

Land Law of 1850: Lessons on effects and the results of not condemn “a one fifth part of current agricultural population”

Lei de terras de 1850: lições sobre os efeitos e os resultados de não se condenar “uma quinta parte da atual população agrícola”

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RESUMO

O malogro da política de terras do Império talvez seja uma das ponderações mais repetidas na historiografia que, direta ou indiretamente, discutiu a Lei nº 601 de 18 de setembro de 1850, a “Lei de Terras”. Contudo, considero que o postulado do fracasso da legislação não dá conta de captar profundamente a complexidade da situação que foi legislada com base nos critérios dessa lei. Além de lhe dar um caráter absoluto, tal ponto de vista retira a dinamicidade do processo social e exige que o cumprimento de determinada legislação seja fiel àquilo que está expresso em seu texto. Neste artigo, portanto, partirei do princípio de que a Lei de Terras de 1850 “pegou”, mas o fez de acordo com a lógica, o contexto, a realidade social e histórica que caracterizou a época e a nação em que foi formulada e aplicada.

Palavras-chave: lei; terra; política agrária.

ABSTRACT

The failure of the lands of the Empire policy is perhaps one of the most repeated weightings in historiography that directly or indirectly discussed the Land Law of 1850. However, I consider that the postulated failure of the legislation does not account for capturing deeply the complexity of the situation that was legislated based on the criteria of Law No. 601 of September 18, 1850. Besides giving an absolute character, such a view removes the dynamics of social process and requires the fulfillment of certain legislation be faithful to what is stated in the text. For this article, therefore, I'll start by the principle that the Land Law of 1850 “caught on”, but it did it according to the logic, the context, the social and historical reality that characterized the era and the nation in which it was formulated and applied.

Keywords: law; land; agrarian policy.

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O povo, tomado de uma cega piedade ... pode exigir do governo certa ordem de atos; mas este, com a responsabilidade que lhe incumbe, não os deve praticar, ao menos integralmente, e tal é a nossa situação. Unamo-nos, e o povo saberá obedecer.

Machado de Assis²

This paper aims at discussing the Land Law of 1850, a subject which has been given many interpretations and which generated significant intellectual production that, within the rural sphere, intended to contribute in the construction of knowledge on Brazil's history. In the scope of historical knowledge of what is conventionally called rural history, it is highly likely that this is one of the most controversial themes discussed. The purpose of this paper, therefore, is rather difficult to be executed, once one must know and debate over a highly complex extended historiography that approaches the matter under the most different angles.

Far from the attempt of synthesizing unsolved matters issued by the Law Land of 1850, as well as its principles, its execution, and its accomplishments, the main goal here is to resume this controversy, focusing on the factors concerned to its application. The main sources to be analyzed are the reports of the Ministry of Agriculture, Commerce and Public Works (MACOP), the reports provided by the agencies responsible for managing with issues related to the Law, and some criminal cases prosecuted in the district of Cruz Alta, Rio Grande do Sul, Brazil. However, in opposition of studying the Land Law for what it might have/might have not accomplished, the priority of the analysis to be performed is on what it managed to achieve while in force.

It is worth to say that was not much, comparing to the goals that the Law intended to succeed and in regard to the period when it was the exclusive existent legislation towards a solution to the matter of land seizure in Brazil. Despite this fact, if one extends this analysis, surpasses the space-time in which the Law was in force (1850/54-1889) and considers the current Brazilian land issue situation, the Law Land of 1850, in the long-term, had a substantial effectiveness. Thus, if in the second half of the 19th century it was not possible to be precise about the boundaries of the proprietaries, if it was not possible to know where begin and where finish the private and public domains of the Brazilian lands, today one only needs to check the census of agriculture/livestock provided by the Brazilian Institute of Geography and Statistics (IBGE) to overview both organization and distribution of land ownership in Brazil.³ Although not

absolute, this higher contemporary accuracy did not emerge overnight and does not mean the extinguishment of the conflicts about land and its ownership; on the contrary, it is the result of a long, conflicting history.

Therefore, to state that the Land Law of 1850 was not applied, did not succeed, was nothing but a “dead letter” means to disregard this scenario and demands that, in 39 years, it solved a long-standing issue since Brazilian Colonial Period, when the law of *sesmarias* (land grants) was in force, which also had not had its principles respected.⁴ In other words, this is a point of view that isolates the second half of XIX century in relation to its past and specifically in relation to what is ahead, separating this turbulent time of Brazilian history from the extensive process from what it belongs. Moreover, the statement carries within the perspective that the mere existence of a law means inevitably its achievement, as well as the undeniable fulfillment of its principles. Thus, both social relations and the concepts/categories that depict them are generalized, withdrawing all their complexity and vigor out of them.

