvelo farm and there “measured, demarcated and invested in Ana Feliciano the lands granted in *sesmarias*”.<sup>54</sup>

In 1799, Antonio Gonçalves de Figueiredo requested a *sesmaria* of half a league squared at the site of Paciência, at the end of the village of São José, district of Rio das Mortes. Along with his request, there is a document

52 ANTT. Chancelaria D. Maria I. Livro 50, p 226 V a 227 V.

53 AHU. Carta de Confirmação de *Sesmarias*. Quitéria Maria de Jesus. Códice 165, folhas 131/132.

54 AHU. Projeto Resgate. Minas Gerais. Requerimento de Ana Feliciano dos Santos. CD 049151 0441.

from the legal notary public certifying that those lands had been legally measured on 26 August 1793.<sup>55</sup>

Among many requests, a recurrent element was some form of certificate to confirm that the different royal provisions had been complied with regarding the measurement and demarcation of the lands requested as *sesmarias*.

What was the reason to distrust the opinions of judges and notaries regarding compliance with measurement and demarcation? Were they not faithfully carrying out their duties, aware of the procedures for the activity of measuring and demarcating?

If we remember the conclusions of Francisco de Sousa Coutinho we can at the least be suspicious of the effectiveness of those boundaries. The opinions attached to requests often just reported that the measurement and demarcation of the territory had been carried out, but there was no indication that geometrical techniques already known had been used to specify the area to be demarcated. As such, the documents revealed an intention, or rather the fulfilment of a duty that fell to the judge, but not the geometers. What Francisco de Sousa Coutinho had discussed was that even if the royal provision had been complied with, it was not able to discriminate the land donated from that still free or already granted to others.

Some governors sought to discuss the issue. Years before Francisco de Sousa Coutinho had written his proposal, Diogo Lobo da Silva, then governor of Minas Gerais, had in 1764 issued an opinion on behalf of the officials of the District Council of Vila Nova da Rainha regarding *sesmarias*. The document sent to the governor revealed the pressure and the difficulties the officers experienced when they sought to demarcate the lands for *sesmarias*.<sup>56</sup> A year earlier, representatives of the officials of the City Council of Mariana had also sent a document asking for clarification on the territorial border of the lands distributed into *sesmarias*.<sup>57</sup>

But what is also to be highlighted are the conflicts between powers that were based on the struggle to enforce a particular territorial accuracy. Thus, on the one hand there were opinions stating that the measurements and boundaries had been carried out, and on the other *sesmeiros* requesting the registration of their lands, and turning directly to the Crown.

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55 AHU. Projeto Resgate. Minas Gerais. Requerimento de Antonio Gonçalves de Figueiredo CD 044 0524.

56 AHC Projeto Resgate. Minas Gerais. Carta de Luis Diogo Lobo da Silva, 1764. CAIXA 83, doc 23.

57 AHC Projeto Resgate. Minas Gerais. Representação dos Oficiais da Câmara da Cidade de Mariana, 1763. CAIXA 81, doc 232.

However, it should be borne in mind that the requirement to delimit and demarcate the land applied to all the *sesmarias* of the period. In most of the letters, in fact, there is a statement that their neighbours should be notified. On 25 October 1796, for example, Manoel Bento da Silva Ferreira requested ½ league of land squared, in the parish of S. Miguel, at the end of Vila Nova da Rainha, Ribeirão da Boa Vista station, Minas Gerais. According to the letter, he was “[...] required to demarcate it within one year from the date of this [...] with the neighbours whom for this purpose he would notify to that they could ensure their justice”.<sup>58</sup> Both in this request as in many others, the application recalled that established by law, enshrined in the *Ordenações Filipinas*, namely, “the *sesmeiros* who are to grant such lands or goods would know first what are or were their landlords”.<sup>59</sup>

The second recurrent requirement was registry with the Treasury of the *Junta da Real Fazenda*, in accord with the *Alvará* of 3 March 1770. That requirement expressed, without a shadow of doubt, the primary intention of collecting duties for the registration of the concession.

Another provision evoked referred to the right to public roads and the preservation of wood for building ships. Theodora Maria Alves de Oliva and her children on 13 September 1797 requested lands in the captaincy of Maranhão, which were granted the following year. However, like the other *sesmeiros*, Theodora should provide

[...] public and private roads where needed for bridges, fountains, ports and quarries and with the requested site having a Navigable River requiring canoe or boat for passage, on one of the banks touching on the lands of the applicants a half league of land shall remain free for public use which shall be demarcated upon possession by a fathom rope and callipers in the style Her Majesty so orders [...].<sup>60</sup>

Bonifácio de Oliveira Quintanilla also received the information that he should reserve part of his land for public paths. In 1799, he asked for half a league squared at Rio Grande, parish of Santo Antonio de Sá, Rio de

58 AHU. Carta de Confirmação de *Sesmarias*. Manoel Bento da Silva Ferreira. Códice 165, folhas 92 a 93.

59 *Ordenações Filipinas*, título XLIII: Das *Sesmarias*, p. 823. And further below: “[...] And if the *Sesmeiros* are unable to know who are the single owners of the aforesaid lands and property, should proclaim this in the places where the property is, as where the *sesmaria* should be, stating where these are and those that adjoin them[...].”

60 AHU. Carta de Confirmação de *Sesmarias*. Theodora Maria Alves de Oliva e menores. Códice 165 folhas 26 e 26 V.

Janeiro. Before taking possession of it, he not only had to legally measure and demarcate it, but also notify

those adjoining the property, as he should [to preserve] the *perobas* and leave the cuttings for some other use “other than the construction of ships [...] and take care of the plantations [...] in those same places which are or will be the most suitable for the production of the same. “

He also needed to

[...] provide any Bridges or stowage where necessary in the lands in the front and, discovering a large-flowing river, requiring a boat to cross and one of the banks leaving half a league of land squared for public convenience [...].<sup>61</sup>

Another recurrent provision was that concerning the richness of the subsoil. The *sesmarias* did not include the granting of mines of any type of metal that were discovered there. These explicit provisions were accompanied by warnings regarding non-compliance. Thus, if the lands were not confirmed in a period ranging from two to four years, they would be deemed vacant. Moreover, non-compliance with these requirements would lead to the threat of transfer of the lands to those who had denounced the irregularity.

It is possible that the reader will have concluded that the constant occurrence of legal requirements present in requests after 1795 confirms the monotonous character of the *sesmaria* letters. However, beyond their apparent insipidness, they show aspects that are quite enlightening for us to understand the possible readings of the law. And that is what we will see below.

To understand this point, it is necessary to closely analyse the concessions granted during the *Mariano* period. To do so, it will first be necessary to provide an outline of the regional differences in relation to such requests and explain the referral process for these land grants. From there, it will be possible to highlight the multiple interests present in the letters.

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61 AHU. Carta de Confirmação de *Sesmarias*. Bonifácio de Oliveira Quintanilha. Códice 165, folhas 132 /133.



## CONCESSIONS DURING THE MARIANO PERIOD: REGIONAL MAPPING AND INDICATIONS

In the survey carried out among the books confirming the *sesmarias*, the approximate number of concessions for the 1795-1822 period was found – that is, the first to the last book of the *Mariano* period.<sup>62</sup> Of note in this period among the captaincies confirming the applications for *sesmarias* are the following:

### SESMARIA CHARTERS CONFIRMED IN THE OVERSEAS COUNCIL, PER CAPTAINCY (1795-1822)

Captaincy	Total per Captaincy
Rio De Janeiro	304
Maranhão	287
Minas Gerais	143
Piauí	61
São Paulo	42
Pará	33

AHU. Livro de Registro de Cartas de *Sesmarias* confirmadas do Conselho Ultramarino. 1795/ 1798 - Códice 164. 1798/1801 - Códice 165. 1801/ 1804 - Códice 166. 1805 1807- Códice 167. 1807/ 1823 - Códice 168.

Firstly, a warning: the distribution according to captaincy was established during that period, and there has been no further process involving the organisation of the archive. When applying for *sesmarias*, plaintiffs provided very loose information on the location of their lands, such as near parish X and/or site Y, district H, and/or at the end of XPTO.

<sup>62</sup> I will discuss the period 1807 to 1823 in the next chapter, when I analyse the issue of *sesmarias* in the process of the transference of the Court and the Independence of Brazil.

The request was forwarded to the council by a governor of the captaincy and it was, therefore, he who circumscribed the request under his authority.

### The Amazon: a region to be discovered

There are no surprises regarding the captaincy of Maranhão, nor should the reflections on it be, in principle, separate from those relating to the captaincy of Pará.<sup>63</sup> It is worth remembering that, as a result of the Pombaline policy for the captaincy of Maranhão, new crops were grown there. According to Schwartz, the *Companhia Geral do Comércio do Grão-Pará e Maranhão* stimulated the cultivation of cotton.<sup>64</sup> In this sense, “the combination of growing rice and cotton, mostly based on slave labour, had the effect of transforming the social aspect of the region”.<sup>65</sup> It was not by chance, therefore, that some of the *sesmeiros* sought to legalise the properties located there.

It is also possible to consider that the economic dynamics of the captaincy provided an increase in subsistence production in free lands as “the expansion of the export sector led to an increase in urban areas and these served as internal markets requiring supplies to the rural economy and colonial trade”.<sup>66</sup> Therefore, it is consistent to assume that occupation through the possessions of poor farmers could have been one more element to justify the search for the legalisation of the property by certain *sesmeiros*.

The case of Piauí is particularly interesting. In the seventeenth century, the region formed part of the State of Maranhão, which had been one administrative unit since 1621, including the regions of Maranhão, Pará, Piauí and Ceará. During the period, there was only one other administrative unit, the State of Brazil, based in Salvador, Bahia.

In 1737, the state of Maranhão was renamed the state of Grão-Pará and Maranhão, and the capital was moved from São Luís to Belém. The captaincy of Piauí was created in 1718 as a result of the break-up of

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63 For a Portuguese view regarding the territory of the Amazon, see Rafael Chambouleyron, “Plantações, *sesmarias* e vilas: Uma reflexão sobre a ocupação da Amazônia seiscentista”, *Nuevo Mundo Mundos Nuevos*, número 6, 14 maio 2006, available at: <http://nuevomundo.revues.org/document2260.html>.

64 Stuart Schwartz “De ouro a algodão: a economia brasileira no século XVIII”, in: Francisco Bethencourt; Kirti Chaudhuri (direção), *História da expansão portuguesa*, vol. III: O Brasil na balança do Império (1697-1808), Lisboa, Círculo de Leitores, p. 95.

65 *Ibidem*.

66 *Ibidem*, p. 101

Maranhão. Its governor, however, only took office in 1758. As such, it is likely that the requests to confirm the *sesmarias* were the result of attempts by the citizens of Piauí to legalise their occupation, because of the disputes over lands which had taken place in the past and would probably be reactivated with the need for the transference of patrimony. As is known, the definitive cessation of the captaincies and the long process of reincorporating the lands to royal patrimony involved the mapping and control of the territory and, therefore, an administrative policy more based on metropolitan interests. As such, the creation of the captaincy of Piauí and its effective possession in 1758 by Governor João Pereira Caldas, a Portuguese individual who had been born in Valencia, resulted in the rural potentates located there searching for legitimate title.

This means that in the eighteenth century, until 1772, the whole of the region known as the Amazon was part of an integral policy for the region of Northern Brazil. Pombaline policies for the region, identified in the setting up of the *Companhia de Comércio do Grão-Pará e Maranhão*, and the establishing of the captaincy of São José do Rio Negro in the same year, in 1755, boosted the region, setting off a dynamics of territorial occupation which would gradually be expressed in intense land disputes.

Of note also were the few requests for confirmation by the governor of the captaincy of Pará - Francisco Mauricio de Sousa Coutinho. On 20 August 1772, Maranhão became a captaincy independent of Pará. In the following years, the requests for confirmation for that captaincy intensified in comparison with Pará, which continued to be not very significant in the overall framework of confirmations. Perhaps the criticisms expressed by Francisco de Sousa Coutinho had corresponded to a decision to more effectively control the granting of lands in the region. After all, he was governor there between the years 1790-1803. Be that as may, the captaincy of Pará was still sparsely populated in that period, which would also explain the few requests to confirm the *sesmarias*.

#### REQUESTS TO CONFIRM *SESMARIAS* – PARÁ (1790/1803 AND 1804/1807)

Year	Period	Confirmation requests
1790/1803	13 Years	16
1804/1807	4 Years	17
Total		33

AHU. Livro de Registro de Cartas de *Sesmarías* confirmadas do Conselho Ultramarino. Capitania do Pará. 1795/ 1798 - Códice 164. 1798/1801 - Códice 165. 1801/ 1804 - Códice 166. 1805 1807 - Códice 167. 1807/ 1823 - CÓDICE 168.

We must also consider the issue of the border and the fact that for a long time the Northeast Amazon “was considered as having zero economic value for the settlers”.<sup>67</sup> However, the problem of the border between the regions was directly related to the game of power between Portugal and Spain. The two Iberian powers chose to make transfers of territory during the mid-eighteenth century. That explains the “transfer of Sacramento in exchange of most of the State of Grão-Pará and for Mato Grosso, Cuiabá, and part of Goiás”.<sup>68</sup> This agreement was the result of a change in perception concerning the Northern Amazon, which was now seen as an “inexhaustible source of natural resources”, the ‘backcountry drugs’ or the fruits of Pará, as well as the interior of Brazil and its golden lands”.<sup>69</sup>

It is also important to reflect on the role of Mauricio de Sousa Coutinho in establishing the border in Pará. According to Ângela Domingues,

In Dom Francisco Mauricio de Sousa Coutinho’s geopolitics, the defence of the Pará coastline and the rivers was vital, since coming from the north – from Caiena -, this could provide access to the Luso-Brazilian territory. Thus he increased the coastal patrols of the flotilla of canoes of the Coast Guard, ordered the repair of the fortress of São José do Macapá and built forts on the backshore area of the rivers which that emptied into the northern bank of the Amazon River, and moved the population of Mazagão to Macapá. In parallel, he ordered that the coastal area be reconnoitred and topographically surveyed.<sup>70</sup>

We can thus understand the attempts of the governor to control the borders, mainly from the late eighteenth century, given the alliance between Spanish and French interests and the attempts to conquer the Amazon. Because of this, it is reasonable to assume that Francisco Mauricio de Sousa Coutinho was careful in granting *sesmarías*, as it was the document that would

67 Ângela Domingues. *Quando os índios eram os vassallos*. Colonização e relações de poder no Norte do Brasil na segunda metade do século XVIII. Lisboa: Comissão Nacional para as Comemorações dos Descobrimentos Portugueses, 2000, p. 203.

68 *Idem*.

69 *Ibidem*.

70 *Ibidem*, p. 209.

configure the property of a certain area. It is also acceptable to consider that the governor's policy was one of not granting *sesmarias*, since "the European presence would not be enough to ensure stable colonisation".<sup>71</sup> By relying on the principle of Roman law to legitimise their claims in those areas, that is, the right of *uti possidetis*, the Crown and Francisco Mauricio turned the Indians into vassals (transferring them to tactically significant sites, where necessary), to evoke that Roman principle and affirm its sovereignty and authority over the territory.<sup>72</sup>

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71 *Ibidem*, p. 212.

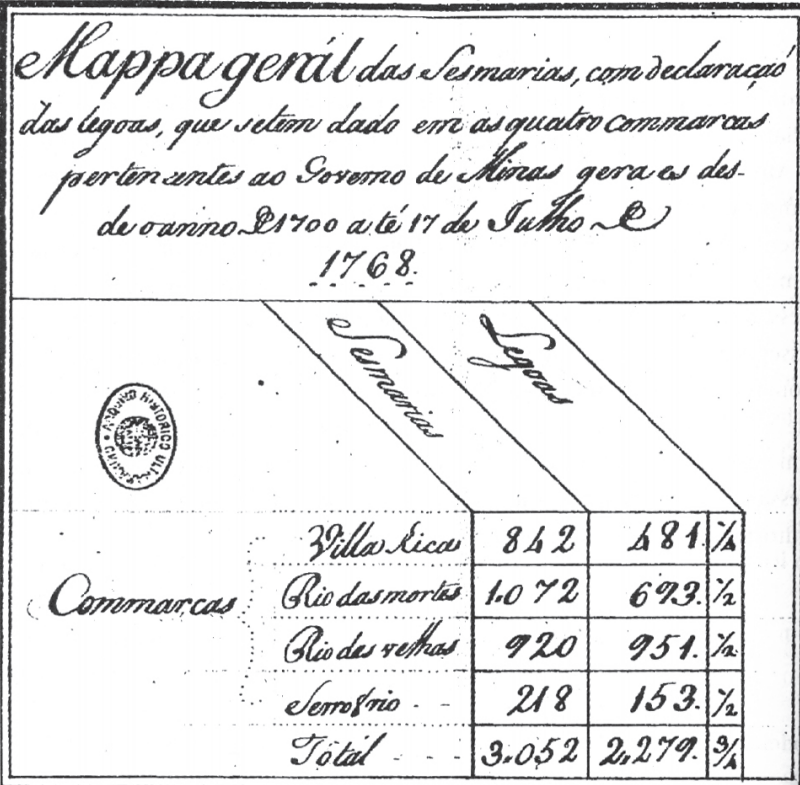
72 *Ibidem*.

## The rebel captaincy: sesmarias in Minas Gerais

Let us look in more detail at the path settlement took in Minas Gerais.

### GENERAL SESMARIAS CHART. MINAS GERAIS, 1768

*Mapa geral das Sesmarias, com declaração das legoas, que se tem dado em as quatro Comarcas pertencentes ao Governo de Minas geraes desde o anno de 1700 até 17 de Julho de 1768.*



Comarcas	Sesmarias	Legoas
Villa Rica	842	481 $\frac{1}{4}$
Rio das mortas	1.072	693 $\frac{1}{2}$
Rio das velhas	920	951 $\frac{1}{2}$
Serro Frio - -	218	153 $\frac{1}{2}$
Total - - -	3.052	2,279 $\frac{3}{4}$

Source: AHU: Projeto Resgate/Minas mapa estatístico sobre demografia, *sesmarias* dízimos, direitos das entradas, 1768. Caixa 93, documento 58. I would like to thank Francisco Eduardo Pinto for finding the document.

At first glance, the above data contradict the information from the books confirming the *sesmarias* during the *Mariano* period. In those books, there were *sesmarias* which were confirmed and probably issued with a seal by the King. A closer look reinforces the hypothesis outlined here. The concessions from the previous years were the result of the intense process of searching for gold. If it is correct to think, as argued by Laura de Mello e Souza, that the captaincy of Minas differed greatly from the “older captaincies

of Portuguese America”,<sup>73</sup> the process of granting *sesmarias* was not able to follow the path of the other administrative units. If there was an improvised world that despised honoured traditions and reinvented procedures,<sup>74</sup> the donations matched the race for wealth, as part of the process of inventing the legality of a particular occupation. This would explain a query made by the Overseas Council on “the disorders created by the ministers in their practice of giving land ownership to the public without any formalities”, - forwarded in 1761,<sup>75</sup> and the warning from Matias Francisco Melo de Albuquerque who, as the judge of Vila Rica, issued an opinion on the illegal occupation of *sesmarias* in Minas Gerais in 1759.<sup>76</sup>

#### SESMARIA CONFIRMATION REQUESTS PER REGISTRY MINAS GERAIS

REGISTRY BOOKS REQUESTS PERIODS	SESMARIA CONFIRMATION REQUESTS
1795-1798	5
1798-1801	55
1801-1804	69
1805-1807	14

SOURCE: AHU. Livro de Registro de Cartas de *Sesmarias* confirmadas do Conselho Ultramarino. 1801/ 1804 - Códices 164/165/166/167.

In his study “Contribution to the Agrarian History of Minas Gerais - eighteenth and nineteenth century”, Carrara demonstrated that the

73 Souza, Laura de Mello e Souza. *O Sol e a sombra*. Política e administração na América Portuguesa do século XVIII. São Paulo: Companhia das Letras, 2006. p. 148.

74 *bbIdem*, p. 168.

75 AHU. Projeto Resgate/Minas Gerais. Consulta do Conselho Ultramarino. 1761. CAIXA 79, doc 71.

76 AHU. Projeto Resgate/Minas Gerais. Carta de Matias Francisco Melo de Albuquerque, 1759. CAIXA 74, doc 65.

concessions in Minas should be considered as guarantees of possessions already taken or land already purchased. In this regard,

the aim of the policy adopted by the government of the Captaincy in the 1730s and 1740s (Royal Order of 14 April 1738 and *Bando* of 13 May 1738) making void all possessions which took place after the publication of these regulations, was none other than that of legalising such possessions. What should be immediately noted is the fact that the petitioners without distinction claimed either the title of first settler (which translated into good Portuguese as *jus primi occupantis*), or the land had been bought from a first settler. In both cases, attaining possession gave rise to access to the property.<sup>77</sup>

The intense process of occupation of that territory, closely linked to the discovery of gold, explains, at least in part, why in Minas, the right of the first settler, or the act of taking possession, was recognised and even overlapped the granting of *sesmarias*, during the initial stage, and later became prohibitive. The “paths of discovery”, by Antonio Rodrigues Arzão, in 1693, Bartolomeu Bueno de Siqueira, in 1696, and Borba Gato fuelled a wave of immigration of enormous proportions. Although no one knows “the exact date and place of the discovery of the first gold-bearing lode”,<sup>78</sup> it is certain that the expectation of enrichment attracted multitudes of people in search of a dream come true. In addition, the increased demand for slaves boosted and allowed the opening of new captive markets.

Moreover, it is likely that the Crown was not interested in scrutinising and controlling the occupation process during the period since the mining activity, the constant supplies of gold and diamonds to Portugal provided “the great revival of Portuguese trade with the colony [and ] allowed the metropolis to solve the problem of its trade deficit with the rest of Europe”.<sup>79</sup>

Be that as may, it is possible that the variations in the distribution of *sesmarias* in Minas Gerais was a result of the intense process of commodification of land in the region. Therefore, it is feasible to believe that there was early on in the region the formation of “an extensive land

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77      Ângelo Alves Carrara, *op. cit.*, p. 11 (author’s italics).

78      Charles Boxer. *O império marítimo português, 1415-1825*. São Paulo: Companhia das Letras, 2002, p. 168.

79      *Idem*, p. 171.



market, given the peculiar conditions of monetary circulation caused by the mining”.<sup>80</sup>

Also according to Carrara, the granting of *sesmarias* had a different meaning in the original mining areas and corrals. In the former,

the *sesmarias* were secondary instruments of property legitimation, since the speed with which the lands were bought and sold decreased the need for the recourse to petitions. The pace of change of the owners of the lands obtained the level it did due to the great circulation of currency (gold dust) in that region.<sup>81</sup>

Monetary circulation was lower in the corrals, “hence the different consideration given to the *sesmarias* in these areas: they consolidated a domain which was more durable, in the absence of other legal instruments, such as deeds of sale”.<sup>82</sup>

Perhaps this helps to explain the significant increase in requests to confirm *sesmarias* in the Minas region in the latter years of the eighteenth century and the beginning of the next

In other words, the decision of the Crown in requiring royal confirmation, via the Overseas Council, would have resulted in a greater concern of the *sesmeiros* who were miners to comply with that provision. Moreover, we must also consider that the *sesmarias* did not remain for ever in the same family. Requests were often submitted for areas previously requested and not occupied.

One must also take into account the dynamics of subsistence production in the region, a complex supplier eager for new lands and/ or security in terms of their access.<sup>83</sup>

It must also be taken into consideration that in the period from 1799 to 1804 there was a significant increase in the grants made in Minas Gerais, pointing to a very dense occupation dynamics obviously a result of the role of the captaincy in the framework of the colonial economy. Just in the years 1800 and 1801, 65 confirmations were granted for the captaincy of Minas Gerais, distributed by region as follows:

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80 Carrara, *op. cit.*, p. 11.

81 *Idem*, p. 12.

82 *Ibidem*.

83 FURTADO, J. *Homens de negócio*. A interiorização da metrópole e do comércio nas Minas setecentistas. São Paulo: Hucitec, 1999.

**CONFIRMATION OF SESMARIAS PER REGION. MINAS  
GERAIS (1800/1801)**

<b>Freguesia do Comarca do Rio das Mortes</b>	São João del Rei	9
	Queluz	1
	São José	17
<b>Freguesia das Zonas Mineradoras Centrais</b>	Rio das Pedras	3
	Sabará	2
	Congonhas do Campo	2
	Mariana	6
	Itatiaia	1
<b>Freguesia da Fronteira Ocidental e Meridional</b>	Tamanduá	5
<b>Not Identified</b>		<b>19</b>

Source: SOURCE:AHU. Livro de Registro de Cartas de *Sesmarias* confirmadas do Conselho Ultramarino. 1801/ 1804 - Códice 166. The distribution by parish here follows the division established by Carrara in the study previously cited.

The settlement process clearly follows the search for free lands or the re-creation of “free lands” in areas previously occupied by former *sesmeiros* or previously belonging to the Indians. The results of this are also clear. There was an increase in conflicts over land ownership and disputes about the (il)legality of the occupation. It is worth noting the decrease, in the period immediately following, of land grants in the captaincy of Minas Gerais. Between 1805 and 1807 only 14 confirmation requests were forwarded to the Overseas Council.

In one way or another, the granting of *sesmarias* was carried out by the governor. Therefore, it was also linked to the perception of each of the governors concerning the system. It also expressed the actual limits and possibilities of controlling the concession, as we can conclude by analysing the distribution in an area of former occupation, such as the captaincy of Rio de Janeiro.

## The old captaincy: the example of Rio de Janeiro

The case of the captaincy of Rio de Janeiro is particularly interesting. The 304 requests during the *Mariano* period were made between 1795 and 1823.

### RIO DE JANEIRO CAPTAINCY. REQUESTED AREA

Area requested	Number of <i>sesmarias</i>	Percentage of the total
½ league squared	150	49.34%
1 league squared	44	14.47%
1 league in front and 2 of backcountry	6	1.97%
1 league in front and 3/4 of backcountry	2	0.65%
1 league in front and 3 of backcountry	1	0.33%
2 league in front and 3 of backcountry	1	0.33%
½ league in front and 1 in the back	9	2.96%
up to 1000 fathoms in front	21	6.90%
Interstitial lands	4	1.31%
Other	66	21.71%
TOTAL	304	

SOURCE:AHU. Livro de Registro de Cartas de *Sesmarias* confirmadas do Conselho Ultramarino. Capitania do Rio de Janeiro. 1795/ 1798, Códice 164. 1798/1801, Códice 165. 1801/ 1804. Códice 166. 1805 1807, Códice 167. 1807/ 1823, CÓDICE 168.

The data above show an attempt to regularize the process in a region with extremely long periods of occupation. The multiple forms of extension indicate more accurate records, accompanied by information on geographical features which, in theory, would have facilitated the location of the area which formed the subject of the request. However, it is worth remembering that the *sesmeiros* would have been willing to submit themselves to the requirements of the Portuguese administration, although they remained restricted to those more general requirements, without the need for accurate data to confirm the arguments they made.

There was, however, the maintenance of land grants involving huge areas, such as that of Campos de Goitacases. Of the 304 requests during the period, 61 were equal to or greater than one league in front and one in the back. It is reasonable to assume that many of these occupations had

previously existed and merely expressed the desire to ensure the patrimony through the ensuring of a legitimate title. Later this aspect will be seen in more detail. It is also pertinent to state that there were still others whose extensions were not so precise, which may indicate that they were also major land grants. There were also the case of the “interstitial land” which in fact were not small plots, such as those requested in 1795 by Manoel Meirinho das Neves, in the region of Bacaxá, Cabo Frio.<sup>84</sup> In short, even in a region involving occupation as old as that of the captaincy of Rio de Janeiro, there were requests that were injurious what was laid down in law.

Be that as may, no mistake should be made in considering the attempts to imprint a particular territorial boundary to confirm a *sesmaria*. These were not normally accompanied by processes involving land measurement to cartographically confirm the requested land area. Conversely, in very ancient regions, the land conflict was already a structuring element of the local reality where various social agents clashed repeatedly when reaffirming: this land is mine.<sup>85</sup>

### A captaincy to control: São Pedro do Rio Grande do Sul

It is worth noting, finally, the modest number of land confirmations in the captaincy of São Pedro do Rio Grande do Sul. This was a result of complex border disputes between powers, with the region having been the object of a slow process of occupation by farmers, mainly from the Azores. The Portuguese Crown had blatant difficulties in controlling the process of land distribution. As Helen Ozório has indicated, the Portuguese administration recognised the problem:

[...] To the many families of the islanders [Azores] who inhabit this continent, they have not been given neither land to cultivate, nor the goods promised to them; and that the powerful individuals living there were the governors of many lands, and there are no more lands left to be shared with the poor, [...] they also ensured me that there are some lands usurped

84 AHU. Carta de *Sesmarias*. Código 164, folhas 70V a 71.

85 For an analysis of land conflict in Campos de Goitacases, Rio de Janeiro, see Silvia Lara. “Senhor da Régia Jurisdição. O particular e o público na Vila de São Salvador dos Campos dos Goitacases na segunda metade do século XVIII” In: Silvia Lara & Joseli Mendonça. *Direitos e justiça no Brasil: ensaios de história social*.

that the aforementioned powerful entities have possessed, without due title.<sup>86</sup>

The border was occupied by many and closed by some, with the region being born in a process which involved the gestation of intense conflicts. In 1786, in criticizing the appropriation of land by a few, with dubious titles, the purveyor of the royal estate of Rio Grande stated: “with similar titles and others of the same nature this vast continent is divided, with some having everything and others nothing”.<sup>87</sup>

In his economic and political memoirs on the administration of Brazil, Antonio José Gonçalves Chaves, who wrote in the 1820s, mentioned that the notary offices of Rio Grande do Sul were “full of claims about possessions and boundaries of land and the origin of these evils dates to the governance of Lieutenant General Sebastião Xavier”, who governed from 1780 to 1801.<sup>88</sup>

Despite the distinct interests of each potential farmer and the different intentions of the governors, the path to obtaining a grant was the same. Let us consider this aspect in more detail to understand, then, what united such distinct interests.

## The filigrees of the Charters: consecration of domains and gestation of conflicts

The maintenance of the same discourse appears to confirm the inability to scrutinise the multiple readings present there. However, they, as has been said, gave differing reasons as to why the *sesmeiros* had sought to legalise their occupations. Let us pause in this regard.

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86 Regimento que há de observar o Cel. José Custódio de Sá e Faria no Governo do Rio Grande de São Pedro. Rio de Janeiro, 23 fev. de 1764. AHRS, Livro de Registro... nº 163, fl. 168. *Apud* Helen Ozório. “Formas de vida e resistência dos lavradores-pastores do Rio Grande no período colonial” In: Márcia Motta & Paulo Zarth. *História Social do Camponato. Formas de resistência camponesa*. Visibilidade e diversidade de conflitos ao longo da História (in press). Regimento que há de observar o Cel. José Custódio de Sá e Faria no Governo do Rio Grande de São Pedro. Rio de Janeiro, 23/fev/1764. AHRS, Livro de Registro... nº 163, fl. 168.

87 *Apud Idem*. Ofício do Provedor da Fazenda Real do Rio Grande ao Vice-rei. Porto Alegre, 26 de fevereiro de 1786. ANRJ, cód. 104, vol. 8, fls. 25-33.

88 Antônio José Gonçalves Chaves. *Memórias ecônomo-políticas sobre a administração do Brasil*. 4ª ed. São Leopoldo: Unisinos, 2004, p. 221. I will discuss the memories of this author in greater detail in the next chapter.

Many *sesmeiros* decided to confirm their *sesmaria* due to the need to transfer their patrimony. Thus, for example, Theodora Maria Alves de Olivas and her sons on 13 September 1797 requested the confirmation of their two leagues in length and one in width in the front of their farm in the Carolinas, captaincy of Maranhão. According to their application, Theodora wanted to see the confirmation of the aforementioned lands as “their own thing for them and their heirs both in terms of ascending and descending lines, without tax or some other tribute”.<sup>89</sup> On 9 August 1798, the farmer had her *sesmaria* confirmed by the Overseas Council.

In a similar vein, there is the request from the brothers Antonio Gomes de Carvalho, Ignácio Antonio Mendes and João Rodrigues de Souza, who on 1 December 1790 asked for the validation of a *sesmaria* in the parish of Guarapiranga, at the end of the town of Mariana, Minas Gerais.

Antonio Gomes, “[...] for himself and as executor and heir of his late mother Cipriana Monteiro de Souza and also for the other heirs his brothers [...]”,<sup>90</sup> claimed he possessed a site in the area known as Cachoponé in Rio Chapoto. He wished therefore to obtain, through the royal document in “conformity with the Royal Orders”, the registration that would confirm the transference of the patrimony resulting from the death of his mother. His *sesmaria* was confirmed one year after the initial application, on 4 November 1799.

Another interesting case was that of Captain Jerônimo Pinto Neto who on 30 September 1791 requested confirmation of his *sesmaria* in Campos, captaincy of Rio de Janeiro:

[...] through his wife Dona Antónia Joaquina da Cruz, Francisca Maria Bellas and José Maria Bellas who through themselves and their parents have for more than 60 years been in possession of 294 fathoms of lands in the front at the place called Beco dos Ciganos [...] and since the aforesaid belonged to her father so that they could issue the *sesmaria* letter for the aforementioned lands.<sup>91</sup>

89 AHU. Carta de Confirmação de *Sesmarias*. Theodora Maria Alves de Olivas. Códice 165, folhas 26 e 26 V.

90 AHU. Carta de Confirmação de *Sesmarias*. Antonio Gomes de Carvalho, Códice 165, folhas 185 a 187.

91 AHU. Carta de Confirmação de *Sesmarias*. Capitão Jerônimo Pinto Neto, Códice 164, folhas 174 e 175.

In other words, the lands had already been occupied by possession for over 60 years and there were, therefore, concrete reasons for the captain to decide to legally secure those lands in Campos.

Heirs of granted *sesmarias* at other times also sought to secure their patrimony. This was the case, for example, of Ignácia Francisca, the only daughter of Bento Álvares Calheiros. Her father had acquired a *sesmaria* with a league in the front and three in the backcountry, in 1757, in the backcountry of the Serra Brás Sardinha, in the headwaters of the Possiununga and Orindi rivers. On 13 March 1800, the farmer Francisca requested a new letter of *sesmaria* in order “to request her confirmation in compliance with the Royal Orders”.<sup>92</sup>

A year later, the heiress had her *sesmaria* secured by the Overseas Council. Ignácia was thus subjected to the provisions of the *Alvará* that obliged her to measure and demarcate the lands granted in the past.

In other examples, *sesmeiros* stand out in seeking confirmation of their *sesmeiros* which had been previously acquired through purchase. In 1798, for example, Caetano Nunes Pereira requested the legalisation of a *sesmaria* relating to the Roça Grande farm in Minas Gerais, since “[...] he thinks [thought] to make use of a farm with Resourcefulness which was of the late Lieutenant Coronel Francisco de Barros and next to it two sites that he bought from Manoel Carlos”.<sup>93</sup>

This was also the concern of Francisco de Abreu Guimarães<sup>94</sup> and Padre Victorino da Paixão. The latter on 16 March 1793 requested confirmation of a *sesmaria* in the place Álvaro Coelho, in Vila de São João del Rei, Minas Gerais, whose lands “[...] were gathered together in their crop areas [...] and which the supplicant bought at an auction in the Market”.<sup>95</sup> On 17 April 1799 he received confirmation of his *sesmaria* of ½ league squared of land.

There were those who claimed in their petitions that the lands were still unoccupied. In those cases, the applicant sought to clarify the desired location, since he presumably had not occupied it. Thus, Antonio Pinto Castelo Branco on 16 May 1793 requested some lands. To that effect, he argued that “[...] he had some slaves which he occupied in agriculture and

92 AHU. Carta de Confirmação de *Sesmarias*. Ignácia Francisca. Códice 252 V a 253V.

93 AHU. Carta de Confirmação de *Sesmarias*. Caetano Nunes Pereira Códice 165, folhas 65V a 66.

94 AHU. Carta de Confirmação de *Sesmarias*. Francisco de Abreu Guimarães, Códice 165, folhas 31V a 32V.

95 AHU. Carta de Confirmação de *Sesmarias*. Padre Victorino da Paixão Códice 165, folhas 150V/ 151V.

through not having his own lands to cultivate they did so in others [...].” According to the petitioner, he had received “[...] news in the Itaipuassu rivulet, running upstream from the right field between Pedro Martins and that of Faustino Cantanlida through the West with the same Field, there were some vacant lands in the *Matas de Piquei* [...]”.<sup>96</sup> On 5 June 1798 Castelo Branco got what he wished for, and his *sesmaria* was confirmed.

The same happened with Joaquim José de Souza Meireles, who on 9 May 1797, petitioned for one league squared at the site of the Rio Preto, Vila de Magé, Rio de Janeiro. Joaquim stated that he was aware of the existence of vacant lands in that location and that they were already being cultivated “[...] for his own benefit and that of his majesty”.<sup>97</sup> Two years later, his request was granted.

In these examples, the decisive element in the request was the potential existence of areas not yet occupied and the efforts of farmers to acquire lands in *sesmarias* allegedly without owners.

Other *sesmeiros* forwarded a request to endorse the expansion of their property. This was the case of Antonio Jose da Costa Barbosa, who requested a *sesmaria* in the back of the government farm of Rio de Janeiro, on 13 May 1799. Barbosa stated that “[...] he was the landlord and possessor of the government farm on the way from Minas Gerais, at a distance of more than 20 leagues from where he had a mill for the manufacture of sugar [...] and had received news that at the back of the hinterland of the same government farm [...] there were some interstitial lands”.<sup>98</sup>

In this and other cases, a previously acquired *sesmaria* opened up the possibility of expanding the area, using the claim of “leftovers” and “interstitial” adjoining lands. The vagueness of the boundaries is striking here and there was no provision of the Crown in relation to these “remnants” of land. Any *sesmeiro* thus had so many ways to achieving his purpose, since having so recognised, his charter was surety as an argument from authority to legitimise his expansion.

There were many requests showing the desire to attain the social mobility afforded by the land grant. In such cases, the *sesmeiro* did not intend to obtain just one legitimate title, but also to join the social category of *sesmeiro*, as opposed to the universe of farmers without land titles.

96 AHU. Carta de Confirmação de *Sesmarias*. Antonio Pinto Castelo Branco Códice 165, folhas 28 a 29.

97 AHU. Carta de Confirmação de *Sesmarias*. Joaquim Jose de Souza Meireles Códice 165, folhas 80 V a 81 V.

98 AHU. Carta de Confirmação de *Sesmarias*. Antonio Jose da Costa Barbosa. Códice 165.



On 26 June 1798, João Pinto Coelho de Souza requested vacant lands in the parish of Inhomirim, Rio de Janeiro. According to what he stated, he lived on the government farm and did not own his own lands in which

[...] he would gather with his family and work with 18 slaves that he has [d] and consider [ed] to bring together on the aforementioned farm and he had news that in the back of the *sesmaria* that the late Antonio Cordeiro da Silva took, in the backlands of Rio Piabanha to the eastern part of the aforementioned Parish of Inhomirim there were vacant lands on the site of the aforementioned *sesmarias*, and he wished to be granted by *sesmaria* one league of lands in the front with others of backcountry in the back so they can establish themselves there and cultivate and thus grow all manner of produce[...].<sup>99</sup>

João Pinto was granted his request, gaining ½ league square on 23 August 1799. A similar situation was that of José Pereira Gurgel, resident of Maricá, Rio de Janeiro. He said he had 10 sons and 18 slaves

[...] with whom he was working on lands that did not belong to them for which he paid excessively and he had news that in the parish of Ihomerim district in the hills above the eastern part of the Vila de Magé there were vacant lands at the end of the *sesmarias* granted to Francisco José Vieira [...].<sup>100</sup>

This was heard in the Magé Council, which authorized the granting of ½ league square, confirmed by the Overseas Council on 8 June 1799.

André de Castro Gomes did the same and on 20 December 1796 requested a *sesmaria* in Cabo Frio, in the parish of Santo Antonio de Sá, Rio de Janeiro, claiming he had “[...] been married for quite some years and had no less than 7 small children and the size of the land he had bought was small for the cost of such a large family as well as owning 18 slaves who could work on a larger extent of land”.<sup>101</sup> Castro Gomes was more

99 AHU. Carta de Confirmação de *Sesmarias*. João Pinto Coelho de Souza.. Códice 165, folhas 146V/147.

100 AHU. Carta de Confirmação de *Sesmarias*. José Pereira Gurgel. Códice 165, folhas 166 a 167.

101 AHU. Carta de Confirmação de *Sesmarias*. André de Castro Gomes. Códice 165, folhas 165 a 166.

fortunate, as he received confirmation of being granted one league square on 8 June 1799.

In such cases, the request for *sesmarias* could result in the desired rise in social status and place the farmer in the social category of the *sesmeiro*. Many had started farming on the lands of others, others started their agricultural activities through occupying vacant lands, supposedly without owners. In requesting a *sesmaria*, they could differentiate themselves from their peers, tenants and farmers having to depend, or not, on the major landowners in the region.

There were other, even rarer, occasions when a group of farmers - probably relatives - collectively requested a *sesmaria*. This was the case of João Pedro Braga and 17 other people on 4 November 1799, who asked for interstitial lands in Rio de Janeiro,

[...] Rio Caçaraubu, for part of the farm of the Colégio and Paucaia, parish of Nossa Senhora do Rio Bonito, at the end of Vila de Santo Antonio de Sá [...] where they are established in the *sesmarias* of the Sardinhas through purchase, inheritance, where they live rather closely with little land in their possession for such a large family.<sup>102</sup>

The *sesmaria* regarding the “interstitial lands they found” was confirmed on 20 October 1801. In the following year, João Pedro received the Seal on 22 January,<sup>103</sup> thus legally securing those “interstitial lands”. On 8 February 1810, João Pedro was accused of having penetrated the farm of Captain Henrique José de Araújo, “[...] which had belonged to the petitioner and his predecessors more than one hundred years previously, in the Vila de Santo Antonio de Sá, in a place called Colégio”.<sup>104</sup>

102 AHU. Carta de Confirmação de *Sesmarias*. José Pedro Braga e outros. Códice 166, folhas 61v a 62 v.

103 ANTT. Chancelaria de D. Maria. João Pedro Braga e outros. Livro 66, p 94 a 95.

104 AN.; Tribunal de Justiça do Rio de Janeiro / Juízo da Corregedoria do Cível da Corte. Código:5237 Caixa 448 G C Código de Fundo 77 Seção de Guarda: CDE. Autor: Capitão Henrique José de Araújo, sua mulher Maria Bibiana de Araújo, e sogra Maria Feliciano Cordovil. Réu: João Pedro Braga. 08/02/1810 - 03/08/1816. Local: Cidade do Rio de Janeiro / Sítio Vila Santo Antonio de Sá.

At that moment, it hardly mattered whether João Pedro had managed to legalise his occupation, as well as obtain the royal seal.

It is true that the *sesmaria* letter contained formal procedures inside it for the forwarding of the concession, as we saw in the previous chapter. It is also true that it was intended to achieve multiple objectives, in relation to the interest of the potential *sesmeiro* in securing a parcel of land. It is also certain that it was the result of a series of *alvarás* and decrees on the granting of *sesmarias*, containing as such a routine of apparently sterile formal procedures.

But even there, there is clear evidence of conflicts, which shows us that, while fulfilling the royal provision, the *sesmeiros* also brought to light the potential for conflicts in the access to land.

Some *sesmeiros*, such as Salvador da Silva Fidalgo, were very careful. In 1798 he requested one league squared in Cachoeira de Macacu, Rio de Janeiro, “adjoining and separating where it is most convenient with another *sesmaria* of half a league granted to Lieutenant José da Silva Fidalgo and in the same direction of the oldest *sesmarias* on that land “.<sup>105</sup>

Quitéria Maria do Nazaré in the same place also requested

one league squared of land in *sesmaria* at the aforementioned *cachoeira* (waterfall), adjoining on one side with the *sesmaria* of Salvador da Silva Fidalgo, through the part on top thus belonging, according to the same path towards the oldest *sesmarias* on that land or belonging to that of the petitioner where he had found vacant land, without any prejudice to third parties.<sup>106</sup>

The (non) disputes between the areas belonging to Salvador, Quitéria and others would have been the results of games of power in the region, culminating in an agreement for each party or in more dramatic actions regarding the demarcations.

This was also the case for Antonio José Ferreira de Abreu who, in 1796, requested

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105 AHU. Carta de Confirmação de Sesmarias. Tenente José da Silva Fidalgo. Códice 165, folhas 130 e 131.

106 AHU. Carta de Confirmação de Sesmarias. Quitéria Maria de Jesus. Códice 165, folhas 131 e 132.

One league in the front with another in the back in the Backlands of Rio Preto, Magé, Rio de Janeiro where [...] there were vacant lands where the *sesmarias* finished which Drs. Francisco Nunes Pereira and José de Arede Neves had requested and the petitioner wanted in the name of His Majesty to be granted one league of land in the front and another in the backcountry of the aforementioned land, beginning where the aforementioned *sesmarias* end.<sup>107</sup>

Once more, the decision would be taken by the *sesmeiros* and the closest representatives of the Crown.

The potential for conflict was also present in the request, made on 9 August 1795, by Antonio Jose Pereira Maya, who requested lands in Vila de Nossa Senhora da Conceição de Guapemirim, Espírito Santo.

At the meeting of the River above the settlement of Itapemirim at the end of Nossa Senhora de Guarapemirim there are many vacant lands such that the petitioner wishes to establish an agriculture holding and does not have his own land where he can do so, such that he has ownership and capital [...] one league squared, with half adjoining each side of the aforementioned Itapemirim river, starting where the granting of the last donataries finishes, who to date have granted the last *sesmarias* with one league at the bottom of one to the other part of the aforementioned River.<sup>108</sup>

An even more significant example was the request made by Matias Álvares de Brito for a *sesmaria* in Rio Bacaxá, Cabo Frio, Rio de Janeiro. In 1788 he claimed that he was in

possession of one league of land in Rio Bacaxá, the lands of which being granted by *sesmaria* to Luiz Francisco de Souza in the year 1726 [...] such as to avoid a bad verilancia (sic!) which could lead to some disorders so that he wished that a

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107 AHU. Carta de Confirmação de *Sesmarias*. Antonio José Ferreira de Abreu. Códice 165, folhas 141 e 142.

108 AHU. Carta de Confirmação de *Sesmarias*. Antonio Jose Pereira Maya Códice 165, folhas 95 V a 96 V.

*sesmaria* be granted for all the twists and inlet of the River corresponding to the adjoining land which the applicant considered he was in possession of [...].<sup>109</sup>

For some reason, only in 1794 was Matias given his request, but it is plausible to think that the delay in granting those lands would have been the result of the “disorders”, in the conflicts arising from imprecise boundaries.

Another even more explicit example is that of Captain João Rodrigues de Carvalho, who in 1777 asked for a *sesmaria* for lands which

came by way of attachment and auction [...] and given that he lacked the primary title which came from the *sesmeiro* and the owners of that field by ancient tenure and avoiding doubts and disputes in the future wished to have the *sesmaria* of the aforementioned lands “[... ] which could have around 600 fathoms in the front with the back which is believed to be until the Serra de Itaoca.”<sup>110</sup>

The potential for conflict is also evident when we analyse the *sesmarias* belonging to Antonio José dos Santos. On 8 March 1803, he requested half a league squared in Campos dos Goitacases, Rio Muriaé. Following his request, he wanted to obtain land “behind the *sesmaria* of Bento Gonçalves Canellas and José Gonçalves Teixeira [which] were found unoccupied, serving only the slaves from Quilombos who had fled and from where they came to steal animals and crops of settlers on the bank of the aforementioned river”.<sup>111</sup>

In short, despite the intention of the letter, its vocabulary and its more formal proceedings, there was evidence that came to the Overseas Council regarding potential conflicts, arising from fluid demarcations. Many of these clashes originated from the incontrovertible fact that there were “too many” concessions or they were granted on land potentially already occupied. As such, despite attempts to limit expansion and control it via royal procedures, there were cases where the *sesmaria* document served to ensure the incorporation of huge territorial limits to the same family, in return for services rendered to the Crown. If the applications did not

109 AHU. Carta de Confirmação de *Sesmarias*. Matias Álvares de Brito. Códice 164, folhas 22 a 22 V.

110 AHU. Carta de Confirmação de *Sesmarias*. Capitão João Rodrigues de Carvalho. Códice 164, folhas 32 a 33 V

111 AHU. Carta de Confirmação de *Sesmarias*. Antonio José dos Santos. Códice 166, folhas 203 a 204 V.

undermine what was written in law, in practice they hid the appropriation of huge expanses of land for one and the same family. However, even in these cases, the position of the crown was not always the same.

## THE CROWN INTERVENES: THE EMBLEMATIC CONCESSIONS

The application for the land registration provision was started with the submission of the applicant, which provided information concerning the extent of their lands, the place where it was located, and in most cases, the corresponding captaincy. On some occasions, the initial request was already accompanied by an indication that it wished to avoid “doubts and disputes with neighbours”. From there, it determined:

I shall for good and hereby request the Judge (*Ouvidor*) of the District ... and in his absence the *Juiz de Fora* in the same city to personally carry out the measurement, demarcation and registration of the lands that belong to the supplicant by legitimate title of legal or extrajudicial purchase, and by *sesmaria* letter confirmed by myself.<sup>112</sup>

That is, the request was accepted, recognizing that the *sesmaria* letter - as was the case - had already been confirmed.

In many request provisions conflict was explicit. In January 1796, for example, Domingos José de Oliveira, farmer of the District of Sergipe Del Rey, requested the registration of his lands, since he was

master and owner of a sugar plantation with the land extension and borders indicated in the deed of sale [...] and as part of the same found himself allied against and usurped by several individuals in a short time such that the supplicant experienced damages.<sup>113</sup>

Another interesting case was that of the farmer Antonio Monis de Souza Barreto Aragão. In his provision request, he stated that “he was

112 AHU. Livro de Registro de Provisões. Códices 109 e 110.

113 AHU. Livro de Registro de Provisões. Domingos José de Oliveira, 1796. Códice 109.

landlord and possessed a land called Aragão, located in the district of Bahia, which was conceded by Grant and *Sesmaria* to Balthasar Barbosa Pinheiro”. According to Barreto Aragão, he “experienced some concerns over the borders that that may lead to considerable disorders over this confusion of boundaries”. But the farmer did not ask merely ask to register his lands:

he asked whether it could be granted him Provision for a Minister of [?] with the exclusiveness for those whom he referred to as being suspicious, carrying out the registration and demarcation of the aforesaid land with Ordinary Jurisdiction to know the causes of that Registration, without the suspension of the Demarcation, with it being less harmful for him to repair any defect, than continue with the confusion over its limits.<sup>114</sup>

The farmer asked a judge who was not involved in the disputes of the locality and accepted that its measurement could reduce his original area, since the confusion over boundaries was even worse than that. In response to his request, the prosecutors of the Treasury were heard and the Overseas Council consulted. The farmer’s request was accepted.

I hereby deem fit to grant to the Supplicant the Provision that is requested and otherwise do order, such as through this I hereby order that the Governor and Captain General of the Province of Bahia Minister appoint for his greater confidence, one of those who have just been dispatched to the Court of the aforementioned city, on which I confer *Jurisdiction Ordinária*, so that the titles represented here can be viewed, the parts heard and this granted [...]”.<sup>115</sup>

Thus, according to the decision, the Crown intervened directly in the potential conflict. The efforts of Barreto Aragão to measure and demarcate his lands, however, continued. On 24 April 1799, that is, nearly three years after his first application, the farmer returned to request a provision for the

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114 AHU. Livro de Registro de Provisões. Antonio Monis de Souza Barreto Aragão. Códice 109, p. 148/149.

115 *Idem*.



registration of his farm.<sup>116</sup> There were even more serious reasons why it had not been possible to demarcate Aragão's lands. The power games between *sesmeiros* and the difficulties of measuring land without the presence of technicians, could not be solved by such a distant crown.

Despite the difficulties, there is no doubt that some farmers expected to see the issue of the demarcation of their lands resolved. In 1796, most likely as a result of the Royal Charter of Queen Mary I of 1795, a significant number of farmers asked for the registration provision. As we know, between 1795 and 1798 - a span of three years - 214 *sesmarias* were requested. In the same period, there were requests for provisions for 59 plots of land!

There were, however, differences between the captaincies. The result of different rates of occupancy, the registration requests also seem to reveal the way in which the farmers of each captaincy were related to the Crown, revealing different expectations regarding the possibility of intervention by that Power.