“THERE WAS NOT A SOUL WHO HAD NOT”:

LAND LAW EFFECTS AND ACCOMPLISHMENTS

When referring to the Land Law of 1850, José Murilo de Carvalho affirms that the land policy of the Empire of Brazil little transcended the legal realm, once that it “was systematically sabotaged and disabled to the level of the implementation. It would be the first considerable national example of poor law enforcement” (Carvalho, 1981). One of the reasons that justifies this type of explanation is that the Law was elaborated and executed by a group of people who was directly involved to the land matter and its occupation, included by farmers, *sesmeiros* (individuals who the land was granted to), and representative squatters (*posseiros*), traditionally named as *landlords and landowners* of extensive areas. Other argument fairly present in the studies that aim at explaining the reasons of the Law had failed is that its goal was to regulate the matter of land ownership, hinder the easy access to the land in order to, via the abolition of the slave trade, guarantee the needed workforce to keep farms running, especially in the areas where the coffee culture had been developing. Hence, the discussion revolved around whether the distinction between private and public lands would assure the necessary security for attracting and settling the European immigrants who would substitute slave labor, a process that José de Souza Martins termed as “the captive of the land” (Martins, 2010).

As one may verify, all those factors were highly beneficial for such landlords and landowners who ruled both political and economic scene during period of the Empire of Brazil. Nevertheless, as the rise of the end of the Empire, in 1889, the Land Law had been neither applied nor respected throughout its elements. An inquiry to the MACOP's reports is sufficiently enough to assure it. In 1889, the then general inspector of public land Francisco Barros e Accioli de Vasconcellos wrote in his report that the Public Lands General Inspectorate (IGTP) "still lacked the elements needed to organize conveniently the movement concerned with legitimating and revalidation of land ownership, as well as the transactions held in the provinces involving unclaimed public" (Accioli de Vasconcellos, 1889). Therefore, not only the Land Law bore the burden of a defective origin – once it was created to satisfy its creators – but also endured the deficiency of the governmental agencies responsible for its implementation, which had a great influence on its poor enforcement. There were not qualified employees, surveyors, and technicians; MACOP's facilities did not support the work carried out. In addition, legitimating and revalidation land ownership procedures "could not always guarantee veracity of the required proofs to justify the essential circumstance of the occupation previous to 1854 regulation" (Accioli de Vasconcellos, 1888). That overall state of affairs contributes and supports the notion that the Land Law did not "catch up".

However, the mere depiction of the failures experienced by different governmental law enforcement agencies regards the compliance of the terms of the Law Land is not sufficient to apprehend the intricacies of its implementation. Other reason constantly raised to claim that the Law was "dead letter" is the resistance offered by the province elites that were not bound to coffee production. São Paulo Province, for instance, had only become favorable to it – to the point of indicating changes to be executed and suggesting new legislation – from 1870, period when the coffee production assumed increased importance in the province and when the matter of replacing slave labor developed into and object of great concern to São Paulo's coffee growers.

The argument that the Law did not "catch up" due to the resistance imposed by the economic and political elite of the so-called "peripheral provinces" has grounds; nevertheless, it considers coffee production areas to conceive at Brazil as a whole. Thus, defining that both the noncompliance of the legislation and the critics made from out of Brazilian southeast towards this unsuccess occurred merely due to discrediting the interests of agriculture exportation is comparable to take a part as the whole, that is, an interpretation that excessively dichotomize the relations among the provinces. The issue,

therefore, is not pure and simply a misunderstanding regarding the Law, as the discrepancies of opinions and positions reflect the different means of insertion into the production universe managed by the provinces.

The fact of large number of Rio de Janeiro's coffee growers, for instance, were favorable to the Law did not contradict that even in the Rio de Janeiro Province the land policies produced results as fragile as they did in the other provinces. Consequently, critical political issues that were relevant during the period in which the draft bill was under consideration had little to say concerning the moment when it was approved and enacted. In other words, the elements responsible for non compliance of the Land Law in Rio de Janeiro were not the same that impaired its functioning in Rio Grande do Sul, in Pará, in São Paulo or in Bahia, once that each one of this provinces, along with others not mentioned here, conducted in their own particular manner the transformations occurring at that time in Brazil.⁵

In light of the preceding, one of the major roles performed by the Land Law of 1850 was to define general legal criteria in order to regulate situations historically grounded on practices and traditions that, most of the times, were based on local and particular events. Hence, the Law neither established a starting point for Brazilian land ownership, nor engendered the "captive of the land" – the land had been previously "captivated", although with different meanings. Similarly, it did not initiate an attempt of disassociating private from public domain lands. Former actions towards this had been performed, and the Land Law is effectively an outcome of them. In this degree, what the Land Law consolidated, although failed to accomplish completely during the period that comprehended its enactment, regulation, and the end of Empire of Brazil's government, was a new conception on land, its use, and particularly its ownership. As a conception, therefore, the path required to trail with the purpose of achieving effectiveness was definitely long. Such transition might not have yet materialized, as current land conflicts in Brazil are intimately connected to the transformations incited by the Land Law, in conjunction to the current coexistence of different forms of interpreting land "proprietorship". Thus, in order to understand the Land Law in its broadest sense, it is required to conceive and approach it as a social construction, that is, "unnaturalize" it.