#### REGISTRATION REQUESTS PER YEAR AND PER CAPTAINCY (1795/1806)

YEAR	CAPTAINCY	REGISTRATIONS
1795	Maranhão	4
1796	Maranhão	25
	Pernambuco	2
	Sergipe	3
	São Paulo	1
	Paraíba	1
	Rio de Janeiro	1
	Santa Catarina	1
	Not identified	2

116 AHU. Livro de Registro de Provisões. Antonio Monis de Souza Barreto Aragão. Códice 109, p. 152/152V.

1797	Maranhão	5
	Pernambuco	1
	Sergipe	1
	Bahia	1
	Not identified	2

<b>YEAR</b>	<b>CAPTAINCY</b>	<b>REGISTERS</b>
1798	Maranhão	3
	Pernambuco	2
	Bahia	2
	Paraíba	1
	Pará	1
1799	Bahia	5
	Pernambuco	2
	Maranhão	1
	Paraíba	1
	Rio de Janeiro	1
1800	Piauí	4
	Bahia	1
	Maranhão	1
	Paraíba	1
	Pernambuco	1
	Not identified	2
1801	Maranhão	6
	Bahia	4
1802	Maranhão	3
	Bahia	1

1803	Bahia	5
	Maranhão	4
	Pernambuco	3
	Paraíba	1
	Not identified	1
1804	Maranhão	3
	Pernambuco	3
	Rio de Janeiro	1
	Not identified	1
1805	Maranhão	3
	Pernambuco	1
	Bahia	1
1806	Bahia	4
	Pernambuco	3
	Maranhão	1

SOURCE: AHU. Livro de Registro de Provisões. Códices 109 (1795/1802) 3 Códice 110 (1802/1807)

The recurring presence of provision requests for the captaincy of Maranhão (of the 128 provisions, 59 were from that region) seems to confirm the trend of *sesmeiros* applying directly to the Crown in an attempt to regularise their land along with the tendency to continue to request *sesmarias* directly from the Council, from 1808 onwards.<sup>117</sup>

Common interests between the *sesmeiros* and the Crown could denote “closing their eyes” to flagrant land usurpations. Divergent interests, however, could have meant discussing the right to land of a potentate. This is what we will see below, with the help of two cases: Ignácio Correia Pamplona and Garcia Paes Leme.

117 I will discuss this information in the following chapter.

## The Crown and its vassals: Ignácio Pamplona and Garcia Paes Leme

Known as one of the informers of the *Inconfidência Mineira* (the Minas Gerais Conspiracy), Ignácio Correia Pamplona was a landlord and possessor of vast territories. One of the conspirators, Claudio Manoel da Costa, was a judge of the demarcations of *sesmarias* of land grants for Vila Rica,<sup>118</sup> but he was the informer who managed to secure a huge area of land.

Ignácio Correia Pamplona, Portuguese, was born in 1731 on the island of Terceira and was the son of Manoel Correia de Melo and Francisca Xavier de Pamplona. He married Eugenia Luiza da Silva, who was mulatto and daughter of a former black slave, and an unknown father. With her Ignácio had six children: Simplícia, Rosa, Theodora, Inácia, Bernardina and Inácio Correia Pamplona Corte Real, who became a priest.<sup>119</sup>

According to Márcia Amantino, he was a trader in Rio de Janeiro, supplying Vila Rica and São João del Rei. His life was marked by expeditions to fight the Indians and *Quilombolas*. In 1764, following an invitation by the then Governor Luiz Diogo Lobo da Silva, he started one of dozens of expeditions to the settlement of Minas Gerais. In 1765, in company with several others, he entered the springs of the Rio São Francisco. Because of this diligence, the governor awarded *sesmarias* to those who had participated in the expedition.<sup>120</sup> “The main reason the applicants requested land was they had participated to some extent in conquering the vacant backcountry of Rio São Francisco, Serra da Marcela and Quilombo do Ambrósio”.<sup>121</sup> According to the author, the following participated in that expedition: José Alves Diniz, Afonso Lamounier, José Fernandes de Lima, Antonio José Bastos, Inácio Bernardes de Souza, Simão Rodrigues de Souza, Pedro Vieira de Faria and Timóteo Pereira Pamplona. However, besides Ignacio, only Afonso Lamounier requested confirmation of his *sesmarias* in 1807, then receiving three leagues of land in the backcountry, in the “second

118 There is an extensive bibliography on the *Inconfidência Mineira* which there is not space enough to discuss here. What matters is just to highlight the proximity of the criticisms that had been made by the conspirators to the administration of the Crown, the fact that one of the conspirators was a judge demarcating *sesmarias* and land grants and one of the informers who managed to obtain vast tracts of land.

119 The biography of Ignácio was taken from the doctoral thesis of Márcia Amantino. *O Mundo das Feras. Os moradores do Sertão do Oeste de Minas Gerais*. Rio de Janeiro, Universidade Federal do Rio de Janeiro, 2001.

120 *Idem*, p. 192.

121 *Ibidem*.

channel of the Rio São Francisco, into the same river, Serra da Marcella and Quilombo do Ambrozio”.<sup>122</sup>

Ignácio Correia Pamplona was also known for his decisive participation in the 1769 expedition, which he reported with a wealth of details. For Laura de Mello e Souza:

The contrast between barbarism and civilization marks the report, suggesting that it is a constitutive part of expeditions of this kind and showing an unsuspected everyday side of the hunters and *quilombolas*. It was not just the frontiersmen and part-criminal backcountry occupants who went into the backcountry in search of new finds of gold and hovels of runaway slaves, or in the hope of *sesmarias* obtained as a reward. The delegation also had a chaplain - in this case, Padre Gabriel da Costa Resende - a surgeon and a company of eight musicians, one of whom was white and seven black slaves owned by the master of the field, consisting also of ‘two black drums’, with their chests covered with wax.<sup>123</sup>

The word *sertão* (backcountry) was always associated with the notion of emptiness, “barbarism and savagery, thanks to it being a place inhabited by Indians and runaway slaves”.<sup>124</sup> As a place to be conquered, the backcountry was a special stage for the explorers, jealous of the gold and wealth of the lands occupied by those not recognised as legitimate occupants. The expeditions thus had the sense of conquest. Ignácio Pamplona, one of the most prominent representatives of this view, stated that the settlement of these lands “was a difficult undertaking which had already been tried many times without success thanks to the opposition of the heathen brave and the blacks who on every side surrounded this continent”.<sup>125</sup> Furthermore, Ignácio Pamplona expressed in a clear manner the threats posed by runaway slaves, when, in 1770, he wrote to the Conde de Valadares to inform him “that

122 AHU. Carta de Confirmação de *Sesmarias*. Antonio Afonso Lamounier. Códice 167,

123 Laura de Mello e Souza. “Violência e práticas culturais no cotidiano de uma expedição contra quilombolas. Minas Gerais, 1769”. In: João José Reis & Flávio dos Santos Gomes. *Liberdade por um fio*. História dos Quilombos no Brasil. São Paulo: Companhia das Letras, 1996, p. 199.

124 Márcia Amantício, *op. cit.*, p. 45.

125 *Apud* Márcia Amantino. Arquivo Conde de Valadares. Biblioteca Nacional, Seção de Manuscritos, 18, 2,6, documento 7.

the *quilomboloas* were destroying farms, destroying everything, putting it in a miserable condition, and recently carrying off your male and female slaves, without leaving you with even one”.<sup>126</sup>

Márcia Amantino also states that throughout his life, Ignácio Correia Pamplona obtained several *sesmarias*, “almost all with the extension of three leagues squared. He also owned the *Fazenda dos Perdizes* farm, that of Mendanha, that of Capote, and another one in Lagoa Dourada, parish of Os Padros, district of Rio das Mortes”.<sup>127</sup> As a result of the conquest of Bamui, Campo Grande, he was also given another eight *sesmarias*, one for him and the others in the name of his children. In his will of 1821, he stated that “in order to measure and demarcate all these lands it was necessary to incur a lot of expenses” involving gunpowder, lead, guns, supplies, animal trains and many men”.<sup>128</sup>

Furthermore, according to Márcia Amantino, Pamplona made sure of resolving any pending legal disputes, arresting criminals and killing both indigenous and *quilombola* enemies”.<sup>129</sup> He was also a *Maître de camp* and *Regente* of various districts of Minas Gerais.

When, years later, he sought to legalise these possessions in response to the *Alvará* of 1795, he reiterated the fact that they originated from the conquest he once undertook. In his request for confirmation of the *sesmarias*, he informed the governor of the captaincy of Minas Gerais that since 1767

he had possessed a large number of slaves, cattle, mares [...] and did not have land to cultivate and an adjoining field to carry out labour on his possession, with the need to go to the backcountry by the San Francisco River, with an aid to discover land [...] which had experienced large losses and considerable expense as it was vacant backcountry land.<sup>130</sup>

Furthermore, regarding the royal requirements in relation to the maximum size to be petitioned, Ignácio did not dare ask for more than

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126 *Idem*, p. 147. Arquivo Conde de Valadares. Biblioteca Nacional Seção de Manuscritos, 18, 2, 6 documento 65.

127 *Idem*, p. 193.

128 *Ibidem*.

129 *Ibidem*.

130 AHU. Carta de Confirmação de *Sesmarias*. Ignácio Correia Pamplona. Códice 166, folhas 69 a 70.

what was laid down in law, requesting three leagues of land “given the aforementioned costs”<sup>131</sup> and received confirmation of this on 5 June 1800.

Without breaking any regulations, Ignacio Pamplona, however, used the legal regulations in force to, at the same time, maintain his power over those areas and to submit to the dictates of the Crown.

Thus, through his daughters he requested another “three leagues” in the same region. Theodora Correia Pamplona requested three leagues of land “for the conquest and settlement of vacant backcountry within the second channel of the São Francisco river, at the end of the village of São José”.<sup>132</sup>

His other legitimate daughter, Rosa Correia Pamplona, also requested three leagues of land in the same region “for the conquest and settlement of vacant backcountry within the second channel of the São Francisco river, at the end of the village of São José”.<sup>133</sup>

Another daughter of Ignácio, Simplícia Correia Pamplona, also requested three leagues of land “for the conquest and settlement of vacant backcountry which lies within the second channel of São Francisco, Serra de Marcella and Quilombo do Ambrozio”.<sup>134</sup>

And furthermore Inácia Correia Pamplona did not settle for less, also requesting, in the same area, three leagues of land “for the conquest and settlement of the vacant backcountry within the second arm of the São Francisco River, Serra de Marcella and Quilombo do Ambrozio”.<sup>135</sup> All of the *sesmarias* of the daughters of Ignácio were confirmed in the same month and year and it was clear that there was an interest in ensuring that occupation, despite the enormous territorial area thus incorporated by the family.

Bernardina Correia Pamplona, also daughter of Ignácio, was the only one not to request three leagues, but “½ league of land squared at the place called *Osaes dos corvos*, from here in Rio de San Francisco”<sup>136</sup> and also received the royal seal. There was also another request, that of João José

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131 AHU. Carta de Confirmação de *Sesmarias*. Ignácio Correia Pamplona. Códice 166, folhas 69 a 70.

132 AUU. Carta de Confirmação de *Sesmarias*. Theodora Correia Pamplona. Códice 166, folhas 56v a 57v.

133 AHU. Carta de Confirmação de *Sesmarias*. Rosa Correia Pamplona. Códice 166, folhas 58 v a 59 v.

134 AHU. Carta de Confirmação de *Sesmarias*. Simplícia Correia Pamplona. Códice 166, folhas 66 v a 67 v.

135 AHU. Carta de Confirmação de *Sesmarias*. Ignacia Correia Pamplona. Códice 166, folhas 72 a 73.

136 AHU. Carta de Confirmação de *Sesmarias*. Bernardina Correia Pamplona. Códice 166, folhas 68 a 69.

Correia Pamplona, probably a relative of Ignácio, who requested “½ league of land squared in the village of São José, district of Rio das Mortes”.<sup>137</sup>

But it was not so easy to use the royal provisions. As I said, both Ignácio and his daughters received the seal for their *sesmarias*, but the strange way in which the lands were requested led to a change in Ignácio’s plans. He received the seal for his *sesmaria* on 16 December 1801.<sup>138</sup> Rosa had had her land confirmed, as she had requested, on 30 January 1802.<sup>139</sup> Theodora was not so lucky, since the document which arrived after that of Rose, was seen to deal with the same area. The Chancery then informed them that: “This *sesmaria* is however the same as the request that was made right before this, with no other difference than the names of the *sesmeiros*, and so should incorporate all of them where it states Jerônimo Jose Correia e Moura.”<sup>140</sup>

Simplicia experienced the same problem along with the allegation that “this letter is the same as the request just before this. It differs only in the names of the *sesmeiros* [...] with these differences, this should be incorporated here, using the form to which she refers”.<sup>141</sup>

However, despite the doubts raised when submitting documents to the Chancery, this does not seem to have prevented the incorporation of Ignácio’s land and the Overseas Council endorsed the occupation of those areas without any addendum to differentiate this from the other concessions. The Chancery just enacted a decision made by the Council and since it had not demanded any precise demarcation of the territories desired, the royal grant ensured the incorporation of various leagues for the family of Ignácio.

Representing the interests of both himself and the Crown, Ignácio Correia Pamplona, now as a Colonel of the militia regiment of the Sertão do Piauí, in 1801 also applied for, “the post of the office of clerk of the orphans from his son, the priest Ignácio in the city of Mariana “with considerations for his daughters and the Habit of the Order of Christ for himself and for his child”.<sup>142</sup> Later that same year, and describing himself as the “*regente* and chief guardian of the lands and minerals, Ignácio requested from John

137 AHU. Carta de Confirmação de *Sesmarias*. João Jose Correia Pamplona. Códice 166, folhas 73 a 74 v.

138 ANTT. Chancelaria D. Maria Livro 65, p. 668V.

139 ANTT. Chancelaria. D. Maria Livro 65, p. 267/268.

140 ANTT. Chancelaria. D. Maria Livro 65, p. 268.

141 ANTT. Chancelaria D.. Maria, Livro 65 p. 269.

142 AHU. Projeto Resgate. Minas Gerais. Ignácio Correia Pamplona. Caixa 160 doc. 3. CD 047.145, 0405.



VI the habit of Our Lord Jesus Christ for his son and “also the post of the office of clerk of the orphans for his daughters”.<sup>143</sup>

One year later, Ignácio Correia Pamplona again presented himself as a faithful subject of the King to request authorisation to use pistols and knives and other weapons when they walked through the backcountry of the captaincy of Minas Gerais, which was depopulated and “full of black robbers and Indian traitors”.<sup>144</sup> Apparently, the request seems to have been misplaced, since the expeditions of Ignácio Correia Pamplona and his reputation as a trailblazer in the backcountry were well-known. It is then possible to suggest that the purpose of the application was mainly to show the submission of this person at a time when he wanted to be accepted into the habit of Our Lady of Jesus Christ.

In November 1805, the then Colonel Ignácio Correia Pamplona begged mercy for his distinguished services. In dozens of pages sent to the Overseas Council, Pamplona reported his expeditions, their commitment to the destruction of the Quilombo and his career as a conqueror. He thus expressed himself as an emblematic subject of the king, hoping to see his career and loyalty recognised.<sup>145</sup>

One of the heirs of Garcia Rodrigues Paes had a very diverse trajectory. The latter was responsible for opening the *Caminho Novo* (New Way) to Minas, through the back of the Serra dos Órgãos. When descending the indigenous trail in the Serra da Mantiqueira range, around 1683, he discovered a quiet spot in the Paraíba River. There he started the Paraíba farm, settling some of his family. He believed that he had discovered precious stones and gold, and in view of this, requested a royal order to open the path. After numerous attempts, in which there were many setbacks, Garcia was thanked by becoming the donatary of a village to be erected in the “river of clear water” in the backcountry of Paraíba, receiving a grant of a large tract of lands officially vacant on the way to Minas. Thus, on 14 August 1711, Garcia Rodrigues was

made a beneficial individual through the granting of *sesmarias* as if to be divided among four people, in the form of Royal Orders, which would not be alongside the village except the

143 AHU. Projeto Resgate. Minas Gerais. Ignácio Correia Pamplona. Caixa 160, doc 4. CD 047, 145, 0409.

144 AHU. Projeto Resgate. Minas Gerais. Ignácio Correia Pamplona. Caixa 164, doc. 37 CD 048, 149, 0342.

145 AHU. Projeto Resgate. Minas Gerais. Ignácio Correia Pamplona. Caixa 177, doc 47. CD CD052, 163,009.

part that could not be contested and that a grant would be given to each of his twelve children.<sup>146</sup>

However, the grant as formerly made would not have established the unchallenged power of Garcia Rodrigues and his family. In an undated document, archived under the custody of the Brazilian Historical and Geographical Institute, there is an extensive explanation for the reasons to limit the extent of those lands.

People say [that] they have *sesmarias* on the Path that goes from Rio de Janeiro to the gold Mines, and the shortcut which Garcia Rodrigues opened on the same path, where the governors of that captaincy have given grants of lands to many people, both at the beginning of the Serra dos Órgãos until the Paraíba River, as the same River up until the first mines of Rio das Mortes and the ease with which the aforementioned have received many grants of Land, especially from the beginning of the aforementioned Serra up to the aforementioned Paraíba River, have succeeded in giving themselves many *Sesmarias* of Land which is one League squared, which really do not fit in the area of the aforementioned path as there are more *Sesmarias* that the number of leagues that are there in one part and the other[...].

In the documents, the residents provided information about the antiquity of occupation of some of the *sesmeiros* and claimed that some of them had cultivated those lands for over twenty years without “any contradiction, being that it was enough to purchase the perfect domain”. They further alleged that it did not seem fair that after having incurred considerable expense to cultivate the lands and make improvements to the paths, others had taken over the lordship of those lands. And they warned:

However, as for all public utility and the royal treasury it is convenient and it is better that there are many *Sesmeiros* because in this way crops are grown and the tithes area raised, and regarding this utility it is convenient for one to give space for the peace of the vassals and to cease all claims with the

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146 C.M.P.S. Ata da Sessão de 26 de janeiro de 1836.

aforesaid demarcations that it is intended to be done and the aforementioned to be done through the ruling of your V. Majesty; to order that each of the confirmed *Sesmarias* be given one half a league along the way and the road that goes to Minas and a quarter of a league therefore to those that are not confirmed because besides being land that each person can comfortably cultivate, it will be free of fault for some years for others to also not have the inconvenience of having less in front by the road, because what is removed with the aforementioned reduction can be compensated for when Y.M. be served in the sides of the backcountry of one and another party, then giving them the actual league which they have, and thus coming to have the same extension of the sesmaria and then this way without prejudice to anything, with the aforementioned way also granting what is settled and has been built on the aforementioned grants at the cost in terms of public utility and the royal treasury with which this utility would remain with the aforementioned reduction since with this there will be more cultivation for the Sesmeiro and as a consequence greatly added tithes such that Y. M. orders by his mercy to demand that the demarcation and measurements for the Sesmaria be reduced, confirmed by your Majesty to half a league and to those that do not have, a quarter of a league and when it is understood that the fronts by the sides of the backcountry neither one or the other part should be reduced. [...].

On 9 December 1796, Garcia Paes Leme - heir of Garcia Rodrigues – sent an application to the Conde de Resende, then president of the Overseas Council, requesting mercy in return for his services. The council considered the application and requested that it be examined by the fiscal authority of favours. The papers were then sent to judge Francisco Feliciano Velho Costa Mesquita Castelo Branco. His opinion was that the petitioner had not submitted “the forms required by the Regulation, while the Services had neither been processed nor legalised in Compliance with the Orders of His Majesty”.<sup>147</sup>

In an administrative order of February the following year, the supplicant was asked to meet the requirements for receiving mercy. The documents were

147 ANTT. Ministério do Reino. Consulta do Conselho Ultramarino. Maço 322.

then presented via the Overseas Council, showing that Garcia Rodrigues Paes Leme was a Nobleman of the House of His Majesty, a native of Rio de Janeiro and served in the rank of Captain of Horses in the Legion of the Royal Volunteers, in the captaincy of São Paulo.<sup>148</sup>

Moreover, the petitioner claimed to have been summoned by the Viceroy Marquez de Lavradio, during the war in the South in 1795, and that he “raised at his expense” a company in the region and that, in February of the following year, he had obtained an order to march with his company, forty recruits, to the mainland of Rio Grande”.<sup>149</sup>

Garcia Paes Leme also claimed to have followed orders from Francisco da Cunha Menezes - who had been the governor of the captaincy of São Paulo - and that “throughout the term of his office, the petitioner had swiftly carried out all his orders [...]”.<sup>150</sup> The petitioner thus asked to be granted through *sesmaria* the land where he was already settled and that

The Minister of the Court of Rio de Janeiro be sent and the Guide with the Rope, at the expense of the petitioner, with it being certain that there is no other settlement than that of the supplicant and that the whole terrain is vacant and barren land, such that it can be demarcated and possession given to him of three leagues squared.<sup>151</sup>

It would appear that the Council had been positioned in favour of the plaintiff, because in the document from the Ministry of the Kingdom there is indication that it recognised the fairness of the plea, a reward for services rendered by Garcia Paes Leme. In addition, the gratification requested would result in “Public Benefit from the Cultivation of the lands which the petitioner says are found vacant, barren and uncultivated”.<sup>152</sup>

The Council also gave the information that the petitioner would add to that *sesmaria* an area that he already possessed due to a shared heritage, due to the death of his grandfather, father and uncle. On 6 April 1797, a ruling was made in favour of Garcia Rodrigues Paes Leme. On 25 August of the same year, the *sesmaria* letter was confirmed and repeated the services

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148 *Idem.*

149 *Ibidem.*

150 *Ibidem.*

151 *Ibidem.*

152 *Ibidem.*

provided by Garcia, thus deserving of the mercy requested. However, on 26 November 1799, the viceroy, the Conde de Resende, informed the Overseas Council that Garcia Rodrigues Paes Leme was not entitled to the sesmaria obtained by him alongside the Santa Cruz farm. Furthermore, according to this, he should return the letter which he had been granted!<sup>153</sup>

In May of that year, the Chancellor of the Court of Appeal of Rio de Janeiro, Luis Beltrão da Gouveia Almeida, had sent an official letter to the Secretary of State for the Navy and Overseas, Dom Rodrigo, in which he expressed his apprehension about the difficulties of managing the royal treasury, reporting an increase in land prices, of sales marked by irregularities and corruption, and forwarding data concerning the Santa Cruz Farm.<sup>154</sup>

That year, in addition to numerous requests for *sesmarias*, allegations of conflicts reached the Council in a short period of time. In March 1799, Captain Bernardo José Dantes requested that the Purveyor of the royal treasury in Rio de Janeiro or “any minister of the Court of Appeal in the same city” undertake the marking with his Joary engine in the parish of Campos de Goitacases”.<sup>155</sup>

In September of the same year, in the district of Campos dos Goitacases, Captain Manoel Antonio Ribeiro de Castro complained of the absence of a proper charter and reported the “difficulties concerning the dispossession of the lands of his wife”<sup>156</sup>

Also in September, the lieutenant of the First Regiment of Militia in Rio de Janeiro, Antonio Nunes Aguiar, sent a petition to the Prince Regent asking for provisions concerning the demarcation of his sesmaria in the district of Macaé, invaded by his neighbour and the respective slaves that have destroyed homes and crops, “the latter having been arrested, then released because of his friendship with the Chief Judge of Appeal, having returned to the same offence”. The lieutenant also informed that this foe had usurped part of his lands.<sup>157</sup>

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153 AHU. Rio de Janeiro, cx. 179, doc. 47. Consulta do Conselho Ultramarino ao príncipe regente D. João sobre o requerimento de Garcia Rodrigues Pais Leme.

154 AHU. Rio de Janeiro, cx. 177, doc. 5. Ofício do chanceler da Relação do Rio de Janeiro, Luis Beltrão de Gouveia de Almeida.

155 AHU. Rio de Janeiro, Requerimento do capitão Bernardo José Dantas, cx. 173, doc. 37, cx. 180, doc. 36.

156 AHU Rio de Janeiro, 1799. Ofício do capitão Manoel Antônio Ribeiro Castro, cx. 176, doc. 32.

157 AHU Rio de Janeiro, 1799. Requerimento de Antonio Nunes de Aguiar, cx. 176, doc. 34.

In November, it was the turn of Domingos de Freitas Rangel, a resident of the city of Rio de Janeiro. He demanded that a provision be passed to the judge of the district to measure and demarcate his lands, in the parish of São João de Itaboraí.<sup>158</sup>

Also in December of that year, a letter from the Council of the Vila dos Campos dos Goitacases was addressed to Dom Rodrigo de Sousa Coutinho, communicating the complaints of the residents of the suburbs and districts of that Vila against abuses committed by the administrators of the lands of the Visconde de Asseca.<sup>159</sup>

Such complaints or requests alerted the Council to the more adverse results of the granting of *sesmarias*. The overlapping of lands, border disputes, and discussion regarding the legality of occupation became the “first item on the agenda”.

Thus it is understandable why at the end of that year the request for the *sesmaria* made by Garcia Rodrigues Paes Leme was placed under suspicion. In a document originating from the *Registro de Consulta Mista* there was information that the viceroy would do well to compare with the document presented by Garcia Paes Lemes.

As it seems and council expresses to the Viceroy the suitable Regulations that I be consulted not only to reinstate in that Office of that governance the Sesmaria Charter that the petitioner obtained, but also to examine and compare the copy of the application which was processed in the Council and more papers that are to be sent to the same Viceroy, also processing and regulating the provision made from Consulting the Council. Everyone should understand that the *sesmarias* in Brazil should only be granted in the manner established and that similar orders I only have expedited by the competent service, except on occasions of special order.<sup>160</sup>

The council responded to a query of the viceroy and Captain General of Land and Sea of the State of Brazil, José Luiz de Castro, 2nd Conde de Resende, where he stated that “This is not just so that this advice to

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158 AHU Rio de Janeiro, 1799. AHU - Requerimento de Domingos de Freitas Rangel, cx. 180, doc. 7.

159 AHU Rio de Janeiro, 1799. AHU Ofício da câmara da Vila de São Salvador dos Campos dos Goitacazes.

160 AHU. Consultas Mistas, código 27.

can be made known for the Royal Resolution on this matter, but to be forewarned so that similar requests are not attended to”.<sup>161</sup> According to the document, Garcia Rodrigues Paes Leme had requested three leagues of land in compensation for his services. In the notice of 9 December 1796, issued by the Secretary of Trade of the Navy and Overseas Dominions that “under the copy of sovereign presence of Y.R.H. as expressed in another earlier warning of 12 April 1796 and finally ratified through Ordinance Number 3, which was issued to the Council from the Secretary of State which was the division of the Kingdom of José Seabra da Silva”.

According to the report, the query that the council wrote to the throne stated that it was common to give vacant lands to “individuals who do not have any length of service”, with this not being the case with the plaintiff Garcia Rodrigues. Accordingly, in the certainty that the mercy requested was not prejudicial to any third party rights, much less the Royal Treasury “that no profit could be received from these uncultivated and abandoned lands in that backcountry”, the aforementioned concession would be useful to the supplicant, convenient to the Public and interesting to the Royal Treasury”<sup>162</sup>.

The question which arises from the application sent by the viceroy was the fact that it could not ensure that the lands received by Garcia Paes Leme were the same as those already “in the possession of other third parties such that they are of the royal treasury and any other that are made use of with title or without it [...]”. “For this reason, the Council issued the opinion according to which the viceroy should refer

the Sesmaria Charter which the aforementioned Garcia Paes received. And that the same Viceroy send his copy of the Request that was processed in this council which should promote and motivate your Mercy, accompanied by another equal copy of the same Ordinance from the person who drew up the aforementioned letter, so that comparing this with the other papers it can be seen whether it has to do with the same lands that the Viceroy dealt with in his Dispatch. Y.R.H. authoring if they be the same in whole or in part to check and endorse all the registers to see if the aforementioned Charter has been issued.<sup>163</sup>

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161 *Idem.*

162 *Ibidem.*

163 *Ibidem.*

The case of Garcia Paes Leme reveals and denounces the possible interventions in regard to the issue of lands. In the late eighteenth century, as a result of an intense process of land occupation, the granting of land gradually became not so much territorial as political. It is no surprise then, as we have seen, that between 1795 and 1806 there were 128 provisions relating to requests for demarcation. Though the number seems insignificant, in terms of the number of lands already incorporated (we should recall here that just in the period from 1795 to 1823 there were 1024 *sesmarias* granted), they reveal the attempt by some to resolve or avoid conflicts. In almost all of them, the request for demarcation was accompanied by information concerning outstanding issues relating to confrontations between individuals.

### The extension of the concession and territoriality

In their disputes to be recognized as the lawful occupier of the lands, Garcia Paes Leme helped bring to light the more interesting side of the granting of *sesmarias* in the late eighteenth century. They could be given to “individuals who do not have any quality of service,” revealing, therefore, the recognition of a dynamic of markedly intense occupancy and the propagation of this concession. In this sense, the difference between the growers is blatant and obvious - some lords and owners of three leagues, with others, owners of some fathoms - does not inhibit the incontrovertible fact that the *sesmeiros* or potential *sesmeiros* wanted a legitimate title, a safe haven, in a sea of conflicts and disputes over access to land. The small farmers perceived that they had satisfied the basic requirements to be granted *sesmarias*. They were cultivators of small plots of land, and could thus justify the title they wished for. Those who had the lordly domain over huge tracts of land also felt in credit with the Crown. Not only had they cultivated at least part of those lands, but they had also served the Crown and therefore were anxious to receive such favour.

If we remember the conclusions of Dom Rodrigo,<sup>164</sup> pages discussed above, we can understand how the *sesmarias* became a desired object to be attained by different social strata. Many of these concessions were seen, as we have seen, as a strategy for the *sesmeiros* to extend their territory

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164 “It is also the case here that often *sesmarias* in Brazil have been given to people without the resources, nor the diligence to take advantage of them, and then perpetuate a right which has no advantage to them, and which is against or harmful to either the neighbours of the same *sesmarias*, or others who have the strength to be able to make use of them”.



beyond the hypothetical original boundaries. But there were also those who were asking for what were actually remnants of land, pieces still free, bordering other *sesmarias* and farms. Thus, we can state that in the late eighteenth century there was no longer a direct relationship between the favour – *Sesmarias* - and the noble ethos. The data below seems to confirm this reasoning. Let us look in more detail at this latter information.

**INFORMATION ON THE TITLES OF *SESMEIROS* CONCERNING  
REQUESTS FOR *SESMARIAS* (1795/1823)**

Titles	Number	Percentage
Capitão	14	
Alferes	09	09
Tenente	06	
Padre	04	
Tenente-Coronel	02	
Capitão-Mor	01	
Sargento-Mor	01	
Guarda-Mor	01	
Ajudante	01	
Coronel	01	
Without indication	257	86.53%
Total	297	

SOURCE:AHU. Livro de Registro de Cartas de *Sesmarias* confirmadas do Conselho Ultramarino. Capitania do Rio de Janeiro. 1795/ 1798 - Códice 164. 1798/1801 - Códice 165. 1801/ 1804 - Códice 166. 1805 1807 - Códice 167. 1807/ 1823 - Códice 168. Ministério da Justiça. Arquivo Nacional. Relação de Algumas Cartas das *sesmarias* Concedidas em Território da Capitania do Rio de Janeiro. 1714-1800. Rio de Janeiro, 1968.

Although the above data may be underestimated, it is more than reasonable to assume that military service was a “decisive way to receive this favour” - in this case, that of *sesmarias*.<sup>165</sup> It is also thus consistent to state that even in the colonial lands “calling themselves lord of a land was a distinction that conferred a degree of nobility, evocative of other times, and kept its symbolic and social efficacy”,<sup>166</sup> but - contrary to that argued by Nuno Monteiro - that title was closely linked to a practical exercise, that is, of the power of entitling oneself lord and owner of lands, based on a favour which granted a legitimate title.

Moreover, in the late eighteenth century, the empire had acquired a sizeable territory and that process involved the recognition of various levels of growers, with of different perspectives on their occupancy. From the royal seal, it is possible that many began to crave other favours, feeling particularly privileged in relation to a majority that supported themselves with the self recognition of being a legitimate occupant, but could not take advantage of a title regarding the domain in any quarrels with their opponents. There were also those who, despite the absence of a sufficiently legitimate document to endorse their occupation, began to see as no less legitimate the use of violence in affirming their tenure at the expense of others. In short, what I want to state is that being called lord of a land, sealed as a favour, was a distinction that not only maintained its symbolic efficacy, but-as an honorary title – created the real difference between the one who had the title and the who did not.

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165 I have used Nuno Monteiro’s work here, but taken a different analysis.

Nuno Gonçalo Monteiro “O ‘Ethos Nobiliárquico no final do Antigo Regime: poder simbólico, império e imaginário social”. In: *Almanack Braziliense*, número 2, novembro de 2005, p. 4-12.

166 *Idem*, p. 13.

PART 4  
*SESMARIAS* AND THE  
PATH OF INDEPENDENCE FOR BRAZIL



LAW AND THE PERSPECTIVE ON *SESMARIAS*  
IN THE EIGHTEEN TWENTIES

THE GRANTING OF *SESMARIAS* IN THE TERRITORIALISATION OF  
THE CROWN (1808/1824)



## LAW AND THE PERSPECTIVE ON *SESMARIAS* IN THE EIGHTEEN TWENTIES

The first two decades of the nineteenth century represented for Portugal one of the most dramatic moments in its history. Occupied by French forces, subject to the decision to transfer the royal family to Brazil, the country experienced the degradation of the seigniorial regime, through questioning and criticism from various points. Those years affected the lives of multiple social actors in search of a solution to the problems presented before, but aggravated by an even more drastic situation, which was marked, among other aspects, by the contraction of the external market and the strengthening of English interests. In this period, the question of land ownership would become one more of the countless political and social clashes of those tragic years.

Two Portuguese authors produced texts on the *sesmarias* at the end of the French occupation and the decision at the end of the year, to grant Brazil a new position in relation to its former metropolis, by creating the United Kingdom of Portugal, Brazil and the Algarves on 12 December 1815. These were Esteves de Carvalho and Homem de Carvalho. A third and important Portuguese author, Francisco Manuel Trigoso de Aragão Morato, wrote on the subject in 1822. Let us first of all consider the points made by the Carvalhos.

### Esteves de Carvalho and Homem de Carvalho.

It is not known why Esteves de Carvalho and Homem de Carvalho decided to write about *sesmarias*, and if they based their conclusions solely on the Portuguese rural reality or sought to contribute to the developments of the law in colonial territory, since the law regarding *sesmarias* was only repealed in Brazil in 1822.

A Bachelor in Law and correspondent of the Royal Academy of Sciences of Lisbon, Esteves de Carvalho wrote *Observações Históricas, e Críticas sobre a Nossa Legislação Agrária, Chamada Comumente das*

*Sesmarias* which was an extensive criticism of this legislation.<sup>1</sup> In arguing forcefully for full private property, Carvalho headed - from his criticism of *sesmarias* - an entire line of thought that had produced discourses legitimizing property without any constraints, and which criticised the use of common pasture land.

For Esteves de Carvalho, the agrarian legislation of King Fernando was not worthy of the praise it received from philosophy, as it attacked individual property and, accordingly, “everything that attacks property, on the one hand indisposes and irritates one’s spirits, and on the other hand diminishes the activity and industry of the owners.”<sup>2</sup> For the author, the most just and right way of achieving agricultural prosperity would not be to constrict the owners into cultivating their lands and punish them for the lack of cultivation. The best way would be “to make them find their own interest in their good production”.<sup>3</sup> Therefore, the *sesmaria* was oriented by violent means of coercion, against human nature itself.

Deeply marked by a liberal view in relation to the right to land, imbued with the belief that freedom and not government intervention are the fastest ways to achieve the desired progress, Carvalho was convinced of the need to condemn that law. In line with the principles of liberalism, the author considered that freedom, in the case of the owners, was expressed in the assertion of individual autonomy and its independence from political authority, revealed, for example, in the statement that it was for the Crown to punish the *sesmeiros* for lands which were not cultivated.<sup>4</sup>

Esteves de Carvalho also pointed out that

it is certain that the owners may often stop cultivating their land, not for lack of will, but lack of means, just as it is equally certain that this lack of resources can stem from many causes attributable to it, such that the law of King Fernando seems to require the establishing of a Censorship to inquire after

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1 Vicente Esteves de Carvalho. *Observações históricas e críticas sobre a nossa legislação agrária, chamada commumente das sesmarias*. Bacharel formado em Leis, e Correspondente da Academia Real das Sciencias de Lisboa. Lisboa: Impressão Régia, 1815 (pp. 1-50).

2 *Idem*, p. 14.

3 *Idem*.

4 André Vachet. *L’ideologie liberale: l’individu et sa propriété*. Ottawa: Les Presses de l’Université d’Ottawa, 1988.

the means that each owner would have to cultivate, and the reasons why he failed to utilise them.<sup>5</sup>

Esteves de Carvalho also doubted that the law would have been a real asset, as its admirers claimed, because - for him - “assets are solid and durable”, and the advantages of the legislation were indeed ephemeral and not permanent.<sup>6</sup> In the defence of his point of view, the author also sought to indeed establish the reasons why some authors continued to praise the law. For him,

Praise of the agrarian law of King Fernando is chiefly made after the discovery of new lands, and progress involving too extensive a navigation for a country with such a small population as Portugal, and, along with other reasons, agricultural progress in agriculture has become paralysed among us. It would be natural in such circumstances that great value were given to that, and that the value of any measure tending to sustain our decadent agriculture may even be exaggerated.<sup>7</sup>

For Esteves de Carvalho, if on the one hand, the law prevented the misuse that the owners did to their goods, on the other, if “abuse is not one of the powers, which as a whole constitute the property, and therefore no owner can legally abuse their things”, that does not mean to say that it falls to the civil legislator to always cut this short, and prohibit the excesses committed by the owners because, after all, “there are many things that Morals disapprove of, and prohibits, that legislative prudence should allow, or tolerate”.<sup>8</sup> In other words, it was possible to express a moral censorship regarding that attitude of leaving fallow land, but such condemnation would not justify a law inhibiting such abuse.

When discussing the rules of procedure for granting *sesmarias* for lands, the author presented the entire bureaucratic procedure, but still employed the term *sesmeiro* to refer to the person responsible for the distribution of

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5 *Idem*, p. 26.

6 *Ibidem*, p. 27.

7 *Ibidem*, pp. 39-40.

8 *Ibidem*, p. 37.

land, and not its recipient. He thus reappropriated the original conception of the word.

Those who want to be given some assets in a *sesmaria*, should request the *sesmeiro*. This requirement, which must contain a statement of the quality of those assets, their position, and confrontations, and the names of their owners, if known, must be updated, starting with the brief process which must be carried out so as to own it. The *Sesmeiro*, within such a request, summons the owner in question the owner or the owners of the assets so requested, and their wives, so that they, within a convenient time (which the Law does not establish, and so should be left to the discretion of the *sesmeiro*) for them to give the reasons why the *sesmaria* should not be given.<sup>9</sup>

When attempting to transcribe the process in order to discuss his negative view of the law, Esteves de Carvalho stated how difficult it was to carry out the procedure for obtaining the grant because, if the law enabled the rights of the owners of abandoned land to be heard before the new concession, this meant that their claims would open new quarrels, “legitimate reasons to give or withhold those lands.” However, there were places where the previous owners were not known. Thus, the *sesmeiros* [donating those lands] should

make this publicly known in places where such property is situated, in which the *sesmaria* is to be given, with them stating their precise location and claim: and moreover, make edicts for thirty days, in which it is stated that the owners of a space utilise it, under penalty of the *sesmaria* being taken back.<sup>10</sup>

That is, his criticism also pointed to the fact that there were a number of procedures to be complied with before the final concession. Failure to comply with such procedures would lead to several lawsuits, since it would be necessary to pay attention to a list of details relating to the location of the land, and to the names of their likely owners.

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<sup>9</sup> *Ibidem*, p. 46.

<sup>10</sup> *Ibidem*, p. 48.



Hence for Esteves, there followed the question of the legitimacy or illegitimacy of the concession, for him “if the *sesmarias* are given, there should be legal proceedings, with the knowledge of the Sheriffs in the leased lands, or tributaries of the King, or Crown, and in those exempt to the Ordinary Judges of the places where the goods are situated”.<sup>11</sup>

Attacking the *sesmaria* system now acquired a new purpose in terms of providing a defence for property. After all, such a concession was always based on the requirement to cultivate which contradicted liberal principles. Taking away its meaning would thus be a clear way of breaking with the bond that tied it to the country’s agrarian past: cultivation as a legitimizing element of a right, the right to say who owns lands. Esteves de Carvalho spoke common sense when making explicit references to the problems caused by the concession. Mello Freire had ascertained the problem years before.<sup>12</sup> But now it was not enough just to highlight this point, but relate it to a background critique, which was achieved through the condemnation of cultivation as the primary aspect of enshrining a property.

Thus, another custom was destroyed in the defence of property, since it was necessary to separate property and the requirement to cultivate, by turning the former into an absolute principle and the latter, as a desirable consequence, but no longer mandatory.

Porfírio Homem de Carvalho also wrote his *Primeiras Linhas do Direito Agrário deste Reino* in 1815.<sup>13</sup> The book was dedicated to Dom Miguel Pereira Forjaz, on the board of the Prince Regent:

I do not know the reasons why Porfírio Homem de Carvalho decided to dedicate his work to one of the representatives of the board of the Prince Regent, since little is known about the author himself. It is only known that he studied at the Faculty of Law of the University of Coimbra and wrote some other works, including *Primeiras Linhas do Direito Comercial deste Reino*, also in 1815.

In that small book, Homem de Carvalho sought to delineate which lands are sovereign land and which lands are those of vassals: the landlords, settlements, leases, majorats, allodial properties and free lands, referring the reader to the provisions in the Philippine Ordinances relating to each type.

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11 *Ibidem*, p. 49.

12 See chapter 1.

13 Porfírio Hemetério Homem de Carvalho. *Primeiras linhas do direito agrário deste reino*. Edição de José Antônio Cardoso Veloso, Coleção “Scientia Ivridica”. Braga: Livraria Cruz, 1965.

When referring to the demarcation of lands, he had stated that it “is not only useful to their landlords; because they free them from litigation, but also to the Sovereign as this enables the provision of taxes.” He went on: “the penalties for those removing the landmarks are necessary”,<sup>14</sup> revealing in his words a strategy for land disputes between adjoining landowners.

By devoting a special chapter to *sesmarias*, differentiating them, therefore, from the lands of the vassals, Homem de Carvalho went back to the definition contained in the Ordinances and explained that they are not the property of the Crown, “since they are registered in their Own books”. Unlike Esteves de Carvalho, Homem de Carvalho avoided making a direct criticism of this form of grant and seemed to be aware of the confirmation procedures noting also that the confirmation of the *sesmaria* was a task of the Supreme Court of Justice (*Mesa do Desembargo do Paço*), without referring to the role formerly played by the Overseas Council. Moreover, the same author was aware of the provisions in relation to the lands of the Botecudos, referring to the Royal Charter of 1808 which determined that land redeemed from the Indians were considered vacant, and that they had not yet been cultivated, and demarcated in a previous grant. Home de Carvalho was also aware of the provision to grant *sesmarias* to foreign residents in Brazil.<sup>15</sup>

Unlike the first Carvalho, this latter author proposed to draw the outlines of the ways of granting lands and sought to be aware of what was happening in Brazil. He did, in fact, take the middle path because he disregarded or ignored the most crucial questions regarding the *sesmarias*. Be that as may, the absence of a direct criticism of the *sesmaria* reminds us that there was no uniformity of opinions in 1815 as regards the arguments to terminate this force of concession.

Both Carvalhos argued about a law that was no longer applied in Portuguese territory, but which it was still necessary to reference in discussions concerning the right and the limit imposed on landed property. In those years, however, the consequences arising from the transfer of the Portuguese Court to Brazil and the subsequent process leading to the United Kingdom were not at all conducive to more detailed study into the system of *sesmarias*. Be that as may, the Carvalhos raised certain issues regarding a system of granting lands which was the central point of the reality of what was called Brazil. However, there was another author in Portugal in the eighteen twenties who was blunt in his criticism of the law of King Fernando and who was an important character during that troubled period.

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14 *Idem*, p. 8.

15 More details of this aspect are considered below.

## Francisco Manuel Trigoso de Aragão Morato and the 1820s

Francisco Manuel Trigoso de Aragão Morato was born in Lisbon in 1777 and died in 1838. A Professor (*Lente*) at the Faculty of Canon Law at the University of Coimbra and deputy of the Constituent Assembly of 1821, he was also a minister and secretary of state in 1826, State Counsellor, peer of the realm and vice chairman of the respective Council in 1833. He was also a member and vice president of the Lisbon Royal Academy of Sciences.<sup>16</sup>

In his memoirs, which were revised and edited by Ernesto de Campos Andrade, the latter stated:

This learned man was, in fact, an outstanding example of the vicissitudes to which men and their sciences are subject. Respected and applauded in the Ministry of King José, for having been the first individual to teach and vigorously defend the principles of Ecclesiastical Public Law [...] he experienced a deafening but painful about-face and persecution in the reign of Queen Mary I [...] and that persecution increased in such a manner that the Academy of Sciences did not dare to grant him the honour of praising his life's work, which he so deserved, for the services he had rendered to the Society.<sup>17</sup>

How can one contextualise the points that Morato made on the law of *sesmarias*, which he presented at the Public Assembly on 24 June 1822?<sup>18</sup> The text was read less than a month before the repeal of the law in Brazil, on 17 July of the same year,<sup>19</sup> but Morato but makes no mention

16 Innocencio Francisco da Silva. *Diccionario Bibliographico Portuguez*. Lisboa: Imprensa Universitária, MDCLLX. Tomo V, p. 459.

17 Ernesto de Campos de Andrada (revisão e coordenação). *Memórias de Francisco Manuel Trigoso de Aragão Morato, começadas a escrever por ele mesmo em princípios de Janeiro de 1824*. Coimbra: Imprensa da Universidade, 1933, p. 97.

18 Francisco Manoel Trigoso d' Aragão Morato. "Memória Sobre a Lei das Sesmarias". In: *História e Memórias da Academia real das Sciencias de Lisboa*. Lisboa: Typografia da mesma Academia, 1823, pp. 223-231.

19 *Resolução* of 17 July 1822. In the *Provisão* of 22 October 1823, the prohibition on granting new *sesmarias* until the Constituent General Assembly had ruled on the matter was reaffirmed. Apud Junqueira Messias, *O instituto brasileiro das terras devolutas*. São Paulo: Lael, 1976, p. 69. I shall return to this matter below.

of what was happening in Brazil and the various decisions in this regard, enacted before the final decision to end the system. This author wrote at a moment of crisis, the result of the 1820 Porto Revolution and the convocation of the *Cortes*.

According to Lucia Neves and Humberto Machado, two points were crucial to the victory of the movement. Firstly, the desire to transform the former advisory *Cortes* during the period of absolutism into deliberative *Cortes*, responsible for drafting a new Constitution. Secondly, it was urgent to reshape the economic relations of the empire, strengthening Portugal within the framework of the United Kingdom.<sup>20</sup> In addition, according to the authors, in the discussions that followed, the claims regarding freedom would be linked to the enshrinement of the right to property, and not as an inalienable right of a human being.<sup>21</sup> Moreover, the *Cortes* also expressed the idea of “a society in which illustrious individuals should rule, with their role being to guide nascent public opinion”.<sup>22</sup>

In Ideology and Temporality, Pedro Martins sought to understand the political path of Morato in relation to the conservatism of the period and his political activity, which was guided by pragmatism and realism. As far as Martins is concerned, Morato had a deep respect for the recently sworn-in Constitution.<sup>23</sup>

We must therefore understand his considerations on the *sesmarias* by contextualising them within the vision of a man eager to contribute to the consecration of a new order, based on a Magna Carta.

Firstly, he makes an accusation against the *sesmarias* law, as Carvalho had done years before. This time, however, the criticism is acidic and direct: this law had to be destroyed. Dubbed the “most holy”, according to Morato by a “well-known Writer” that he does not name, and mentioned by another writer that “he carefully observed enough to make agriculture flourish,<sup>24</sup> Morato undertakes the task of replying in the following manner:

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20 Lúcia Neves & Humberto Machado. *O Império do Brasil*. Rio de Janeiro: Nova Fronteira, 1999, p 68-69.

21 *Idem*, p. 72.

22 *Ibidem*.

23 Pedro Miguel Páscoa Santos Martins. *Ideologia e temporalidade*. As ideias políticas de Francisco Manuel Trigoso (1777-1838). Lisboa: Universidade Nova de Lisboa. Dissertação de mestrado em História Cultural e Política, 1995.

24 Morato, *op. cit.*, p. 223.

is this judgment to be handed down slightly, and without first carrying out a considered examination of the aforementioned law? Perhaps this is an effect due to the respectful impression we normally have for the former institutions of our homeland, and the customs of our betters? Or is it rather the result of the intimate conviction that those writers on the justice of this law have, and the practical utility that could follow from its renewal ?<sup>25</sup>

The author acknowledged, however, that the law concerning *sesmarias* was perhaps the oldest agrarian law of Portugal and reproduced in his text the provisions contained therein. He did not deny that the law had some positive features, such as those concerning the price of livestock for needy farmers, taxed at prices according to the type of place. He also highlighted the obligation that the profession of farmer was hereditary, and the provisions relating to vagrants and beggars. However, he stated:

while the wisdom with which the law considered related and connected manners deserves all its praise, namely the culture of the land, and the abundance of cattle, and competition from journeymen that it of necessity requires; is not well understood if it could in a country promote the raising of cattle with a law that locked the farmers into one spot [...].<sup>26</sup>

Morato also highlighted the various modifications made to it by successive sovereigns after King Ferdinand, and found an inconsistency in its final formulation. He considered perpetual dominion to be fair, which the law granted to those receiving the land in *sesmarias*. What was unfair was to

take the land off an owner when he is seen to be undergoing hardship due to causes beyond his control, not being able to cultivate himself or have others do it for him; or punish a child, and reduce him to disgrace due to the fault of spoiled and lazy

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25 *Idem*.

26 *Ibidem*, pp. 225-226

parents, in which situation incidentally the law requires the provision of a curator to prevent the dissipation of his assets.<sup>27</sup>

In short, he attacked the principle of the law which imposed the requirement to cultivate as the factor enshrining the property, mentioning the problems of impoverished heirs deprived of lands, since that which is uncultivated should return as an asset to the Crown, through the original spirit of that law.

The author also highlighted that, despite having been looked after by so many sovereigns, it had never been fully implemented. On the contrary, because the laws never “carried out in their full extent, nor had they had the expected effectiveness, because despite all their provisions, agriculture continued to decline and had done so since the reign of King Fernando”.<sup>28</sup>

For Morato, the *sesmaria* law was damaging itself and its ineffectiveness was not a result of the political state of the kingdom, or civil unrest, wars and conquests that have harmed agriculture. It was harmful because it forced the owners to produce without any attention to the quality of the land. In addition, it wounded the “precious right of ownership”.

Morato also pointed out that the law after the Restoration would have insensibly fallen into oblivion, until it was in full disuse. And he recalled that:

It is true that in the 1641 *Cortes* the people asked King John IV to keep the ordinance and laws of *sesmarias*, to which the same Ruler stated they had not been repealed and he wished them to be once again observed.<sup>29</sup>

And he continued: “but no effect whatsoever arises from this: and that determination seems to have been the last word on the *sesmarias* that has been published until the present day.”<sup>30</sup>

In “forgetting” about the dozens of rulings relating to the system after 1641, Morato did not show his ignorance; on the contrary he was simplifying the historical path of the law to strengthen the argument that it should be abolished.

This author thus spoke about a law that was no longer used for occupying lands in the kingdom, and insisted on its abolition. Why? What

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27 *Ibidem*, p. 227.

28 *Ibidem*, p. 227.

29 *Ibidem*, p. 233.

30 *Ibidem*.

meaning can we find in a speech that argues for the repeal of a law no longer used in the lands of Portugal?

It does not seem that the author was particularly interested in questioning the granting of *sesmarias* in colonial lands, because he made no allusion to the problems raised by that system. It is noteworthy that both he and the Carvalhos made no reference to the *Alvará* of 3 May 1795, during the reign of Queen Mary, the content of which was to discuss precisely the sesmarial system in Brazil, imposing limits on the form of the grant. It is important for us, however, to emphasize that Morato, when writing this text brought to light the most important aspects of the question of ownership, at a time when everything that was solid could come apart in the air.

There is no doubt that Portuguese historiography has not yet reached a consensus about the role of the antiseigneurial reaction of the eighteenth twenties. The abuses and conflicts of landlords in the exercise of their jurisdictions and rights without having any legitimate titles cannot be denied, or even their efforts to impose new obligations, led to a reaction, despite the bearing this would have had in dismantling the *Ancien Regime*.

The classical consolidated view from the pioneering study of the French historian Silbert, according to which the Portuguese liberal revolution was not followed by a peasant unrest,<sup>31</sup> is now put to the test. Thus, the notion that the crisis of the *Ancien Regime* was not accompanied by a crisis involving famine, which would have happened to inhibit the occurrence of antiseigneurial riots is nowadays under revision, given the deeper understanding of the multiple forms of contestation that were present at that juncture. According to Monteiro, if on the one hand the penitentiary movement cannot be identified as an example of the peasant movement, on the other hand it is an exaggeration to identify it as a rural bourgeoisie “linked to ‘capitalist’ forms of agrarian exploitation”.<sup>32</sup>

A closer look at the penitentiary movement of 1821 enabled that author a glimpse into the expectations raised by the liberal project in its relation to different regional realities and various expectations of social actors involved in the petitions.