In this sense, one of the significant elements that strictly affected the Land Law enforcement was the existence of contention among the very conceptions related to land and its use. One may consider as its principal achievement, in the long run, the form in which, the Law astutely provided the grounds upon which these varied conceptions should be substituted for an exclusive one: the

one that transformed land into property/commodity, obstructing any type of association with what was not subordinated to the market rules. As a result, historical groups that had occupied and used land supported by criteria divergent from the postulated by legislation or market had their arguments objected, were banished, suffered abuse, and were converted into intruders, vagrants, and felons. Under these circumstances, according to James Scott (2002), they did not abstain to wield resistance, interfering and hindering the enforcement of this Law. Actually, as Marcia Motta illustrates, they attempted to employ the legal mechanism for their own benefit (Motta, 2008). We also must recognize, nonetheless, that, in the broadest sense, the outcome of this resistance, albeit considerable, failed to modify genuinely the fundamentals which had generated them.

This reflection reveals another critical circumstance regarding the Land Law of 1850 enforcement: how far the Law achieved in establishing a benchmark for land as private property. Despite the fact that the letter of the Law failed to be adopted in its wholeness, explicitly by the major *landlords and landowners*, its existence, as legislation proper to regard the land and its ownership, is of social and historical utmost importance. Viable and executed actions developed after the Law approval constitute additional aspects to be highlighted. One of them – and to which the current historiographical production has been focusing on – is related to the actions and motions aroused by groups not directly assisted nor consulted during the elaboration of the draft bill and its enactment, that is, subaltern groups, primarily individuals from underprivileged classes. This new historiography has expanded the perception on the matter and proved that Land Law was applied by poor peasants, although connected to the Empire's political and economic elite.

However, this type of application must be questioned. I agree with the assert that the Law Land “could (as it was, in fact) function as legal instrument to legitimize land ownership for small farmers” and “as they apprehended this concept of the Law, they endeavored to apply it” (Motta, 2008, p. 230). Nevertheless, it should be added to this analysis the fact that, as they guaranteed their share of land by implementing the rules of the Land Law, the peasants executed a fundament that was diametrically opposed to the one that defined their cultural, social, and economical existence. As a result, they gave life to the concept of property as something absolute, present in the rules of the Law, which invalidated the historical and traditional configuration through which these groups occupied territorial spaces and engaged in a particular type of farming.

In this manner, although unaware of it, they nourished the group of the *landlords and landowners* who owned large areas.

There is sense in analyzing this matter through this point of view when considering that the poor ploughmen's claims were not exclusively against landowners, given that there were cases in which small squatters contended for miniscule pieces of land among themselves. The preceding does not imply the inexistence of land conflicts involving the poor ploughmen. It is worth to emphasize, however, that after the Law, these conflicts received a new dynamic: they were then compelled to be subjected to judicial control of the new legislation. The cases that follow provide an enhanced picture of the question discussed in this article.

On August 28th, 1863, Francisco Lemes da Silva, resident of the second district of Vila de Cruz Alta, São Pedro do Rio Grande Sul Province, lodged a complaint against Bernardo José Fagundes, Raimundo Francisco Tambeiro, and Pedro Domingues dos Santos “as charged with penal offense established by Law n. 601, Article 2, of September 18th, 1850”. According to the complaint, the charged “were found cutting down, setting fire and planting in the woods edging the Ijuí River, ignoring the law which thusly prohibited such actions”.⁶⁷ Those events had been occurring for about a year, and, according to the plaintiff, the defendants could not argue they had “registered ownership” of that area.

Throughout the criminal prosecution, six witnesses were subpoenaed to testify. All of them confirmed that the defendants were engaged with agricultural activity upon “national government lands”. The defendant themselves had confirmed the fact during interrogation, although they alleged that the planting was being carried out on *capoeira* (secondary vegetation) areas, and, therefore, these areas had been used for this purpose so far. Certainly the defendants aimed at being exempted from possible criminal liability, emphasizing that the actions occurred previously to the enactment of the law they violated.