A reading of the petitions collected and published by Albert Silbert<sup>33</sup> allows us to state that, despite the diversity of complaints, and the expectations

31 Albert Silbert. *Le problème agraire portugais au temps des premières cortes liberales (1821-1823)*. 2ª edição. Paris: Fondation Calouste Gulbenkian, 1985.

32 Nuno Monteiro. “A Geografia das Petições e dos Conflitos (1821-1824). In: *Elites e Poder. Entre o Antigo Regime e o Liberalismo* Lisboa: Instituto de Ciências Sociais da Universidade de Lisboa, 2003, p. 211.

33 *Apud* Silbert, *op. cit.*

brought up-to-date through propagating the notion that a new order was being established, there was the desire of some to maintain the right to common pasture and the primacy of cultivation.

Many of the complaints about the excessive levels of rents made explicit references to the problems arising from the confrontations and the fact that there were many uncultivated lands, contributing to the impoverishment of the cultivators. Others emphasized the desire to keep fallow land and asked for provision for them to be ensured of such rights. In the petition from the parish of Santa Maria D’Ancora, at the end of the village of Vianna, in the province of Minho, the residents requested the maintenance of fallow lands

from such precious pastures the residents take fertilizer from their land, and the waters with which they did this fertilization [...] since with this appropriation by a small number of individuals, who have taken possession of it, the aforementioned cattle shall be deprived of the precious public space for their pasture and grazing, with serious and scandalous harm to the live-giving branch of farming and raising of cattle.<sup>34</sup>

There were those who collectively complained of the payment of rights from others without proper presentation of “a law or foral charter such as required”, as did most of the inhabitants of São Pedro da Vargia.<sup>35</sup> In such cases, for example, the absence of a foral charter was already understood by lawyers as a proof of illegality.<sup>36</sup>

There was also the desire of many farmers to preserve the forests of their respective villages. In 1821, the farmers of Salvaterra and Benavente wrote a petition regarding the publication of public notices on the little used forest called Garrocheira. According to the petition, the existence of forests allowed the use of the wood for agriculture and crafts and was still the only shelter and sustenance for their cattle. The petition also stated that it was possible to open the ditch, with the help of farmers, “without

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34 *Apud* Silbert. Maço 37, documento 18, pp. 53-55.

35 *Apud* Silbert. Maço 37, documento 4, pp. 45-46.

36 I agree here with note 2, page 45 of Silbert’s book. The author, in turn, bases himself on the writings of Manoel d’Almeida e Sousa which were discussed in the first chapter.



having to lose that woodland, as it was so important and worth preserving perpetually, either with or without guards.<sup>37</sup>

But there was also petitions aimed at enshrining private property, in a clear condemnation of the custom of common pastures. There were individual petitions from owners such as Domingos Pires Caldeira and Maria Pires Leitoa, both from the district of Castelo Branco, who pointed out the injustice of the right to common pasture, stating that its use caused harm to agriculture.<sup>38</sup>

Accordingly, the petitions were clashes over land rights, and the limits that should or should not be imposed on the property. It is thus understood why Morato starts his discourse with such a categorical condemnation of the *sesmarias*. It was an old law no longer applied in Portugal, but it also symbolized a limit on full ownership since it laid down a primary condition, that of compulsory cultivation. It can be assumed that it had become a point of contention between the advocates of private property in all its fullness and those that - to redeem the past - believed that property should be subject to that obligation.

The liberals had an “obsession with the origins” of rights.<sup>39</sup> In this regard, there would be two “the remote origins of the forms of lifelong tenure and/or land inheritance: on the one hand the medieval royal foral charters [...] and on the other the collective hereditary leases”. Furthermore, there was a tendency to recognize that the royal charters were a royal donation, revocable at any time. It is understandable then that in the debates of the deputies of the eighteenth and nineteenth centuries there was a clear effort to “reconcile the attack on the seigniorial regime with the consecration of property rights”.<sup>40</sup>

Thus, Morato positioned himself against the *sesmaria* system, not because he was discussing the previous attempts of the Crown to get *sesmeiros* to submit to its will, imposing limits on the abuses and demands of colonial landowners, as did Francisco Mauricio de Sousa Coutinho. In my view, he positioned himself against the law, because it kept within its core the submission of land ownership to the requirement of cultivation. Destroying and delegitimizing it was the way to delegitimize and destroy that foundation to consecrate a new property right, a natural and absolute right, the freedom of which was related to the ability to enjoy this without

37 *Apud* Silbert. Maço 37, documento 54, pp. 86-88.

38 *Apud* Silbert. Maço 38, números 21, a e b., pp. 135-144.

39 Nuno Monteiro. “A questão dos forais” na conjuntura vintista” in: *Elites e Poder. Entre o Antigo Regime e o Liberalismo*. Lisboa: Instituto de Ciências Sociais da Universidade de Lisboa, 2003, p 189.

40 *Ibidem*, p 195.

any restriction, dispose of it without limit, and be able to sell it, purchase it or inherit it. By breaking with a tradition dating back to the times of King Ferdinand, this ensured a future where land ownership would be recognized in all its fullness. Property is thus enshrined in the 1822 Constitution as a “sacred and inviolable right”.<sup>41</sup>

Morato thus expressed profound criticism, particularly in a period of crisis within Portuguese society. The years 1807-1820 were the most dramatic years in the history of Portugal”.<sup>42</sup> The Porto Revolution was the culmination of a process that began with the transfer of the Portuguese Court to Brazil. Complaints, anxieties, doubts became recurrent regarding a government which after 1808 was no longer there, but rather on the other side of the Atlantic, in a colony, elevated in 1815 to become part of the United Kingdom of Portugal and the Algarves.

## The cortes and discussion regarding the Sesmarias

In that revolution and its most important development, the setting up of the *Cortes*, the petitioner movement channelled expectations for a Congress which gave itself the responsibility of constructing a new country.<sup>43</sup> There were also various expectations on both sides of the Atlantic. There were also tensions and anxieties in the distinct territories that made up Portuguese America.

According to Marcia Berbel, 45 elected parliamentarians in different regions of Brazil went to Portugal to join with the other elected individuals

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41 J. Joaquim Gomes Canotilho. “As Constituições”. In: José Mattoso. *História de Portugal*. 5º vol.: *O Liberalismo* (coordenação de Luís Reis Torgal & Roque João Lourenço). Lisboa: Estampa, 1998, p. 126.

42 Miriam Halperm Pereira. “Introdução Geral. A crise do Antigo Regime e as Cortes Constitucionais de 1821-1822”. In: Benedicta Maria Duque Vieira. *O problema político português no tempo das primeiras cortes liberais*. Lisboa: Edições João Sá da Costa, 1992, p. 1. Miriam Halperm Pereira (direção). *A crise do Antigo Regime e as cortes constituintes de 1821-1822*, vol. V, Lisboa, edições João Sá da Costa, 1992.

43 It is not possible within the limits of this work to discuss the political culture of the period, nor the interpretations of some of the concepts in force during that period. For a discussion on the subject, I would refer the reader to a key book on the subject: Lúcia Maria Bastos Pereira das Neves. *Corcundas e Constitucionais*. A Cultura Política da Independência (1820-1822). Rio de Janeiro: Revan/Faperj, 2003. On the role of the Press in the process of the Independence of Brazil, see Isabel Lustosa. *Insultos Impressos*. A Guerra dos Jornalistas na Independência. 1821-1823. São Paulo: Companhia das Letras, 2000.

to constitute the Portuguese nation “.<sup>44</sup> A result of the Porto Revolution, the Constituent body laid bare the distinct interests and different perspectives on the consolidation of the marks of Portuguese liberalism.

It is not possible to avoid stating that the “nationalism of the 1820s excluded, in principle, Brazil”.<sup>45</sup> However, the “merchants of Oporto and Lisbon were willing to recover trade privileges with the captaincies of Brazil.”<sup>46</sup> The various readings about the revolution were the most visible face of the multiple interests of the captaincies in adhering to the Constitution. Perhaps there was a common goal that united the members of Brazil, namely the preservation of the Portuguese unit embodied from 1815 onwards which, was completed, at the same time, by the various interests of each region.<sup>47</sup>

The captaincy of Pará, on 1 January 1821, acceded to calls from across the Atlantic, in recognizing the power existing there in Portugal. That captaincy subordinated itself directly to the Government of Portugal and was unaware of the presence of the Corte in Rio de Janeiro.<sup>48</sup> Bahia was the second captaincy to unite. Moreover, the deputies of Pernambuco belonged mostly to the faction which was unsuccessful in the revolt of 1817.

In the North and Northeast, therefore, the movement to join the *Cortes* had differing responses from the local governors, all connected to the Johannine Court. The case of Pará, in January 1821, and that of Bahia in February, which implied the destruction of the governments of the *Ancien Regime*, then

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44 Márcia Regina Berbel. *A nação como artefato*. Deputado do Brasil nas cortes portuguesas. 1821-1822. São Paulo: Hucitec, 1999, p. 17.

45 Márcia Berbel, *op. cit.*, p. 55.

46 *Idem*, p. 56.

47 From so many books on the period, I would highlight Andréa Slemian & João Paulo Pimenta. *O “nascimento” político do Brasil*. Rio de Janeiro: DP&A, 2003.

48 Berbel, *op. cit.*, p. 57. Footnote. The vice-president of the *Junta* was the *juiz de fora* of the city, Joaquim Pereira de Macedo, and the members were the coronels João Pereira Vilaça, Francisco José Rodrigues Barata and Geraldo José de Abreu, lieutenant-coronel Francisco José de Farias, the trader Francisco Gonçalves Lima and the farmers João da Fonseca Freitas and José Rodrigues de Castro Góis.

followed in Pernambuco, which included attempts to control the governor, the loyal representative of King John VI.<sup>49</sup>

However, if on the one hand, there was the recognition of the future Constitution and the adherence of some captaincies expressed their alignment with the Lisbon government, while on the other hand the permanence of the Prince “had a special status for the former headquarters of the Monarchy and preserved the quality of the Kingdom for Brazil”.<sup>50</sup> In addition, there was the pressure for King John VI to depart, and also the creation - from the formation of the Provisional *Junta* in São Paulo - of “a proposal for the continuation of Brazil as a United Kingdom” which acquired, according to Marcia Berbel, “distinct content, which was later argued in the *Cortes* of Lisbon”.<sup>51</sup>

In the records of the *Cortes* it is possible to find some direct references to the *sesmaria* system of land grants. It should be considered that the discussions on the property involved, in most cases, the problem of bound property and the claims for the abolition of majorats.<sup>52</sup> However, “the reformers dared not face emphyteusis, or long-term leasing, and when it became urgent to deal with the enshrined rights of property owners they surreptitiously appealed to *sesmarias*”.<sup>53</sup> According to the author, furthermore, the reformers would not have explained the reason for the attack on *sesmarias*. A closer look, however, leads to a response regarding the decision to focus on the delegitimization of a system as old as that of *sesmarias*. First things first.

The law of *sesmarias*, as we saw in the first part, was set up to tackle the agricultural crisis of the fourteenth century and made cultivation a

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49 *Idem*, p. 64. “In general, the elections for the North and Northeast thus expressed the victory of the constitutional movement. Most of the deputies aligned themselves with the liberalism of the *Cortes*, whether in terms of more intense regional ties with Lisbon, as was the case with Lisbon, or in terms of the unsatisfied claims of 1817” (p. 65).

50 *Ibidem*, p. 68.

51 *Ibidem*, p. 72 Furthermore, according to Márcia Berbel: The *Junta* drew up the only political programme which considered the organisation of the *Union, the Kingdom of Brazil and the Province of São Paulo*. Everything suggests that it was drawn up by José Bonifácio.

52 For this, see: Benedicta Maria Duque Vieira. *A justiça civil na transição para o Estado Liberal. Estudos e Documentos*. Miriam Halperme Pereira (direção). *A crise do Antigo Regime e as cortes constituintes de 1821-1822*. Vol. V. Lisboa: Edições João Sá da Costa, 1992.

53 *Idem*, pp. 47-48.

condition for the donating of the land. There are strong traces that, from early on, what was transmitted - largely from donations - was a perpetual and alienable domain.<sup>54</sup> At the same time, it became the legal principle that cemented the legal ownership of land to pathfinders in the Overseas Territories, becoming over time the “legitimate title”, the document that vouched for the ownership of some, to the detriment of others. It is thus understood why so many *sesmeiros* continued to seek confirmation of their *sesmaria* through the Overseas Council, while others directed their request to the Supreme Court of Justice (*Mesa do Desembargo do Paço*), located in Rio de Janeiro in 1808. But before discussing this aspect, let us look at the most important proposal presented to the *Cortes*. In other words, during those complex and decisive years, it became urgent to legalize occupation and at least one of the deputies dared to discuss the system in that period, namely Domingos Borges de Barros. He went beyond mere criticism. The deputy made an innovative proposal to revitalize the system, adapting it to a rural reality composed not only of rural farmers in its broad sense, but also of Indians and captives.

It has been confirmed that the first proposal to intervene in the agrarian structure was made by José Bonifácio de Andrada e Silva, in the Convocation of Brazilian representatives to the Portuguese Court, in the troubled year of 1821.<sup>55</sup> At that time, he had written the text *Lembranças e apontamento do governo provisório da província de São Paulo para os seus deputados*. In previous work, I have pointed out that that person based himself on the same assumptions of legislation regarding *sesmarias* to argue that lands granted by that system, but not cultivated, should return “to the pool of domestic goods, leaving only to the owners of the lands, half a league squared, at best, on the condition that they started immediately to cultivate it”.<sup>56</sup> In relation to land taken by possession, José Bonifácio stated that their owners should also lose them, except for the land already cultivated and

54 Virgínia Rau. *Sesmarias medievais portuguesas*. Lisboa: Editorial Presença, 1982.

55 For an analysis of the role of José Bonifácio de Andrada e Silva in the process that culminated in the Independence Policy of the country, see Emília Viotti da Costa, “Jose Bonifacio: mito e história”. In: *Da monarquia à república: momentos decisivos*. 3a. ed., São Paulo: Brasiliense, 1985, pp. 55-118.

56 “Lembranças e apontamentos do Governo Provisório da Província de São Paulo, para os seus Deputados. Instruções redigidas por José Bonifácio de Andrada e Silva. 1821” *apud* Messias Junqueira. *O instituto brasileiro das terras devolutas*. São Paulo: Lael, 1976. pp. 67-68.

“more than 400 academic *geiras*, in order to extend their cultivation, and specifying a fixed time for this”.<sup>57</sup> His project also included a policy of land sales and the prohibition of new donations, except in some specific cases. That is, according to the provisions argued by Bonifácio, the money arising from the sale of the land should be used to “promote the colonization of poor Europeans, Indians, mulattoes and former black slaves, who will be given small *sesmarias*, small portions of land to cultivate and settle upon”.<sup>58</sup>

Also, as I said, despite the fact that the project would have just remained on paper, “it was a proposal for public intervention in land distribution and thus limiting the power of the lords and possessors of land which, according to the proposal, would have been subject to the more general interests of the Crown.”<sup>59</sup> The result of a rather ambiguous political conjuncture, heir of previous attempts to intervene in land policy, this proposal concerning the issue of land by José Bonifácio, according Emília Viotti, was part of a larger proposal for the development of Brazil.<sup>60</sup>

The proposal was also part of a whole range of proposals from José Bonifácio “to overcome barriers to the development of industry and agriculture, and especially for the integration into society of Indians and freed blacks”.<sup>61</sup>

Even more striking and impressive is the proposal presented to the *Cortes* by Domingos Borges de Barros, one of the Bahian deputies

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57 *Idem*.

58 *Ibidem*.

59 I discuss this proposal in *Nas fronteiras do poder, conflito e direito à terra no Brasil do século XIX*. Rio de Janeiro: Arquivo Público do Estado do Rio de Janeiro/Vício de Leitura, 1998, especially chapter 4.

60 “The Notes and Recollections suggested installing a general executive government in the kingdom of Brazil, to which the provinces would submit; he spoke of creating colleges and a university, and suggested the establishing of ‘a central city in the hinterland of Brazil’ with the aim of developing settlement, he made recommendations on the development of mining, presented suggestions on the treatment of the Indians and on colonization; finally, he pleaded for equal civil and political rights. “Emília Viotti da Costa: “José Bonifácio: mito e história”. In: *Da monarquia à república: momentos decisivos*. 3ª. ed., São Paulo, 1985, p. 58.

61 Miriam Dolhnikoff. “Introdução”. In: *José Bonifácio de Andrada e Silva. Projetos para o Brasil*. São Paulo: Companhia das Letras, 1998, p. 27.

who had gone to Lisbon, along with Francisco Agostinho Gomes, Luis Paulino de Oliveira, Marcos Antonio de Souza, Alexandre Gomes Ferrão Castelo Branco and Pedro Rodrigues Bandeira. Domingos Borges de Barros graduated in law from the University of Coimbra, later becoming the Viscount of Pedra Branca and was a Senator of the Empire of Brazil from 1833 to 1855.<sup>62</sup>

According to information from the Senate, that congressman, in his lifetime, had written at least four works on question of land: *Memória sobre a plantação e fabrico de urucum*; *Memória sobre o café, sua história, cultura, amanho*, *Memórias sobre os meios de desaguar ou esgotar as terras inundadas*; and *Memórias sobre os muros de apoio ou muros que servem para sustentar a terra*.<sup>63</sup>

On 18 March 1822, Domingos Borges presented his proposal to the *Cortes Gerais e Extraordinárias da Nação Portuguesa*, with the desire to promote “settlement, civilization and culture for the vast kingdom of Brazil”.<sup>64</sup> The text was, in fact, an intervention proposal to stimulate emigration to Brazil. Therefore, freedom of religion and belief was guaranteed to all who would come here. In each province, a board would be formed consisting of five members, “elected from the illustrious citizens” and interested in the public good in order to create a “colonisation settlement fund, intended to defray the costs of settling colonists and villagers for the Indians”.<sup>65</sup>

There was also the intention of spreading the measure, since it proposed that the government establish commissioners<sup>66</sup> in some European countries, so that they could, on behalf of the Government, “help bring together the number of families or colonies that have

62 The biographical data was downloaded from the site of the Senate on 4 January 2007. [http://www.senado.gov.br/sf/senadores/senadores\\_biografia.asp?codparl=1583&li=2&lcab=1830-1833&lf=2](http://www.senado.gov.br/sf/senadores/senadores_biografia.asp?codparl=1583&li=2&lcab=1830-1833&lf=2).

63 *Idem*.

64 [http://debates.parlamento.pt/mc/c1821/shpg\\_c1821.asp](http://debates.parlamento.pt/mc/c1821/shpg_c1821.asp), *Diário das cortes gerais e extraordinárias da nação Portuguesa*, pp. 538-542. Downloaded on 4 January 2007.

65 *Ibidem*.

66 *Ibidem*. “These commissioners shall arbitrate fixed and moderated wages, paid on a daily basis wherever they are settled, and certain bonuses with regard to ability, gender, and age of each settler who is sent, and paid Brazil upon arrival.” The masters of vessels that transport settlers also “would be protected by the Government which will effectively carry out such observance”.

been requested by the colonisation boards and then get them to sail to Brazil".<sup>67</sup>

Furthermore, according to the proposal:

The colonists, who first arrive in Brazil at the expense of the colonization boards, and the families who at their own expense travel to that country, and present themselves to the same boards, will be settled on the lands, which are fallow and uncultivated, in the vicinity of cities and villages, and existing settlements, or along the banks of rivers and major highways, to facilitate the transportation of products to markets. And so that the colonization definitely starts in those places, and the boards have been able to explore and prepare beforehand the indicated lands, the provincial Government shall present them with a report on this with the utmost brevity, and if they are not being used, or owned by someone. If they are owned by a title bearing profit, or *sesmarias*, the boards will enjoin the *sesmeiros*, to cultivate them, within the time allotted, or else they will revert to the listed individual, and be given free to the settlers; and if they have to be paid for, the owners will be told to make use of them within two years, under penalty of being rented to the settlers through a rent, that shall be due to the respective owners.<sup>68</sup>

The proposal of the Bahian deputy sought to scrutinize the occupation of vacant land. In this sense, his proposal implied a section of one league squared of lands, divided into portions of two hundred fathoms squared for each family, to form a total of one hundred families or six hundred people per league. Thus,

Each settlement family that engages in farming, will have one of these portions; and some of the remainder will be to the village, and common pasture, others to settlers who have newly arrived, and some for some members of the board, to establish the colony, as a reward for this important service;

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67 *Ibidem*.

68 *Ibidem*. Author's emphasis.



taking care to leave each village with a portion of woodland, which will always be preserved as such.

Each family shall receive seeds, birds and “some cattle”, and will be supported for four months. The board will also give a title for the portion of land portion and the head of the family shall sign “an obligation to pay the stipulated annual quotas together with the price of their ticket, groceries and other capital forwarded to them”.<sup>69</sup> The family unit was bound “to open up their land within four months, on pain of losing it”.<sup>70</sup>

There was also a provision to differentiate the colony funded by the board and that created by an entrepreneur. In this case, it will be given “double land [...] which will be divided into two parts, one for the entrepreneur and one to be subdivided by the families”.<sup>71</sup> The option of a few families with more than six people to migrate to Brazil is also recognized, “carrying instruments and more capital necessary for farming”.<sup>72</sup> In such cases, they will be given 500 fathoms squared.

Domingos Borges moved for the recognition of settlers as Portuguese citizens, being released from military service and any taxes during the first five years. After this period, the colonists would pay “a tithe for the colonization settlement fund” and only then would they be subject to the costs common to all Portuguese.<sup>73</sup>

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69 *Ibidem.*

70 *Ibidem.*

71 *Ibidem.*

72 *Ibidem.*

73 *Ibidem.* And furthermore: “All settlers who come to Brazil, whether at the expense of the boards, or privately, or at their own expense, may freely return to the land of their birth once they have fulfilled any financial obligations that they may have contracted in this country and which remain unpaid, as well as nationals, with some departure rights for these people. And the record should show the number, nation, gender, age, and occupation of the settlers who settle in the different provinces, and those who leave them, and every three months the boards shall publish an exact description of one and the other, taken from the record books, for which this should be read.”

In addition intervention in indigenous policy was also planned.<sup>74</sup> The colonization boards and protectors of Indians would also be responsible for establishing new villages for the Indians, as well as “repairing the old ones, which are in a ruinous and decayed state on the edges of civilised cities, towns and villages”.<sup>75</sup> The board will distribute land needed for each village in the same proportion given to foreign settlers. The directors of the villages shall be appointed, with the task of inspecting schools and workshops, as well as the distribution of farming tools that will be provided for those who have the means to buy them.

In order to civilize the Indians, the proposal included in the responsibilities of the directors the setting

of certain days, and especially those in which there will be baptisms or weddings in the village, for parties and dances, and decent enjoyments, that the Indians will enjoy the most, and ultimately seek with all their care, and through intervention of civilized Indians, in whom greater confidence is entrusted, entice the wandering and wild, who will be affably hosted when they visit the villages, buying and bringing things, and giving them in exchange for goods they choose, and the village will have the necessary provisions, and ordering things from the country that can be hand worked, such as salted fish, for if they are given salt, they can be taught how to salt.<sup>76</sup>

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74 *Ibidem*. “The directory of the Indians shall remain fully in force, as stated on 17 August 1758, with the deletion of Articles 27 to 34, and 56 to 70, which will be taken as void, and consequently the new settlements shall be exempt from tithes, and any other rights, for a period of 10 years, and forever the six who paid the directors (for whose benefit they shall also enjoy the existing settlements that are to be paid) and finally abolish the practice of forcing the Indians to work on the farms of various lords, which they can do if, and when, they wish.”

75 *Ibidem*.

76 *Ibidem*. “For the Indian, who goes from the bush to the village, and wishing to settle, will be given a portion of land, and the necessary capital to cultivate it, either separately, or in common, as wished, and shall help him to build his home. Who is so established shall enjoy the rights and exemptions granted to new settlers.” Furthermore: “Those who come to the village to receive an education and learn a trade, will be admitted in to the schools and workshops, of which the directors should take particular care”.

The intention of civilizing the farmers and controlling access to land were accompanied by the desire to create an agricultural society, “composed of the citizens most interested in the progress of this most noble art”.<sup>77</sup> In the spirit of so many of the texts of the Lisbon Academy of Sciences, the deputy argued that the function of that society would be

to promote, by the means deemed appropriate, all branches of beekeeping in the province, and to inform the Government of which taxes, monopolies, and exclusivity agreements, which retard the progress of tillage; which bridges, roads, and pipes that are most necessary; which lands that are vacant are suitable for colonization, and cultivation, either because of its advantageous situation, or due to its fertility, which the farmers, who most distinguish themselves in the use of land; and finally for the sake of the well-being of the fields.<sup>78</sup>

The proposed plan even mentioned immigration policy and the thorny issue of the slave trade, optimistically establishing six years for the end of that trade, “counting from the day that the Constitution is proclaimed in Brazil”.<sup>79</sup> It further provided that

The provincial governments of Brazil, inviting national philanthropy, shall establish redemption funds for their release on their anniversary or the respective recommitment of those slaves, who for some virtuous action or outstanding behaviour, such as obedience and good service rendered to their masters, if they became worthy of freedom; with each of those governments required to set up the aforementioned funds, and organize the company, who shall administer this, gives and establish precise regulations to create a good system, and employ those slaves, who must without fail be released each year, who do not receive jobs in order to avoid inactivity.<sup>80</sup>

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<sup>77</sup> *Ibidem.*

<sup>78</sup> *Ibidem.*

<sup>79</sup> *Ibidem.*

<sup>80</sup> *Ibidem.*

The deputy also argued that the slave showing his value “garnered through lawful means [would be] released”.<sup>81</sup> If the master were opposed to the release of his captive, “he would be forced to give to the redemption fund a fifth part of the value occasioned by his loss, and resulting from that freedom”.<sup>82</sup>

It is possible to assume that the proposal by Domingos Borges was anchored on the role played by Bahia in the recognition of Lisbon as the political centre of the empire. Moreover, the deputy himself was aware that Brazil was not a monolithic unity, on the country “Brazil should not look like a single country, since there are as many different countries as there are provinces”.<sup>83</sup> Thus, he sought to unite unequal trajectories to scrutinise an intervention which, at the same time, would organize the territory and stimulate agricultural activity, and provide a route to the abolition of the slave trade. If it is a fact that Bahia had a strategic role “in maintaining the political unity of Northern Brazil”, it is likely that the intervention of Domingos Borges involved the possible reformist proposal within the framework of a society based on the plantations and based on slave manpower. Thus, in revitalizing the system of *sesmarias*, the author did not dare discuss the foundations of property of longstanding occupants, nor touch on the sensitive issue of land disputes. He redefined the system, bringing to the centre of the debate its greatest common thread: the requirement to cultivate. Because of this, the proposal was a plan for the future, omitting, therefore, a past marked by quarrels and doubts over the effectiveness of the system of *sesmarias* in the foundation of colonial land ownership.

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81 *Ibidem*.

82 *Ibidem*. There were also other provisions regarding those held captive: “The child shall be free, and the female slave who had the child, also from her lord; this also requires learning a trade, so that he can survive: and those slaves shall also be made free where they came down with diseases and have been abandoned by their masters, since this proves that they do not usually treat their infirmities. “The slave who is tortured by his master, upon this being proven, may request a change to the master of his choice; and the price will be arbitrated by evaluators.” “The masters should live and encourage marriage among their slaves. The married slave who can offer six living children, shall receive a letter of manumission; the master shall be obliged to feed her during the gestation of the last child.”

83 *Apud* Thomas Wisiak, “Itinerário da Bahia na Independência do Brasil (1821-1823). In: István Jancsó, (organização) *Independência: história e historiografia*. São Paulo: Hucitec/ Fapesp, 2005, p. 456.

But there were those who, though less daring, were willing to criticize the system of *sesmarias*. On 14 September 1822, one of the deputies, Domingos da Conceição, when speaking on the agricultural situation in Piauí, said that it was “very backward” because of the numerous “uncultivated *sesmarias* given to individuals which had caused remarkable harm to the national income”.<sup>84</sup>

Domingos also proposed that “every citizen who has not complied with this purpose, for which the *sesmaria* was granted, should by this same fact have their land considered as vacant”.<sup>85</sup> He also asked the government to dismantle the granting of land by *sesmarias* and argued that the District Councils should be allowed to grant portions of vacant land “for immediate cultivation, portion of 100 fathoms squared per individual or family, always giving preference to those that currently are farming or the house shall be their permanent dwelling”.<sup>86</sup> Domingos da Conceição thus showed what on many occasions had tried to be hidden, namely that the granting of *sesmarias* did not stimulate agriculture in his region.

The following year, the Portuguese deputy Borges Carneiro<sup>87</sup> expressed his concerns regarding agriculture in Portugal:

To be brought to its former cultivation what is required is to remove the causes that have destroyed this. They are more than one: But so that this great purpose is not delayed any longer, I will limit myself today to just consider one, which is the main one and which can very easily be mended [...] <sup>88</sup>

84 [http://debates.parlamento.pt/mc/c1821/shpg\\_c1821.asp](http://debates.parlamento.pt/mc/c1821/shpg_c1821.asp), Diário das cortes gerais e extraordinárias da nação Portuguesa. P-435 n. 37. Accessed on 04 January 2007.

85 *Idem*.

86 *Idem*.

87 For an analysis of the life of Borges Carneiro, see <http://www.arqnet.pt/dicionario/borgescarneiro.html> Borges Carneiro had a deep level of knowledge of Portuguese Law. Amongst his works, of note are: *Extracto das leis, avisos, provisões, assentos e editaes publicados nas côrtes de Lisboa e Rio de Janeiro, desde a epocha da partida d'El-rei nosso senhor para o Brazil em 1807 até Julho de 1816*, Lisboa, 1816; *Appendice do Extracto das leis, avisos, etc., desde 1807 até Julho de 1816*, Lisboa, 1816; *Additamento geral das leis, resoluções, avisos, etc., desde 1603 até o presente*, Lisboa, 1817; *Segundo additamento geral das leis, resoluções, etc., desde 1603 até 1817*, Lisboa, 1817; *Mappa chronologico das leis e mais disposições de direito portuguez, publicadas desde 1603 até 1817*, Lisboa, 1818. *Direito civil de Portugal*. Lisboa, 2<sup>a</sup> ed., Typ. Maria da Madre de Deus, 3 volumes, 1858.

88 Diário das cortes gerais e extraordinárias da nação Portuguesa. 1821-10-23, p. 2747.

And he stated: “This question, Gentlemen, as you know, is the lack of ownership by the cultivators”.<sup>89</sup> For him,

Man thus in the state of nature, and even more so in society, has always been, is, and will be subject to numerous dependencies and inequalities; often having to lose the free use of himself and his things. The particular good is subordinated to the general good: this is the supreme law: under this condition lies the fact that society has guaranteed the right to individual property.<sup>90</sup>

And he asked: “Were then the aforementioned laws of King Joseph so unfair, those relating to *sesmarias* and others both ancient and more modern, that both constrain and sometimes take away the right of ownership and yet are the eternal foundations of good agronomy”?<sup>91</sup>

The law thus lost its legitimacy as a legal rule that established compulsory cultivation in Portugal, in the period in which at least two Brazilian deputies, the Domingos, were concerned to discuss that principle to justify land ownership in Brazil. In Portugal, the link which had bound it to its past was broken, as a law which aimed, above all, to stimulate Portuguese agriculture. It had also been transposed as a legal instrument in Portuguese America. Here, it had operated in multiple forms by many farmers, in search of the enshrining of a legitimate title able to at least inhibit the legal wrangling over who was entitled to a certain portion of land. To settle questions, many of those farmers submitted themselves to the Crown, and were subject to the provisions of the *Alvará* of 1795 and tried to “legalize” their property, using some of the provisions of that law. In subduing themselves, they recognized that the Crown had the ultimate right to say: this is yours.

During the period of the eighteen twenties, however, it was dangerous to clarify the problems arising from this form of concession, explicitly revealing conflicts nurtured by that system. It was therefore preferable to bet on the future, to build mechanisms that once more updated the law to be utilized on free lands that were still uncultivated. Accordingly, the deputies present in the *Cortes* did not talk any nonsense. They knew the commitment of the Crown based in Brazil to control this concession and the numerous royal provisions regarding *sesmarias*.

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89 *Idem.*

90 *Ibidem.*

91 *Ibidem.*

A bet on the future as described in the texts of José Bonifácio, Domingos Borges de Barros and Domingos da Conceição omitted those provisions, precisely because they revealed the inability of the Crown, located in Brazil, to put an end to the dilemmas. However, the path regarding the destruction of the system was not a linear one. In the process of transferring the Court to Brazil by 1822, when the system was abolished and the country became independent, it was once again sought to revitalize the system to control the granting of land and carefully examine occupation in various parts of Brazil. It is possible to assume, furthermore, these proposals of Domingos Borges were the highest expression regarding “tidying up the house”, ordering the system, retaking control over the granting, without revealing the underlying conflicts of that form of donation. In monitoring the legislative proposals concerning the system of the transfer of the Court up to Independence, we be able to assess which directions were taken by the government, now based in Brazil, in seeking solutions for the control and legalization of land access in the country. And that is what will now concern us.





## THE GRANTING OF *SESMARIAS* IN THE TERRITORIALISATION OF THE CROWN (1808/1824)<sup>92</sup>

Some time ago, the studies of Luiz Felipe de Alencastro placed roots in the historiography of the process of the constitution of Brazil, in its multiple and complex developments. In highlighting the strength of the mercantile interests linked to the slave trade, the author introduced, in the words of Wilma Costa, “a kind of ‘invisible boundary’ in the formation of the National State, where the extraterritoriality of the labour market appeared as a strategic element for the agreement elites around the unitary monarchy”.<sup>93</sup> Fore Alencastro

colonial continuity should not be confused with the continuity of the territory of the Colony. In fact, the Atlantic, African conditioning factors - distinct from the European bonds - would only disappear from the horizon of the country after the end of the slave trade and the breakdown of the colonial spatial matrix in the second half of the nineteenth century.<sup>94</sup>

How can we explain the disputes and quarrels about colonial lands, within the boundaries of an invisible border? If the labour market was extra-territorial, slave production, based on captive labour, inevitably had to be based within a particular space. In this sense, with experience involving struggle, farmers were increasingly aware of the need to enshrine their territoriality, which implied the maintenance of their interest based on the search for a “legitimate title” - in this case, *sesmarias*.

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92 The discussions below are markedly influenced by the exemplary work of Maria Odila Dias, *A interiorização da metrópole e outros estudos*. São Paulo: Alameda, 2008

93 Wilma Peres Costa, “A Independência na historiografia brasileira”. In: István Jancsó, (org.) *Independência: história e historiografia*. São Paulo: Hucitec/ Fapesp, 2005, p. 105.

94 Luiz Felipe de Alencastro. *O Trato dos viventes*. Formação do Brasil no Atlântico Sul. São Paulo: Companhia das Letras, 2000, p. 21.

It is correct to state, as we are reminded by István Jancsó, the danger of attributing to a plantation owner “more attributes than the owner” because “in that society there was no strict correspondence between the hierarchy of material wealth and the hierarchies of conditions, that is, status.”<sup>95</sup> The analysis carried out above on the provision of *sesmarias* in relation to titles seems to confirm Jancsó’s assertion .

The search for a legitimate title, the games initiated by efforts to legalize property, by the legitimate incorporation of lands through the system of possessions and the invasion of the areas of others, thus uncovered the underestimated territoriality hidden under the mercantile interests focused on the purchase and sale of slaves, “the productive vector of colonial wealth”.<sup>96</sup> We thus understand how it was possible that the critics of the system of *sesmarias* in Portugal continued to ignore - almost completely - the problems arising from the granting of *sesmarias* in Brazil.

### The laws in Brazil (1808/1822)

What was concealed by weightier economic interests was, slowly, unveiled with the transfer of the Portuguese Court to Brazil. One of the first measures taken by the Crown when it settled here was the setting up of the Supreme Court of Justice and Conscience and Orders (*Mesa do Desembargo do Paço e da Consciência e Ordens*), by *alvará* of 22 April 1808. According to the *alvará*, the Court would have the power to decide on all businesses that fell under the competence of the Supreme Court of Justice and the Overseas Council. In that same year, the decree of 22 July authorized the Court to carry out confirmations of *sesmarias*.

Desiring to establish fixed rules for this important matter, on which much depends regarding the increase of agriculture and settlement, and security of property; I hereby order that henceforth *Sesmarias* continue to be granted in the captaincies in this State of Brazil by their Governors and Captains-General

95 István Jancsó. “Independência, Independências”. In: István Jancsó (org.), *op. cit.*, p. 29.

96 Alencastro, *op. cit.*, p. 34.

them, when seeing the *sesmeiros* request the relevant confirmation from the Supreme Court of Justice.<sup>97</sup>

On 24 September 1808 the Crown established a regulation to settle certain doubts “concerning Concession on neutral, undecided Terrains which advanced in the last war, in the captaincy of São Pedro do Rio Grande do Sul.”<sup>98</sup>

It is worth mentioning also the Decree of 25 November 1808, which allowed the granting of *sesmarias* to foreigners resident in Brazil, “with it being appropriate for my royal service, and the public good to increase Tillage and increase the population, which is tiny in this State”.<sup>99</sup> The Crown had decided to open the doors to trade with foreign nations, through the royal charter of 28 January 1808. Through that decree, legal access to land by foreigners resident here was also allowed.

The concern for constructing mechanisms to ensure property was also expressed on 5 January 1809. The Prince Regent recorded the ways of appointing judges to confirm *sesmarias*, in an *alvará*. According to the document, what was intended was

to remedy the abuse of confirming *Sesmarias* without carrying out the necessary Legal measurement and demarcation of the land granted, against the express decision of the Decree of 20 October 1753 and many of my orders, which forbade this, and that their transgression stemmed from the indecency of donating lands, which already had *Sesmeiros* and such injustice gave rise to claims and litigation, and the disruption of the rights acquired by previous concessions.<sup>100</sup>

97 Decreto de 22 de julho de 1808. Autorizando a Mesa do Desembargado Paço para confirmar sesmarias. <http://www.iuslusitaniae.fch.unl.pt/>. Downloaded on 5 January 2007.

98 DEI 39/1808 (Decisão do Império) 24/09/1808. <https://legislacao.planalto.gov.br/legislacao/nsf/fraWeb?OpenFrameSet&Frame=frmWeb2&Src=%2Flegislacao.nsf%2FFrmConsultaWeb1%3FOpenForm%26AutoFramed>. Downloaded on 2 January 2007.

99 Decreto de 25 de novembro de 1808. Permite conceder-se aos Estrangeiros sesmarias no Brasil. <http://www.iuslusitaniae.fch.unl.pt/>. Downloaded on 5 January 2007

100 Alvará de 5 de janeiro de 1809. Sobre a Confirmação de Sesmarias, forma de nomeação de Juizes e seus Salários <http://www.iuslusitaniae.fch.unl.pt/>. Downloaded on 5 January 2007.

The charter thus recalled the decree of 1753 to, once again, record the problems arising from the process of confirming *sesmarias*. There was an attempt there to promote and ensure the maintenance of “the sacred rights of property”.<sup>101</sup> Therefore, several paths towards confirmation were established. Firstly, both the Supreme Court of Justice as well as the governors and captains-general were forbidden to “issue a granting letter” without showing that the required legal measurement and demarcation had been done and legally finalized with testimony from the confronting parties”.<sup>102</sup>

To do justice to the proposal, the Crown established the requirement that in every village there would be a *sesmarias* judge, appointed for a period of three years. In Rio de Janeiro, the Town Council had to propose three names to the Supreme Court of Justice. In the other Captaincies, the Chambers had to refer the same number of names to the governors and captains-general. The individuals chosen for the position had preferably to be graduates in Law or Philosophy; in the absence of these, those with the highest “probity and knowledge”.<sup>103</sup> Once chosen, the *sesmaria* judges

would hear the grievance and appeal of the *Ouvidores* (Judges) of the Districts, which have had recourse to the Appeals Courts of the District in accordance with the Law of the Kingdom. And when the parties wish to apply before the *Juizes Ordinários* or *de Fora* or the *Ouvidores* of the Districts, they shall defer to them, going to them so that they are not left without the Jurisdiction of the *Sesmarias* Judge, though they will however be required to wait for what the provisions of this Regime shall be.<sup>104</sup>

The charter also stipulated that every village should have a pilot for measuring and demarcating, holding that position for a period of three years. The registrar would be the “oldest notary or least busy and the Judge more skilful for similar diligences”.<sup>105</sup>

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101 *Idem*.

102 *Ibidem*.

103 It is interesting to note the primacy of Law, thus contrary to the arguments laid out by Francisco Mauricio de Sousa Coutinho.

104 *Ibidem*.

105 *Ibidem*.

The charter also instituted the ritual of the measuring process. Firstly, they would be carried out concurrently, “starting some in the squares of the other, without leaving any intermediate or vacant lands”, with the exception of roads, general service roads and public sources. The measurement presupposed knowledge of the lands granted, “even though the configuration and topographical situation of the land may not be a perfect and regular square”.<sup>106</sup>

Each half league would correspond to fifteen hundred fathoms, with it also being necessary to specify the milestones and marks found in the ground as well as “strands, rivers, hills, and the like”.<sup>107</sup> Also to be noted were the presence of “meadows, mountains and virgin forests and all the outstanding qualities which to the Judge appear to be suitable for marking the *sesmarias*, which will be measured and demarcated”.<sup>108</sup>

Once the measurement has finished, the pilot would make a plan of the site, in which “its configuration would be drawn, placing the landmarks, the noteworthy beacons, rivers, streams, swamps and anything else that may figure”.<sup>109</sup> Such a map would be kept in the Supreme Court of Justice so that “it can be used to settle certain doubts which shall occur”.<sup>110</sup>

For each measurement, regardless of the days to be spent performing the task, the judge would receive twenty thousand *réis*; the pilot, twelve thousand *réis* and the rope assistant, six thousand *réis*. In addition, for each six leagues journey there and back they would receive: two thousand *réis* for the judge; one thousand two hundred *réis* for the pilot and six hundred *réis* for the rope assistant.<sup>111</sup>

There is no doubt, therefore, that in the intricate process of transferring a Court, it was necessary to build mechanisms for the government to use its power, establishing the key idea that it was the entity that decided who was the real owner of a certain portion of land. There was also the urgent need to establish procedures for the reaffirmation of legitimate titles. It was necessary to serve the interests of their subjects, to reassure them about their rights, instantiate their property and control occupation.

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106 *Ibidem*.

107 *Ibidem*.

108 *Ibidem*.

109 *Ibidem*.

110 *Ibidem*.

111 *Ibidem*.

In the following years, a series of procedures points to repeated attempts to regulate the situation. The royal charter of 13 July 1809 allowed the settlers of Rio Doce to have ten years to measure their *sesmarias*, allowing exemption for those cultivating the crops of wheat and flax in the captaincy of Espírito Santo.<sup>112</sup> On 27 October of the same year, once again the Crown intervened in that region, seeking to regularise the distribution of *sesmarias*.<sup>113</sup>

Later on in 1809, in a royal charter, the Crown established the period of ten years for the distribution through *sesmarias* of the lands rescued from the incursions of the *Botocudos*.<sup>114</sup> Apparently, this document was the result of the war declared in the previous year by another charter, that of 13 May. What was laid down in that document was that the *botocudos* “were reduced under the terms of their subjection; that they form a body of foot soldiers to fight against the ‘barbarians’ and that the ‘infested’ lands were distributed into six districts”.<sup>115</sup>

Two years later, the Crown granted *sesmaria* lands in the captaincy of Rio Grande de São Pedro do Sul to set up a colony of Irish settlers.<sup>116</sup>

In 1814, the Crown intervened in Espírito Santo, authorizing the granting of *sesmarias* and exempting the payment of tithes for the farmers who were cultivating wheat and flax.<sup>117</sup>

In September 1817, the Crown established the steps that had to be taken to regularize the granting of *sesmarias* in the captaincy of Ceará.<sup>118</sup>

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112 Carta régia permitindo aos colonos do Rio Doce, 10 anos para a medição das respectivas sesmarias. 13 July 1809. <http://www6.senado.gov.br/sicon/ExecutaPesquisaBasica.action>. Downloaded on 29 December 2006.

113 Carta régia declarando o Direito que poderia competir aos colonos do Rio Doce e regulando a maneira da Distribuição de Sesmarias e data. 27/10/1809. <https://legislacao.planalto.gov.br/legislacao.nsf/fraWeb?OpenFrameSet&Frame=frmWeb2&Src=%2Flegislacao.nsf%2FFrmConsultaWeb1%3FOpenForm%26AutoFramed>. Downloaded on 2 January 2007.

114 Carta régia. Marca o prazo de dez anos para distribuição por sesmarias dos terrenos resgatados das incursões dos botocudos. 13 July 1809. *Ibidem*.

115 Izabel Missagia de Mattos. *Civilização e revolta*. Os botocudos e a catequese na Província de Minas. Bauru: Edusc, 2004, p. 78.

116 Concede Terras de Sesmarias na Capitania do Rio Grande de São Pedro do Sul para o estabelecimento de uma colônia de Irlandeses. 23 September 1811. *Ibidem*.

117 Carta Régia. Autoriza a Concessão de sesmarias e isenta do pagamento dos dízimos às cultura do Trigo e Linho da Capitania do Espírito Santo. 17 January 1814. *Ibidem*.

118 Decisão do Império Determina as Diligências, a que se deve proceder para a concessão das sesmarias na Capitania do Ceará. 11 September 1817 *Ibidem*.

Soon after that, it also determined the referral process for the owners of lands through *sesmarias*, purchases, and possession.<sup>119</sup> Two years later, the sesmaria concession of the lands of the village of Valencia, destined for the crown Indian village, was declared null and void.<sup>120</sup> Later that same year, 1819, it created the office of the Private Registrar for measurements and demarcations of *sesmarias* of the town of Porto Alegre and its surroundings.<sup>121</sup>

Successive laws, rules for regulating access to land in a territory of continental dimensions and with marked regional differences were not able to make a tabula rasa of its recent past, with disputes and quarrels often reaching the courts. In many portions of the country, rivalries beat at the gates of justice, with it not being possible, in many cases, to decide who was the “real” owner of the occupied area.

It should also be pointed out that the legal disputes were only a “tiny fraction of all conflicts of interest whose resolution could conceivably be asked of the court and an even smaller part of the set of disputes that arose in society”.<sup>122</sup>

However, recognizing that the courts “play a limited role in the resolution of conflicts” does not mean to say that the courts played a minor role in this matter.<sup>123</sup> Studies on the conflicts that reached the justice courts are important, since their decisions provide a substrate of standards and cases, “a basis for negotiations and for the regulation of relations of a private nature, as well as of an administrative nature.”<sup>124</sup>

As we saw in Part Three of this book, João Pedro Braga and 17 other people on 4 November 1799 applied for interstitial lands in Rio Caçaraubu in the parish of Nossa Senhora do Rio Bonito to from “part of the college farm”. The request was confirmed in the *Livros de Confirmação de Sesmarias*

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119 Alvará para a remessa de relações dos proprietários de terrenos por sesmarias, compras, posses, etc. 21 October 1817. *Ibidem*.

120 Decisão do Império. Declara nula a concessão de sesmaria das terras da aldeia de Valença destinada para vila dos índios coroados. 26 March 1819. *Ibidem*.

121 Alvará. Cria o ofício de escrivão privativo das medições e demarcações das sesmarias da vila de Porto Alegre e seu termo 9 August 1819. *Ibidem*.

122 Marc Galanter. “A Justiça não se encontra apenas nas decisões tribunais”. In: António Manuel Hespanha. *Justiça e litigiosidade: história e prospectiva*. Lisboa: Fundação Calouste Gulbenkian, 1993, p. 68.

123 *Idem*. p. 69

124 *Ibidem*.

on 20 October 1801.<sup>125</sup> The following year, João Pedro received the royal seal, on 22 January, ensuring - at least in theory - his “interstitial lands”.<sup>126</sup>

What appeared to be a legal document underpinning his right to land turned out to be insufficient to ensure his occupancy in 1810. That year, Captain Henrique José de Araújo, his wife Maria Bibiana de Araújo and his mother-in-law Maria Feliciana Cordovil knocked on the doors of the Court of Justice of Rio de Janeiro to state that João Pedro Braga “had entered a farm in which he was the supplicant, and his predecessors for over one hundred years, in the Vila de Santo Antonio de Sá, [in] a place called Colégio [...] cutting several sticks and had them sawed to make wooden boards”.<sup>127</sup> Among the witnesses of the author, two stood out: Simon Antonio Roza, “whose job was as a pilot measuring land, dwelling at Catete”, and Antonio Luiz, also a pilot measuring land and resident in Rio Bonito, the place of the dispute.

The case of João Pedro is an example of disputes arising from inaccuracies in the demarcation of borders, in the process of granting land through the *sesmaria* system. He and his colleagues had received a royal seal regarding “the interstitial lands” in that region, but this did not guarantee his right to land a few years later. Thus, it is possible to suppose that quarrels were not settled by the attempts to reorder the form of grant, although the various legal dispositions pointed out above confirm that an alternative to the process of territorialization of the Crown in colonial lands had been sought.

There was more dramatic situations, such as robberies of documents. In January 1821, Captain José Joaquim Freire Souto complained to the Santa Madre Church:

from the notary office of José Pereira Lisbio [...] cases involving land measurement have disappeared as ruled upon by Dr Joao Pedro de Souza Carias, who for the aforementioned measuring had served as judge, and whose measurement was made at the

125 AHU. Carta de Confirmação de Sesmarias. José Pedro Braga e outros. Códice 166, folhas 61v a 62 v.

126 ANTT. Chancelaria de D. Maria. João Pedro Braga e outros. Livro 66, p. 94 a 95.

127 AN. Tribunal de Justiça do Rio de Janeiro / Juízo da Corregedoria do Cível da Corte. Código: 5237 cx 448 G C Código de Fundo: 77 Seção de Guarda: CDE. Autor: capitão Henrique José de Araújo, sua mulher Maria Bibiana de Araújo e sogra Maria Feliciano Cordovil. Réu: João Pedro Braga. Data: 8/02/1810 a 3/08/1816. Cidade do Rio de Janeiro / Sítio Vila Santo Antonio de Sá.



farm of Santa Ana do Camisão, as these were sought in the aforementioned notary office of Rodrigues, and they were not found, he asks those who know or have news of their discovery, and incidentally promises to remove any excommunication.<sup>128</sup>

Disputes often included the so-called lands of the Church, since in many regions, there were those who questioned the right of religious orders on certain lands. In the region of Maricá, in Rio de Janeiro, for example, disputes over lands were very old. In 1797, the Benedictines sought to cartographically register the extent of their *sesmarias*, in a map entitled *Mappa em que se mostra as Terras que São Bento possui em Maricá e as que aferia possuir e alguns dos Ereos introduzidos nellas sem legítimo título no terreno por Simão Antonio da Roza Pinheiro*.<sup>129</sup> In that representation, there was a cartographical examination to delimit the lands belong to the Monastery of São Bento and visually question the legality of the occupancy of the other party.

The date 1797 is significant, since the *alvará* of 1795 had established the compulsory keeping of *sesmaria* records, and that included church property. It was not surprising then, that the São Bento Monastery expressed its annoyance at drawing up a map with information about invasions into the areas considered as rightfully theirs.

On 16 September 1817, King John VI sought to regularize the ownership and possession of orders. If the first such measure was to end the complaints procedures that allowed ordinary people to request the lands of the religious, legal clashes continued to take place. Furthermore, this aforementioned law “imposes the obligation of payment of the rights of the chancery regarding the licences along with their respective assessments for the confirmation of possession”.<sup>130</sup> This meant that, on the one hand, the government sought to safeguard the lands of the Church and, on the other hand, keep a tighter rein on their concessions. By imposing the payment

128 IHGB. “Documento Ecclesiastico”. Revista do Instituto Histórico e Geográfico Brasileiro. Tomo 47, parte II, vol. 68, ano 1884, p. 121.

129 I explore the aspects of the conflicts related to the lands of the Church throughout the nineteenth century in the article entitled: “Terras da Igreja: arrendamentos e conflitos no Império do Brasil” in: José Murilo de Carvalho. *Nação e cidadania no Império: novos horizontes*. Rio de Janeiro: Civilização Brasileira, 2007, pp. 421-443.

130 Fania Fridman. *Donos do Rio em nome do rei*. Uma história fundiária da cidade do Rio de Janeiro. Rio de Janeiro: Jorge Zahar/ Editora Garamond, 1999, p. 69.

of the chancery, the government demanded that the lands were evaluated, which is another way of saying measured.

Thus, the process of territorialisation of the Crown meant finding mechanisms to rearrange land, counter certain interests to safeguard its power, as a body that could endorse the legal rules specifying property. This opened loopholes for new tensions and expectations of law which had been sublimated. In 1821, the Crown responded to the requests made by various farmers in Pernambuco who requested to be kept on their land, because they had been expelled from these because of *sesmarias* granted afterwards. Therefore, the decision referred to orders previously enacted on the same problem.<sup>131</sup>

A year later, a new request, this time from farmers of the Vila São João do Príncipe, Pernambuco, led to another decision, of 14 March 1822, reaffirming the right of the more ancient parties over the lands that were given later by *sesmaria*.

I hereby Order you to proceed with the corresponding measurements and demarcations, without prejudice to any owners who have actual crops on the lands, because their possession should be kept, with sufficient title being these Royal Orders, such that for the same possessions the *sesmarias* subsequently granted prevail.<sup>132</sup>

Finally, on 17 July 1822, during the regency of King Peter the granting of *sesmarias* was repealed. The resolution aimed to meet the demands forwarded by the farmer Manuel José dos Reis,

that begs [ed] to keep possession of the lands in which he has lived for 20 years with his large family of children and grandchildren, with the aforementioned lands being included

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131 Decisão de 10 de janeiro de 1821. *Coleção de Leis do Império do Brasil*. A decisão referia-se ao decreto de 3 de janeiro de 1781, as ordens que foram expedidas, respectivamente, ao Vice-Rei do Rio de Janeiro em 14 de abril de 1789 e ao governador da capitania de São Paulo, em 4 de novembro do mesmo ano.

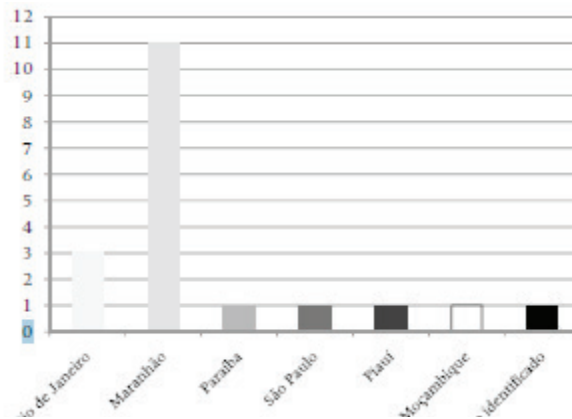
132 Decisão de 14 de março de 1822. *Coleção de Leis do Império do Brasil*. Once more the decision was based on the decree and on the previously cited orders.

in the measurement of certain *sesmarias* which had been granted later.<sup>133</sup>

If, on the one hand, there was a whole set of procedures of the Portuguese Court to re-establish control over the granting of land, on the other hand, this did not mean to say that all *sesmeiros* or potential *sesmeiros* were willing to follow such procedures. Perhaps because of this, in some captaincies there were those who continued to send requests for confirmation of the *sesmarias* to the Overseas Council. In these cases, the farmers disregarded the role to be played by the Supreme Court of Justice, established in Rio de Janeiro and the power of the Crown there. Let us return to the discussion, now with the concern to unveil the expectations of the *sesmeiros* during those difficult circumstances. This is what will see from the *Livro de Confirmação de Sesmarias*, for the years 1808 to 1823, from the Overseas Council, and confirmation requests, in the custody of the National Archives. What path was taken to enshrine a title?

An analysis of the *Livro de Confirmação de Sesmarias para os anos de 1807 a 1823* can help us at least get some answers about the option of some *sesmeiros* to address themselves to the Overseas Council.

#### CONFIRMATION OF SESMARIAS PER CAPTAINCY - 1807-1823



AHU. Livro de Registro de Cartas de *Sesmarias* confirmadas do Conselho Ultramarino. 1807/ 1823. Códice 168.

133 *Resolução* of 17 July 1822. In the provision of 22 October 1823, the prohibition of new *sesmaria* grants was restated until the Constituent General Assembly had regulated the matter. *Apud* Messias Junqueira. “O instituto brasileiro das terras devolutas”. São Paulo: Lael, 1976, p. 69.

As already stated, the transfer of the Portuguese Court represented the displacement of the decisions of the Crown regarding royal confirmation. The Decree of 22 July 1808 stated that *sesmarias* could not continue to be granted, which hitherto had been granted by the viceroys of Brazil and the royal governors, confirmed by the Overseas Council. The interruption of the process was answered with the establishing of the Supreme Court of Justice (*Mesa do Desembargo do Paço*) in Rio de Janeiro, in order to carry out confirmation for the “establishment of fixed rules for this important matter, on which much depends regarding the increase of agriculture and settlement, and security of property”.<sup>134</sup> The decree also stipulated that the *sesmeiros* should request confirmation in the Supreme Court of Justice, and prior to this have “the necessary information and steps taken under my real orders’”.<sup>135</sup>

Some, however, continued to ask for confirmation from the Overseas Council, probably because the proceedings had been initiated before the transfer of the Court.

In the case of Rio de Janeiro, two of the three claims referred to the lands of the Novas Minas do Sertão de Macacu and one referred to the district of Campo Grande. In the latter case, Estevão da Silva Monteiro had requested these lands in 1789, “at the bottom of those possessed in the Serra de Bangu, running to the *Serra do Camarim* [where] there was quite a number of uncultivated vacant lands and backcountry, without any other landlord than the royal Crown”.<sup>136</sup> The three requests were confirmed between 3 and 28 July 1807. The confirmations regarding the captaincies of São Paulo, Paraíba and Piauí occurred between October and November 1807. In these cases, they were enshrined during the discussions of the so-called Secret Convention of London, which established the British aid in the transfer process of the Court, in exchange for trade agreements advantageous to that power. In other words, it seems that in these cases, the confirmation request was made during a time of uncertainty.

Here we would highlight the maintenance of the requests for confirmation of *sesmarias* in Maranhão, one of the last provinces to join the Independence of Brazil, and only on 28 July 1823. After 7 September 1822, five requests still reached the council, all requesting confirmation of their

134 *Decreto* of 22 July 1808, authorising the Supreme Court of Justice (*Mesa do Desembargado Paço*) to confirm *sesmarias*. <http://www.iuslusitaniae.fcsh.unl.pt/>. Downloaded on 5 January 2007.

135 *Idem*.

136 AHU. Carta de Confirmação de Sesmarias. Estevão da Silva Monteiro. Ano de 1807. Códice 168, folhas 3 a 4.

*sesmarias* in late 1822 and throughout 1823.<sup>137</sup> Francisco de Assis Oliveira was even more determined in his attempt to regulate his overseas access. In June 1826, three years after the end of the system in Brazil, he requested King Peter IV to confirm his *sesmaria* charter “by the river Turiaçu, on land of the Vila de San José de Guimarães”.<sup>138</sup>

This does not mean that all the *sesmeiros* looked toward the power on the other side of the Atlantic, and continued to seek confirmation of *sesmeiros* from the Overseas Council. The forwarding of the application indicated the reading taken by the farmers regarding which court would enshrine it with a legitimate title. Beyond the interests of those who supported or not the unlinking of Brazil with Portugal, there was clear intention to ensure their piece of land, with the legal possibility to state: “this is mine”. The table below, however, relativizes any conclusion regarding the farmers of the province of Maranhão and also shows the regions of Brazil where the Crown had some success in the process of confirming *sesmarias*.

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137 AHU. Livro de Registro de Cartas de Sesmarias confirmadas do Conselho Ultramarino. 1807/1823. Códice 168. Caio Boschi (coordenador) Catálogo dos Manuscritos Avulsos Relativos ao Maranhão existentes no Arquivo Ultramarino. Caixa 171, doc. 12.458; Caixa 173, doc. 12.563; Caixa 175, doc. 12.682; Caixa 175 doc. 2.698; Caixa 175; doc. 12.701; Caixa 176, doc. 12.725.

138 Caio Boschi (coordenador). Catálogo dos Manuscritos Avulsos Relativos ao Maranhão existentes no Arquivo Ultramarino. Caixa 178, doc. 12.949.

## CONFIRMATION OF SEMARIAS BY CAPTAINCY (1808/1822)

Year	MG	RJ	SP	PA	MA	RS	AL	CE	ES	MT	PE	BA
1808		4	5		3							2
1809	4		3	1	7							2
1810				7	2			1				1
1811			2	1	13	1		1	1	2		9
1812			5		3		1			2		2
1813			4		14					1		3
1814	4		2	1	2	37		1	4		1	2
1815			4	1	4	12			2		1	2
1816			2	1		7	1		2			3
1817	1	1		2	5	4		2			1	
1818			1	5	2		1		2	1		
1819	1	1	4	1	1		1		2			
1820	3		6	1	1				1		2	
1821	4		6			1				2	2	
1822		1				2	3		1	1	1	
1823						1		2	1		2	

To draw up this table I used the inventory Fund [*Sesmarias*] of the National Archive of Rio de Janeiro, with one of them being only for Rio and the other for the remaining states. The catalogues contained the nature of the process (demarcation, confirmation, etc.), the name(s) of those involved, the location of the *sesmaria*, the time period for the process (deadlines) and the date on which the *sesmaria* charter was granted (this data is not reported for all cases). I used the date on the *sesmaria* charter to do the totals.

Some *sesmeiros* might have felt safer submitting to the Crown, now based in Brazil, and presenting their request to confirm the *sesmarias* at the Supreme Court of Justice; others had perhaps begun the process before the political situation that precipitated independence and saw themselves in a delicate situation to confirm their land on the other side of the Atlantic during the period of a political rupture. Others could even ask for confirmation from both processes, thinking of operating with greater ballast during a period shown to be uncertain.

Be that as may, it is not unreasonable to assume that the Crown had particular interest in solving the problems arising from the granting of *sesmarias* in the province of Rio Grande do Sul. As we saw in the previous chapter, there were strong indications concerning the grants previously made by the Governor Lt. Gen. Sebastião Xavier, who had governed between 1780 and 1801.<sup>139</sup>

This man, full of himself, with his gentlemanly airs and military whim completely ran roughshod over the most sacred rights of the peaceful and industrious settlers, frequently taking land from them which they, with their tacit consensus, had settled and cultivated after conquering it from the Spanish, savages and beasts, to give to the valid individuals; he often pulled down very important buildings, and send many owners to prison who dared to offer any resistance to the loss of their labours, to the point that there were many families who, for similar reasons, had fled over to the Spanish.<sup>140</sup>

Despite complaints about the irregularity of the concessions, few lands were confirmed in the Overseas Council between 1795 and 1807 for the captaincy of Rio Grande do Sul, but it is symptomatic that in the year of his departure, that governor forwarded for confirmation seven *sesmarias*.

Year	Number of confirmed <i>sesmarias</i>
Ant 1795	1
Ant 1796	3
Ant 1801	7
Ant 1802	2
Ant 1803	5
Ant 1804	4
Ant 1805	3
Ant 1806	2
Ant 1807	3

Source: Osório, Helen et al. *Catálogo de Documentos Avulsos referentes à capitania do Rio Grande do Sul existentes no Arquivo Histórico Ultramarino*, Lisbon.

139 Antônio José Gonçalves Chaves. *Memórias ecônomo-políticas sobre a administração do Brasil*. 4ª ed. São Leopoldo: Unisinos, 2004, p. 221.

140 *Idem*.

Through the same table, we can also see that the *sesmeiros* of Rio Grande do Sul did not continue to request confirmation of *sesmarias* to the Overseas Council after 1807. Instead, the request was submitted via the Supreme Council of Justice, revealing a marked territorialisation of the Crown in deciding the ownership of the land in that region. But this also meant that it operated with the private power established there, acknowledging the ownership of land to those who were willing to defend the territory against the desires of the Spanish State.<sup>141</sup>

Despite diverse interests, there was an expectation of their right from some of the *sesmeiros* to ensure the legality of their occupation. It is also significant to realize that in the area recently occupied, quarrels over land were laid bare, revealing what previously it had been desired to minimise. The conflicts became routine, demonstrating conceptions of injustice in the distribution of lands within the confines of the country. Let us consider this point.

### **Rio Grande do Sul: conquered area, area of conflict**

A border area, minted by border disputes and quarrels over which power it belonged to, the region “had been born” as a political unit marked by doubts concerning past concessions, as expressed in the text of Antonio José Gonçalves Chaves. The author did not shy away from laying out the consequences which arose from the redirection carried out by former governor Xavier:

Hence the confusion between ownership and recognized demands, which since then have multiplied and scandalously worsened, since the aforementioned governor, far from limiting, as he should have, with justice and righteousness, the claims of some, signing into authenticity so that each might possess and enjoy, he decided to exalt the ambition of the most powerful, his favourites, by keeping them in large tracts of land: he questioned, whenever it suited his purposes, the legitimacy of possessions, and thus always favoured them, allowing them to get the same lands already taken from their primitive state of nature by the hard and difficult labour of their first

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141 Helga Piccolo. “O processo de Independência numa região fronteiriça”. In: István Jancsó (org), *op. cit.*, p. 578.



occupants, now reducing them to tiny sizes and often to total abandonment.<sup>142</sup>

Antonio Chaves also stated that the successor to governor Xavier would have been Brigadier Francisco João Roscio, who governed between 8 January 1801 and 30 January 1803. According to the author, throughout his management, the brigadier sought to organise the concessions, but nothing could be done in such a short period of time. After him, it was the turn of Paulo José da Silva Gama, who “let things go on as before”. Subsequently, Dom Diogo de Souza, Count of Rio Pardo, became the governor, who when writing a *bando* on 29 December 1810, revealed the violence stemming from that form of concession and the proposals to remedy the problems arising therefrom.

The *bando* written by Dom Diogo de Souza, who governed the region between 1807 and 1811, imposed the obligation that the *sesmeiros* had to confirm their lands in the Supreme Court of Justice and established a series of procedures to be followed by farmers in the region. The governor was incisive in his arguments and showed he was aware of the routine violence occasioned by land disputes:

It being well-known the violence with which various powerful people, in their own right or cloaked in informed dispatches, have expelled the first possessors and successors of those lands, since they had no solid title; and the scandalous trade that has taken place is also clear, appropriating different lands for them or different ways that their cunning ambition provides them, to sell some and retain others.<sup>143</sup>

The stinging words of Antonio Chaves, revealed in the *Memórias de Antonio José Gonçalves Chaves*, written from 1817 and published in Rio de Janeiro between 1822 and 1823, elucidated the problems arising from that grant, pointing once again, to some of the issues discussed at other times. The work - actually a set of five memoirs - was written by a Portuguese individual from Trás-os-Montes who arrived in Brazil in the early years of the nineteenth century, and who became a merchant, an industrialist, a dried meat dealer and a rancher. The book was published at his own expense, in an environment in which its author adhered to the Independence of Brazil.

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142 Chaves, *op. cit.*, p. 222.

143 *Idem*, p. 127.

The first memoir from 1821 was On the need to abolish the captain-generals (*Sobre a necessidade de abolir os capitães-gerais*). The second, One the municipalities, understanding the union between Brazil and Portugal (*Sobre as municipalidades, compreendendo a união do Brasil com Portugal*), was probably written before Independence. The third On Slavery (*Sobre a escravatura*), was drafted in 1817. Its markedly liberal content impresses not only because of its knowledge of modern political economy, but also because its author is also a supporter of slavery. In condemning captivity, Chaves based himself also on the conclusions of A. Smith and the illustrious Portuguese Francisco Soares Franco.<sup>144</sup>

The fourth memoir, On the distribution of lands in Brazil (*Sobre a distribuição de terras no Brasil*), was written in 1823 and offered to members of the Constituent and Legislative General Assembly of Brazil, which was established in May 1823 and dissolved in December of that year. To make known the proposals of Antonio Chaves, at the time in which the issue was being discussed in the Constituent Assembly, allows us to demonstrate the culmination of a process critical of the system, immediately after its end on 17 July 1822, reaffirmed in the provision of 22 October 1823, until “the Constituent General Assembly regulates on the matter”.

## The Memoir of Antonio José Gonçalves Chaves and the discussions within the 1823 Constituent Assembly

The memoir On the distribution of lands in Brazil (*Sobre a distribuição de terras no Brasil*) is made up of five chapters. In the first, ‘Emancipation of Brazil is seen from the point of view of interest to both States. It was operating in 1807’ (*Emancipação do Brasil vista pelo lado do interesse de ambos os Estados. Ela se operou de fato em 1807*), the author clarifies the reasons why Brazil’s independence was legitimate, because the country had been oppressed for three centuries, “had its thirteen years of being the oppressor” and it was time to recognize that emancipation was

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144 For an analysis of the criticisms of José Gonçalves Chaves with regard to slavery, see: Antonio Penalves Rocha: “Ideias antiescravistas da Ilustração na sociedade escravista brasileira”. *Revista brasileira de História*. vol. 20, n. 39, São Paulo: 2000. [http://www.scielo.br/scielo.php?pid=S0102-01882000000100003&script=sci\\_arttext](http://www.scielo.br/scielo.php?pid=S0102-01882000000100003&script=sci_arttext). Downloaded on 30 January 2007.

reciprocal.<sup>145</sup> In the following chapters<sup>146</sup> he reaffirms the legitimacy of the independence of Brazil, based on a discussion of the word emigration and the nation born from the emigration experience. In these texts, the author is also concerned to show that Portugal had no right to dominate Brazil.

It is, however, in the following chapters<sup>147</sup> that Antonio Chaves clarifies his scathing criticism of the system of *sesmarias*, demonstrating that his perceptions are not only based on his experience of the occupation of Rio Grande do Sul, which is discussed in the fifth and most extensive of his memoirs, as mentioned above: On the Province of Rio Grande de São Pedro in particular (*Sobre a Província do Rio Grande de São Pedro em particular*).

This author reconstructs the legislative experience of the system of *sesmarias*, demonstrating a keen awareness of the varied and contradictory provisions to be found:

Alongside the usurpation of the sovereignty of Brazil, which has affected its people since its inception, [...] it was also usurped in terms of private property, nor do we know of another manner to explain the astonishing concessions of land in Brazil for titles signed by the sovereign where it says: I deem it fit to hereby grant the Supplicant such and such portion of land.<sup>148</sup>

Moreover, he recognized that the Indians were the original landowners, and it is not possible to destroy “this rule without subversion of the natural law”.<sup>149</sup> Deeply influenced by modern political economy concerning notions gleaned from the hierarchy of man in various stages of civilization, Chaves indicated that the Indians belonged to the first class of men, the hunters. Thus, “these people consider themselves unable to leave their state by themselves and hence the cultured peoples [the Portuguese] give themselves

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145 Chaves, *op. cit.*, pp. 108-109.

146 “O Brasil emancipado de direito desde as primeiras colonizações portuguesas; Continuação do mesmo objeto”; “As colônias das nações modernas da Europa são de fato escravas, mas de direito e sua origem, livres; e têm direitos incontestáveis a organizarem-se em corpo da nação.”

147 The chapters directly related to the theme of the *sesmarias* and the occupation of lands are: “Viciosa distribuição de terras”; “Originária possessão das terras no Brasil: direito de propriedade”; “Sistema de distribuição e partilha das terras convinável ao Brasil”.

148 *Idem*, p. 120 (editor’s emphasis).

149 *Ibidem*.

the right to meddle in their preceptors”.<sup>150</sup> However, he warned that this did not mean that men from “the noblest classes of mankind” had the right to take the land from the Indians. Rather, “the colonists [the Portuguese] should be obliged to buy the land for their settlements in Brazil from the original peoples and owners of them, or enter into an agreement with them to hand over the domain”.<sup>151</sup> And he stated:

However, the Brazilian nation was not as fair in its origin as it should have been; it cannot be said that the right of ownership over the land it occupies was destroyed [...] Our present nation thinks it is the owner of an immense area of land, even excessively disproportionate with regard to its primary population, and so we have the obligation and possibility to respect the rights of the Aborigines that still exist in many Brazilian forests.<sup>152</sup>

Chaves thus recognised a past right, while still insisting on the barbaric character of the Indians and their need for help. He believed in the possibility of one day publishing “a plan for the progressive civilization of the Indians in Brazil”.<sup>153</sup>

The author was concerned, above all, to show “how absurd our system of land distribution in Brazil is” and denounced the granting of *sesmarias* above the limit of three leagues, in defiance of the laws in this respect. And he further stated:

For further demonstration of the absurd system that we are fighting, and how much it has prejudiced us, we will mention the following facts, known to all who have seen Brazil.

1st fact. Our population is almost nothing compared to the vastness of land we have occupied for three centuries;

2nd fact. The lands are almost all divided and there is little to distribute which is not subject to invasions from the Indians.

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150 *Ibidem*, p. 121.

151 *Ibidem*, p. 122.

152 *Ibidem*.

153 *Ibidem*, p. 123.

3rd fact. The monopolisers have up to twenty leagues of land and rarely consent to let any family settle on any part of their land, and even when they do consent this is always temporary and never let any family settle for a few years.

4th fact. There are many poor families - poor people wandering from place to place asking for favours at the whim of landholders and always lacking the resources to obtain some land on which to make a permanent establishment.

5th fact. Our agriculture is considerably backward and a discouragement to what it could be for any agricultural people, even the least advanced in civilization.<sup>154</sup>

In this memoir, the Portuguese Antonio José Gonçalves Chaves unveiled the adverse results of how the system of *sesmarias* had been operated in Brazil. Rich landowner, owner of the dried meats São João, where he had received the traveller Saint Hilaire,<sup>155</sup> Chaves was a keen analyst of the problems arising from the distribution of land in the country and knew that discussing the issue involved more than rambling on about the effects of that system. As I said, he had paid for the costs of publishing his book and the fourth memoir had been produced to be delivered to the constituent members. He had studied the question, and also quoted Arthur Young, an English economist and agronomist who had made many observations about English agriculture. It seems to me that he was heavily influenced by that author, since he was concerned to demonstrate that there were three classes of shareable land in Brazil:

1st – Foreign lands, which belong to the Indian [sic] or indigenous nations and only the nation can divide or share them after they have been purchased in a fair and legal transaction.

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154 *Ibidem*, p. 125.

155 Saint Hilaire had written: “The poor that cannot have titles, and settle on lands which they know do not have an owner. They sow, build small houses, raise chickens and when they least expect it some rich man appears, with a title he received that night, expels them and takes advantage of the fruit of their labour”. Auguste Saint Hilaire. *Segunda viagem do Rio de Janeiro a Minas Gerais e São Paulo*. São Paulo: Edusp; Belo Horizonte: Itatiaia, 1974, pp. 23-24.

2nd - Lands already distributed and through commissioning return back to the bulk of the original property or national land, which are the same situation.

3rd – Lands totally vacant, that have not been distributed and are considered as national lands.<sup>156</sup>

Chaves went further. This time, he had clear expectations about the possibility that the lands had been measured and demarcated by experts. He argued therefore that the Provincial Councils had officials for the demarcation of uncultivated land, giving them the necessary tools to “make and share these lands among themselves through permanent divisions and landmarks”.<sup>157</sup>

The lands should be distributed “to anyone who can take possession of them to make use of them”.<sup>158</sup> He reworked the notion that they could not be left fallow, but it was clear that they were in fact “distributed only to parasites, the sedentary and the powerful”.<sup>159</sup> He continued:

From these inevitable abuses one clearly concludes that such a system deprives society of its common property without favouring the consortia, destroying civil equality, understood only through the merits of social goods [...] as an offence to the principles of the well-ordered social pact, and all of this to the manifest dismay of agriculture.<sup>160</sup>

And he warned:

How often are rich houses ruined because of the controversies that happen between them, born of the presumption of rights to land where there is nothing else but some sort of trickery of some to deceive their rivals! There are so many examples of this that we could cite just in this province.<sup>161</sup>

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156 *Ibidem*, p. 127.

157 *Ibidem*, pp. 127-128

158 *Ibidem*, p. 130.

159 *Ibidem*.

160 *Ibidem*, p. 131.

161 *Ibidem*.

The expectations of Antonio Chaves were great. In the last lines of this his fourth memoir he asked the Assembly to “take into account this important issue in the way that it has been considered: the distribution and sharing of uncultivated lands”.<sup>162</sup> It is difficult to ascertain the reasons why this Portuguese was moved to write such a forthright text, but the fact is that his hopes were dashed, as the Constituent Assembly hardly discussed the topic. Let us look at this aspect more carefully.

## The 1823 Constituent Assembly

On 3 May 1823, deputies from various provinces gathered to start on the first Constitution of the Brazilian Empire. The absence of representatives from some provinces was felt, such as Bahia, Maranhão and Pará, which had not yet acceded to the separatist proposal for Brazil. At that moment, however, what was needed was not just the creation of a State, but also the construction of a nation. It was necessary, therefore, to set up “a Brazilian political identity through its Portuguese otherness”.<sup>163</sup> At that time, therefore, it would have been reckless for the constituents to lay bare the fundamentals of land ownership in Brazil, since many of them were owners or relatives of great rural potentates. It would have been really difficult to consecrate a State and, at the same time, bring to light the illegal occupation of farmers, and the perceptions of injustice that reached the courts. The issue, however, was not completely absent. It appeared here and there, without it being possible to do justice to the hopeful words of the Portuguese Chaves. Nothing specific was decided in the debates that year. At the session of 20 June 1823, when the deputies discussed the means to stimulate agricultural and industrial production for the new nation, and even before the enactment of the provision which reaffirmed the end of the system of *semarias*, the deputy Pereira da Cunha gave his criticisms of that system.

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162 *Ibidem*.

163 Andréa Slemima & João Paulo Pimenta. *O ‘nascimento político’ do Brasil*. Rio de Janeiro: DP&A, 2003, p. 103

I note for example that agriculture in Brazil, for which special agrarian laws were made, though with restrictions that hinder the exercise of the Sacred Right of Property. [...] I also equally remember the *Sesmarias* as being an object of uttermost importance, since the acquisition of useful domain over all the land owned in Brazil depends on them, despite some steps in this regard having been established, their distributary power has been so abused that in addition to the endless demands that have fatigued their owners, we see inequality and disparity that has followed these divisions which arbitrated by the Governors as if they were their property.<sup>164</sup>

The speeches of Pereira da Cunha also expressed an acute awareness of the consequences arising from the granting of *sesmarias*, but this was not shared by all those in attendance. His proposal was based on stimulating agriculture and the responsibilities of provincial governments. But this was not consensual. The deputy Manoel José de Sousa França, in discussing the duties of the provincial governments councils argued that the proposals were very vague in order to promote agriculture, industry and the arts of the country. He also recalled the Portuguese experiences in relation to agriculture “sending them [the farmer] to pick the vines, and forcing them to use other types of agriculture on the lands”.<sup>165</sup> He further stated: “some historians praise the ministry of Marquis of Pombal for this supposed benefit he had made to his country. I on the other hand always shuddered at rather similar despotism”.<sup>166</sup> And he showed himself to be against the proposal then in vogue concerning the obligation to plant cassava.

In the session on 14 July 1823, the deputies met once again to discuss the duties of the provincial councils. Manoel França warned then that one of their responsibilities was the division of vacant lands and explained the problems resulting from the distribution of land. The proposed amendment was that, among the duties of the council, “it should sign the granting of *sesmarias* and the division of lands between the farming class: with the President required to produce the preparatory orders for the granting of *sesmarias*”.<sup>167</sup>

164 Diário da Assembleia Geral e Constituinte e Legislativa do Império da Brasil. 1823. Tomo I. Brasília: Senado Federal, 2003, p. 256.

165 *Idem*, p. 257.

166 *Ibidem*.

167 Diário da Assembleia Geral e Constituinte e Legislativa do Império da Brasil. 1823. Tomo II. Brasília: Senado Federal, 2003, p. 402.



The debate revolved around the responsibility of granting *sesmarias*. Sr. Arouche Rendon argued that: “If I were to judge the state of all Provinces based on mine, I can say that it would for now be useful to suspend the granting of *Sesmarias*. He went on:

In São Paulo, Mr. President, so many *Sesmarias* have been granted and with such ease that it has produced great evils, such as: There are many lands not cultivated, as the poor farmers had to flee the settlement to the backcountry and to plough uncultivated land.<sup>168</sup>

There was also a donation of land which had already been granted once, “without first being judged as being vacant, especially with so much uncertainty and confusion no *Sesmaria* can be measured and demarcated without many legal disputes over the borders”.<sup>169</sup> Apparently, the subject headed towards the reaffirmation of the end of the granting, a proposal submitted by Sr. Vergueiro, who added reference to the agriculture committee to draft a bill on public lands, “containing provision for the past and fixed rules for the future”.<sup>170</sup>

On 22 August a consultation arrived from the Supreme Council of Justice with a request to waive “the lapse of time for the measuring and confirmation of *sesmarias*”.<sup>171</sup> The complaints reached the Constituent Assembly, to reveal different expectations regarding the issue. On 5 September, 37 residents of the district of Tanque in the *comarca* of Sabará complained about the violence of the heir of Marshal João Carlos Xavier, the holder of three *sesmarias* (never measured and marked). According to residents, the widow wanted to expel them from the land where they had lived for over 20 anos.<sup>172</sup>

On 25 September, the Assembly decided to authorize the government to grant “waivers for the lapse of time in processing the confirmation of those *sesmarias*.” According to Vergueiro, this authorization was in fact

168 *Idem*. p. 402

169 *Ibidem*, pp. 402 & 403.

170 *Ibidem*, p. 403.

171 The petitioners were: Antonia Tavares Correa, D. Joaquina, D. Ana, D. Joana Marques de Lima and Manoel Marques de Souza, Felipe Antonio de Amaral and Manoel Afonso Velado.

172 *Diário da Assembleia Geral e Constituinte e Legislativa do Império da Brasil*. 1823. Tomo II. Brasília, Senado Federal, 2003, p. 721.

essential, because “those concessions which were made by the authorities are already nowadays not recognized,” but he also believed that the waivers for the lapse of time in confirming the *sesmarias* also had its inconveniences.<sup>173</sup> For Vergueiro

the Supreme Court of Justice proceeds in these affairs without knowledge of the reasons, and I have seen many examples of this. Men who had been granted *Sesmarias* who never took care of them, with others therefore farming their lands for them and benefitting from them, and then, after 10 or 15 years, requesting confirmation so as to dispossess those who have been of benefit to the lands.<sup>174</sup>

According to the deputy, the charters should have been issued following certain provisions that the *sesmeiro* was required to satisfy, under penalty of forfeiture, “as it was among others, to cultivate within two years, and nevertheless, having not complied with the clause, it was granted if requested, because the orders that were given did not have any information”.<sup>175</sup> Vergueiro thus denounced what so many wished to hide, namely that the *sesmarias* were granted and confirmed without ascertainment of the rules governing the grant. He had knowledge of the facts, because he had been a *sesmarias* judge in the province of São Paulo.<sup>176</sup>

On 3 October, the Assembly had to take a position on the claim previously made by the residents of Sabará, Minas Gerais. From the point of view of the deputy França, the Law did not allow for dispossession of occupied lands “except for a verdict in a claim after the hearing of the parties”. And he added: “After Luiz do Rego, the Government of Pernambuco, dispossessed many farmers of their non-entitled possessions, representations were made to the throne and King John VI established and enabled legislation in this respect”.<sup>177</sup> The deputy made explicit reference to the demands of Luiz do Rego in the repression of the revolution of 1817

173 Diário da Assembleia Geral e Constituinte e Legislativa do Império da Brasil. 1823. Tomo III. Brasília, Senado Federal, 2003, p113.

174 Diário da Assembleia Geral e Constituinte e Legislativa do Império da Brasil. 1823. Tomo III. Brasília, Senado Federal, 2003, pp. 113 & 114.

175 *Idem*, p. 114.

176 The future senator Vergueiro was known for his pioneering work in the implementation of the system of *parcerias* in São Paulo.

177 Diário, *op. cit.*, p. 162.

and the provision of King John (resulting from a request by farmers from the village of São João do Príncipe) which established the measurement and demarcation in the *sesmarias*, “without prejudice, however, to the interest of those on the land actually cultivating it”.<sup>178</sup> However, the opinion given by that deputy was rejected because others understood the matter not to fall within the competence of the Assembly.

On 22 October 1823, a provision reaffirmed the ban on new grants for *sesmarias* until the Constituent General Assembly had regulated the matter, thus reaffirming the Resolution of 17 July 1822. However, it is difficult to know whether the deputies who were present were willing to fulfil the wishes expressed in the words of Antonio Chaves. Uncertainty remained as to the distinction between Portuguese and Brazilians, as Andréa Slemian and other writers have noted. Certain basic practices of the political culture of liberalism were also maintained, that is, “a society in which illustrious men ruled, whose role was to guide public opinion, a freedom that did not exceed the rights of others and an equality that was restricted at the legal level.”<sup>179</sup> It was difficult to discuss the *sesmaria* system, without examining the land conflicts it nurtured.

It is also possible to think that the “inability to create spaces of relative autonomy for the provinces and to equate such diverse interests”<sup>180</sup> represented not only the centralization of political power from Rio de Janeiro, but also revealed the working limits of the deputies on issues involving the foundations of the nation that wished to construct these, namely ownership. The limited breath of Brazilian liberalism in its relation to the political culture of independence that Lucia Bastos Neves speaks of contradictorily bared itself in its concealment. The conflicts nurtured by the granting of *sesmarias* laid bare the way the law had been used by various social agents. It also showed how the Crown sought to either repress, or “close its eyes” to irregular occupancies. The *sesmaria* grants placed justice in intricate situations, recognizing the right of the *sesmeiros*, but also reaffirming the primacy of ownership. The conflicts nurtured also showed that compulsory cultivation was the greatest restriction for those who - in defiance of the Law - were looking for a legitimate title. It was necessary to enshrine property without having to make a deal with the past, “containing provision for the

178 Decisão de 14 de março de 1822. Coleção de Leis do Império do Brasil.

179 Lúcia Maria Bastos. Pereira das Neves. “Liberalismo Político no Brasil: Ideias, Representações e Práticas (1820-1823)”. In: Lucia Guimarães & Maria Emilia Prado. *O Liberalismo no Brasil Imperial*. Origens, conceitos e práticas. Rio de Janeiro: Revan/UERJ, 2001, p. 100.

180 Slemian, *op. cit.*, pp. 105-106.

past and fixed rules for the future”,<sup>181</sup> as Vergueiro stated. The *sesmaria* had created landed property in Brazil and established a strange restriction to the interests of liberalism, always ready to enforce the law “in the neighbour’s house.” It was necessary to delegitimize the notion that land ownership should be based on the obligation to cultivate.

The dissolution of the Constituent Assembly dismantled any progress in discussions on the bases of land ownership in the country. Be that as may, it would have been difficult for the hopes of Chaves to have become concrete proposals for the overhaul of the system of grants. It is worth remembering that “during discussions of the Constituent Assembly, most of the deputies clearly showed their intention to limit the meaning of liberalism and distinguish it from democratizing claims”.<sup>182</sup> With the Constituent Assembly dissolved, King Pedro I appointed a Council of State made up of ten members to draft the Constitution, resorting to various articles from Antonio Carlos’s draft. Thus was born the first Constitution of the country and the only one of the Empire of Brazil.

The Constitution of 25 March 1824 established the inviolability of the civil and political rights of Brazilian citizens, “which is based on freedom, personal safety and property”.<sup>183</sup> The *sesmaria* system was dismantled and the principle that had guided the establishment of that law, namely the obligation to cultivate.

Thus the nineteenth century society which was created was based on two pillars: ownership of slave labour and land ownership, the latter unrestrictedly defended in all its fullness.

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181 See note 169.

182 Emília Viotti da Costa. *Da monarquia à república: momentos decisivos*. 2a ed., São Paulo: Livraria Editora Ciências Humanas, 1979, p. 116.

183 Constituição Política do Império do Brasil. 25 de março de 1824.

## FINAL CONSIDERATIONS

### Property “in all its fullness”

In 2005, the then Minister for land policy and agrarian development, Raul Jungmann Pinto, published, through his Coordinator of communication, a book entitled: *The White Paper on land robbery in the country (O livro branco da grilagem de terras no país)*. This was, however, an exercise book-synthesis of 41 pages, which listed the largest properties suspected of falsifying titles. According to its authors, the total amount of land under suspicion was approximately 100 million hectares. For the Northern region, the data were even more scary: out of its total area, 157 million hectares, the government raised the possibility that around 55 million had been illegally and fraudulently occupied (*griladas*).

The case of Pará was repeated remembered, indeed with news items in the quality press. Entitled the case of the ghost Carlos Medeiros, this illegal occupation of land (*grilagem*) was associated with the invention of a chain of succession which would have been constructed from the eighteenth century. According to the highlighted news item in the newspaper *O Globo*, on 20 February 2005, the state prosecutor Carlos Lamarão and his team had for thirty years been trying to dismantle the chain of succession which had been invented by the alleged owners. In the name of that ghost, 1% of national territory had been illegally appropriated, which corresponds to twice the size of the State of Rio de Janeiro and the size of Portugal.

This *grilagem* had started in the 1970s when the ghost Carlos Medeiros would have presented two *sesmaria* letters in the name of Manoel Joaquim Pereira and Manoel Fernandes de Souza and presented himself as the heir of the former *sesmeiros*. The titles were registered in a notary office. Carlos Medeiros – never found by justice or by politics - would thus have appropriated public lands, using a chain of succession based on the invention of *sesmaria* documents, as the original and legal proof of occupation by his ancestors.

The use of ancient documents to construct a chain of succession became an exciting theme for me, although rarely explored by Brazilian historians. Throughout the last years, I have sought to analyse land litigation and the transmission of patrimony, initially in Rio de Janeiro and nowadays in various regions of the country. The surveying and analysis of numerous documents revealed an exciting factor to me which enabled me to change the direction of my research. In many conflicts over land which occurred in the nineteenth century (and even today) the *sesmaria* letter was and has been utilised to establish a ground zero point in the history of the territorial occupation in the area in dispute. In making use of such an old document, one of the parties (or both) call on history as a witness and enshrines - at least in the eyes of the law - the legality of his/her occupation. What seems simple hides a clash of legal preconceptions and disputes concerning the right to land, which may be focused on from at least three points.

In the first place, it is known that most of the *sesmarias* granted were not accompanied by the procedures necessary for their regularisation. As such, throughout the nineteenth century it was a fact that the *sesmarias* were mainly forfeit, since the *sesmeiros* had not complied with the legal provision to measure and mark their land. Therefore in cases involving an appeal and expulsion from housing (open to expel an alleged invader) the *sesmeiro*-litigant used the document as the ground zero of his/her occupation, aware that he had not complied with the royal provision. In various cases involving the measurement of lands, opened to define the territorial boundaries of a given area, the *sesmaria* documents were repeatedly presented as if they represented – without discussion – the absolute truth regarding the area occupied.

Secondly, the acceptance of the letter as the ground zero point and the final resolution in favour of the *sesmeiro*, tell us that it was not important to satisfy the legal procedures to regularize occupation, since the letter in itself only symbolically reflected an expression of the power of the *sesmeiro*. It is thus understood how and why farmers continued to use the *sesmaria* document after it ceased being granted in 1822, and even after the Land Law of 1850 and its regulatory act of 1854. In many cases, farmers have used *sesmaria* letters, including ignoring the mandatory Parish Registration of 1854/56, the latter document being created by the aforementioned regulation.

The repeated use of the letter as documentary evidence of the “true” story - an expression of timeless occupation - is itself emblematic.

Finally, when the litigants build a ground zero of their chain of succession based on *sesmaria* letters, the power play between the two is also the clash between different interpretations about the original occupation

of their ancestors. On both sides of the conflict, reconstruction is required (in time) of the territorial occupation undertaken by those identified as the first occupants, the original *sesmeiros* of the land in dispute. In these cases, it is possible to identify the way in which “truths” are produced to substantiate stories concerning the occupation of a place, a territorial stage with various social actors. The game is established by the presence of not only a letter, but by the use of two letters expressing opposite “truths” and revealing disputes beyond the territorial limits of the litigants.

To construct the defence for the litigants, it is necessary to reconstruct a chain of succession based on the transmission of patrimony. Therefore, it is necessary to reconstruct the entire process of land occupation until the time of the dispute. The stepping back in time, since the *sesmaria* letters are understood as the ground zero point of the occupation, is interwoven with a detailed spatial description of the area occupied, just to prove that the other is the real invader. Finally, the use of the *sesmaria* letter as the starting point for land occupation renews - in each case - the legitimacy of this royal grant.

Thus, the construction of an inaugural date based on the *sesmaria* letter covers a whole tangle of disputes concerning the spatial definition of the area granted and it was from there that I ventured to reconstruct the process of granting *sesmarias* to disentangle the gestation of land conflicts in the country. By pursuing this track, I came up against the complexity of the subject and the countless readings made concerning the system in the late eighteenth century. By following the considerations of Francisco Mauricio de Sousa Coutinho, governor of Pará, I shared the distress clearly evident in his prophetic phrase: “the discussion about the litigation aspects of the titles or those granted by the donatary, or by the government, will not unravel even after centuries”. Although I was running the risk of being anachronistic, I tried to understand the historicity of the phenomenon of land disputes in Brazil, the search for legitimate title in a country that has become accustomed to thinking that invasion is always a neighbour’s action. This book, therefore, deconstructs the foundations of property and the arguments of the litigants who today rely on the *sesmaria* letter to support the legality of their occupations. In denaturalising property it recovers - I think - one of the principles that legitimized the granting of lands by *sesmaria*: the obligation to cultivate.

With so many years having passed since the publication of the first edition of my first book (*At the frontiers of power - Nas fronteiras do poder*, 1998), perhaps it is also exciting to think about the reasons which enshrined the *sesmaria* document as the original proof of occupation and

the modest legitimacy of the parish land records, stemming from the 1850 Law. It is certain that, as I have stated elsewhere, the actual agents of the State revealed a pessimistic view of the effectiveness of the law and its regulation and complained that many farms continued to ignore what had been laid down in the 1850 Law. I also stated that many small occupants appropriated or tried to appropriate the law to ensure their right to a small portion of land. But that is part of a long history. Be that as may, it is possible that some reader may one day be interested in researching why the *sesmaria* documents became property documents stretching down through the centuries, legitimized as the first proof of occupation in various courts and in distinct regions. In other words, because Brazil established the idea of a ground zero point in the occupation symbolized by the “truth” expressed in the presentation of such an ancient document.

Ownership is a set of capabilities, possibilities and powers which the individual unconditionally enjoys. It is, for many, the guarantee of happiness, and there is therefore a close link between individualization of ownership and individual satisfaction.<sup>184</sup> But as a historical construction, land binds to kinship, neighbourhood, profession and creed. It is this and more. Its economic function is one among many others. It is the location of your house, it is the view of your landscape and your physical safety. “Dividing the land from human beings and organizing society in such a way as to meet the requirements of a real estate market was a vital part of the utopian concept of a market economy”.<sup>185</sup> To do justice to this more general movement, the 1824 Constitution did not proclaim any limits on the right of land ownership, nor make this depend on an obligation to cultivate. It enshrined ownership without limits and in doing so, also created a society marked by conflicts over land, by conflicting interpretations regarding the history of occupancy of a place.

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When I started writing this book in 2003, I already had an idea of the phenomenon of *grilagem* in the country and started my studies on this theme, taking my research back to the eighteenth century. The theme of ownership became a new window with which I could revisit the eighteenth century. The final notes of this book show the path that I have undertaken to uncover some of the elements which have led to the *grilagem*, using

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184 Vachet, Andre. *L’Ideologie Liberale: L’Individu et sa Propriete* Canadá, Les Presses de l’Université d’Ottawa, 1988.

185 Polanyi, Karl. *A grande transformação*. Rio de Janeiro: Campus, 1980.



documents as old as *sesmaria* letters. To my surprise, the book reactivated a half-forgotten debate, both in Brazilian and in Portuguese historiography and it is certainly gratifying to now that it has stimulated new research

However, the publication of this book in 2009 had a less visible result. It legally delegitimized fraudulent property claims based on historical documents, which were almost always viewed as being correct, since they were old. The reception that the book has had among lawyers has been remarkable. It is difficult to know the reason, perhaps because history or this new history sustains the legal interpretation which questions the legality of the occupancy of *grileiros* who use historical documents, which are almost always false. Perhaps the story told throughout these pages has been an inspiration, a small support for legal actions which question the fraudulent property claims in the country. Be that as many, it is always good to know that a book has crossed boundaries between apparently such diverse fields of knowledge.

Sometime after the publication of this book, I had my first contact with the project coordinated by Carmen Alveal, of the Universidade Federal do Rio Grande do Norte. This concerned an ambitious and important project. Using a team composed of various researchers in Brazil, the database, known by the acronym SILB (*Sesmarias* in the Luso-Brazilian Empire – *Sesmarias do Império Luso-Brasileiro*) will allow us to organise the records of no less than 16 thousand *sesmaria* letters, from all the regions which came under Portuguese Imperial domination. In a language accessible to all readers interested in the topic, the project envisages a system where it is possible to search for *sesmeiro*, captaincy, year in which the grant was awarded, and year in which it was confirmed.

The possibilities which this project opens up are considerable. In future years, researchers will have access to a set of documents which will, for example, allow them to analyse the territorial sizes requested by the *sesmeiros*, and the different dynamics of the grants. The quantitative data will enable us to uncover the real dimension the *sesmaria* system had in Portuguese America, the number of plaintiffs, cultivators with confirmed *sesmarias*, besides tables regarding the size of portions of parcels of land, differences between regions, etc. Besides the quantitative data, it will also be possible to know which were the strategies used by the powerful to ensure “legitimate title”, That is, which arguments were commonly used to plead for a certain area and in which regions it is possible to unravel conflicts over possession of the land. There is still a set of information which could stimulate more detailed information about the *sesmeiros* themselves. There is still a game to be unveiled, the differences between the request and the

confirmation, the networks of power involving the *sesmeiros*, the multiple registers, the familiar strategies. In short, today I think that many of the conclusions presented in this book will be updated, rethought or even disproved with the rise of new research of the process of territorial occupation in Portuguese America which may benefit from the immensurable efforts of the team led by Carmen Alveal.

The publication of this book in 2009 had another, no less interesting, consequence. It was a means of linking up with Iberian researchers involved in the issue of territorial appropriation and discussions around the concept of property. The results of this closeness have been enormous. In the first place, due to the approval of the *FCT/CAPES Terras Lusas: propriedade e conflito no setecentos* project, coordinated by myself and the researcher José Vicente Serrão, of the *Instituto Universitário de Lisboa*.

The proposal is based on the following two areas for reflection: 1) The laws on land rights and conflicts, using as a basis conflicts over possession and ownership; 2) the description, formation of the landscape and recognition, as an integral part of territorial organisation and map making. This project enabled five academics with doctorates to travel to and stay in Lisbon (three on a research mission and two carrying out a post-doctoral internship). Some more concerned with the more cartographic considerations of conflict, such as Iris Kantor, of the *Universidade de São Paulo*; others more concerned with land occupancy in indigenous areas, such as Vânia Maria Losada Moreira, of the *Universidade Federal Rural do Rio de Janeiro*, and Marcelo Henrique Dias, of the *Universidade Estadual de Santa Cruz*, Ilhéus, Bahia. And others interested in researching the granting of *sesmarias* in the Caminho Novo para Minas, such as Marina Machado, of the *Fundação Getúlio Vargas*.

As part of the task of disseminating this work, I also joined the FCT project, as the coordinator with regard to Brazil, which is coordinated by José Vicente Serrão, *Lands overseas : Property Rights in the Early Modern Portuguese Empire*. The team is made up of researchers from various institutions from distinct parts of the Portuguese speaking world, and seeks to analyse how instruments connected to property law (*sesmarias*, emphyteusis, leasing, period, majorats) were transplanted to colonial territories. And furthermore, how such instruments were utilised by the agents of power and landholders. And also in which way property rights contributed to maintaining, or subverting, social balances in the various overseas contexts analysed.

The publication of this book also enabled the creations of ties with the *Centre de Recerca d'Història Rural, da Universitat de Girona*. For

researchers who are part of this research group, the dimensions of a social history of property are particularly complex when seeking to analysis the areas of law concerning right to possession and land ownership. This aspect has been the central topic of discussion of this group, coordinated by Rosa Congost.

Known by many as the most important disciple of the unforgettable historian Pierre Vilar, Rosa Congost coordinates the research group and has produced a series of studies on distinct aspects of rural history, linking Vilar's research path with Thompson's conclusions concerning law. It would also not be an exaggeration to state that the consolidation of the reputation of this group and their visibility in a number of countries, including Brazil, has to do with the effects of the studies carried out by Congost. In addition, the work of the Centre and its visibility has been enhanced with the success of its last book, entitled: *Tierras, leyes, Historia. Estudios sobre 'la gran obra de la propiedad'* The work is presently one of the works most cited regarding the concept of property, considered from a historical perspective. In denaturalising the markedly liberal property law of the present day, the author perspicaciously shows the pluralistic, historical and transformative character of that law in its relations with social groups in conflict. The Catalan author argues for an objective reflection on the social conditions which led to a certain law and the concern to unravel the greater or lesser effectiveness of its application. In reconstructing the historical experience of Spain in the period before the liberal revolution of this country, she also offers us the opportunity to rethink the classical French model on the consolidation of private property, deconstructing its main interpretative features.

Finally, it is also interesting to note the emergence in 2010 of a discussion group on rural history, Rural History, at the University of Sussex, with the support of the British Agricultural History Society, which was founded in 1952. The discussion group took on the challenge of setting up a network of Portuguese language historians working on rural history, including José Vicente Serrão (*Instituto Universitário de Lisboa*), Rui Santos (*Universidade Nova de Lisboa*), Dulce Freire (*Universidade de Lisboa*), Benedita Câmara (*Universidade da Madeira*) and Margarida Sobral Neto (*Universidade de Coimbra*), among others. The results of this encounter are still to come, but they will certainly be quite exciting, not only for researchers, but also for a new generation interested in rural history or, as it is general known in Brazil, agrarian history.

To conclude, it is gratifying to know that the new edition of this book forms part of the reinvigorating work in rural studies, not only in Brazil, but in a number of European countries. As was once said historians do not

study the pass to sell prophecies”. Therefore, it is not possible to know if this revival will take root or if it is just an encouragement for historians engaged in the topic. There is no problem here: time will tell us.

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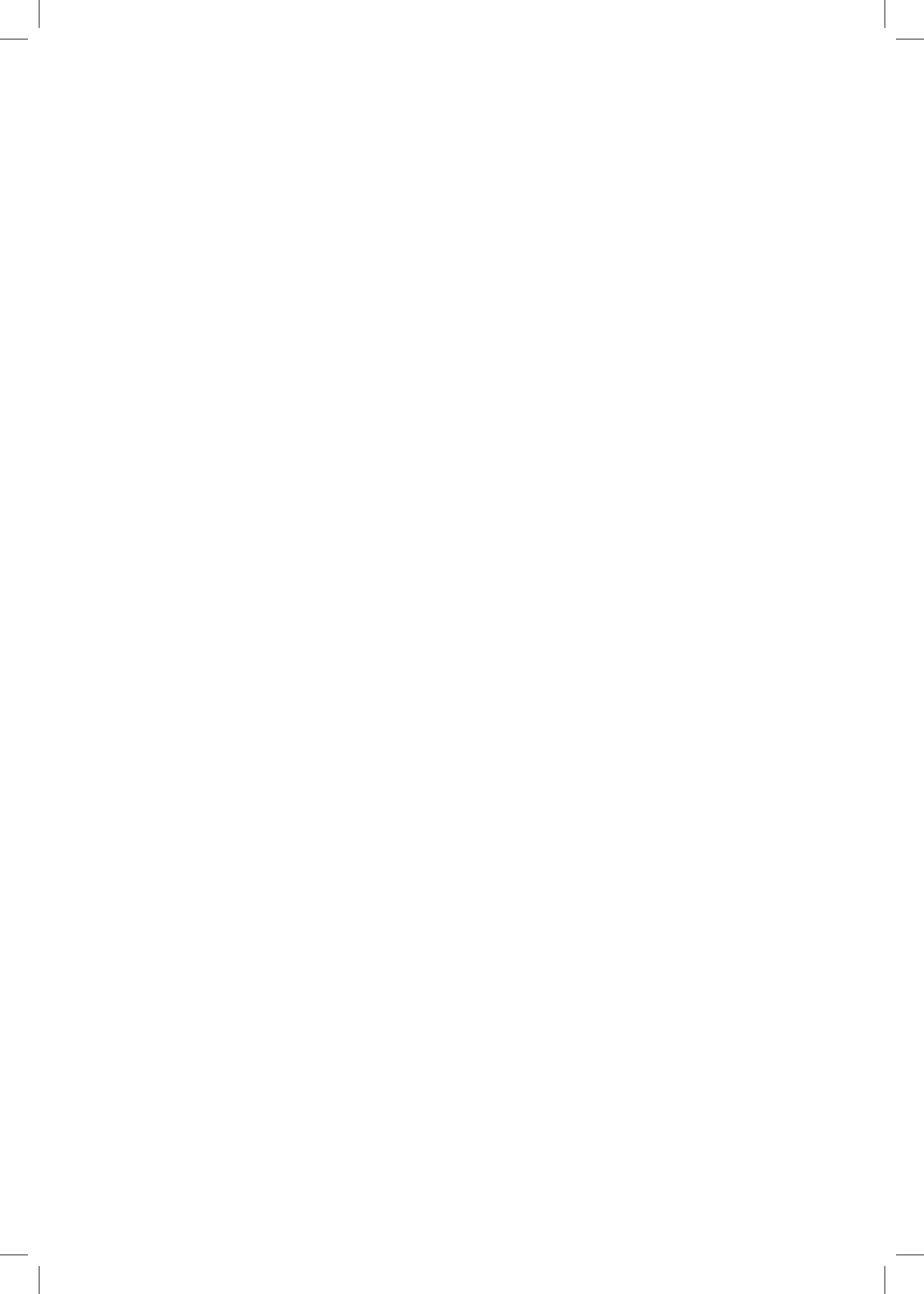
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