Another interesting aspect may be noticed in the deposition of one of the witnesses: Ignácio Luiz de Oliveira (60 years old, married, breeder, born in Paraná Province, resident of the second district of Cruz Alta), when questioned about the veracity of the facts stated in the claim, answered: “regarding cutting virgin woods down he himself testified that had practiced and there was not a soul who had not”. Due this statement, Ignácio, from witness, converted into defendant. For his turn, during his interrogatory, he entirely rephrased his testimony and affirmed that “cut down woods in the limits of its ownership,

which he held registration of it”,⁷ since March 24, 1856. In addition to this event, somewhat unexpected, and that must have surprised Ignácio, another interesting data regarding the trial was that, on October 20, 1864, the procedure is concluded without sentencing, unjustifiably. There is not possible to be learnt of what succeeded with the players of this plot.

The episodes above increase relevance if we “rewind” some months in the life of the defendant Bernardo José Fagundes: on January 2nd, 1863 – six months previous to he had been accused under the terms of the Article 2 of the Land Law – he himself was responsible for charging Antônio Lemes Pinheiro, Francisco Xavier Antunes, Francisco Antunes de Oliveira, Manuel Lemes da Silva, Raimundo Lemes da Silva, Fidelis Lemes da Silva, and Manoel Lemes da Silva Filho with trespassing national government lands. In this case, Francisco Lemes da Silva, who would later be the plaintiff of the former claim against Bernardo, was not mentioned. However, their last names in conjunction with the fact of all of them belonged to the second district of Cruz Alta presume that he was a close relative of the indicted. Nevertheless, the claim against the Lemes da Silva was not closed abruptly, and the defendants were sentenced to “two months in prison, eviction from the location and loss of the benefits earned when producing upon it, as well as one hundred thousand *réis* fine” and the court costs.

In order to provide a better understanding of the details of this incident, the following presents the content of the source. In the text below, it is the clearly indication that the practice of planting in “national government lands” was a habit in the reality of the third block of the second district of Vila de Cruz Alta, since the defendants were considered

criminals as they invaded national government lands without possessing any authorization statement granted, assuredly the defendants disrespect the established by the Law n. 601, Article 2nd, of September 18th, 1850, maintain the habit of both cutting and appropriating of wood, so much that now on the days of November and the current December they still do, fire, and plant upon lands which they had no possession what so ever, serving as an example to others execute the same service.⁸

This small excerpt is paradigmatic to apprehend the significance of the Land Law and the context in which it was enacted. The claim argument was procedural: first, it evidenced that there was a habit, that is, the act was frequent and common in that context; from a certain moment, however, precisely

when the Land Law was approved, it must be restrained and conformed to the rule of the legislation.

The motion executed by Bernardo Fagundes against the Lemes da Silva and, similarly, the consequent retaliation executed by Francisco Lemes da Silva against Bernardo Fagundes demonstrate that the Land Law of 1850 “caught up”. This tumultuous history involving the dispute of small squatters over their shares of land explains other achievement of the Land Law: it enabled that a habit/costume could be objected, including by those who guaranteed their livelihood by the practice of this habit. Thus, both Bernardo Fagundes and Francisco Lemes da Silva, as they accused one to another with that practice of the habit, were applying a legislation, in particular, against themselves, and in general, against the social group that they belonged. Historically and traditionally, in Brazil, the referred social group had been occupying land spaces, living and surviving through the practice of subsistence agriculture in the scope of the plantation system adopted in the agrarian frontier areas.

On the other hand, one could interpret this very source as granting reinforcement to the idea that the Land Law of 1850 “did not work”: six out of the seven defendants identified themselves as “ploughmen”; only Francisco Antunes de Oliveira, when inquired about his way of living and his occupation, answered he was shoemaker. Manuel Lemes da Silva (51 years old, married, born in Lapa, Paraná) was the father of Manuel Lemes da Silva Filho (26 years old, single, born in Botucaraí, Rio Grande do Sul), Raimundo Lemes da Silva (age not declared, married, born in Botucaraí, Rio Grande do Sul), and Fidelis Lemes da Silva (28 years old, married, born in Botucaraí, Rio Grande do Sul). As his turn, Manuel Lemes da Silva, when inquired “whose son he was”, answered he was the son of Francisco Lemes da Silva, that is, the same man who accused Bernardo José Fagundes of national government land appropriation in the first criminal case discussed previously. As for the rest of the defendants, Antonio Pinheiro Lemes (49 years old, married, born in Castro, Paraná), Francisco Xavier Antunes (46 years old, married, born in Sorocaba, São Paulo), and Francisco Antunes de Oliveira (48 years old, married, born in Caçapava, Rio Grande do Sul) did not seem to be closely related, although they shared the same social universe.

As it is possible to observe, the accused shared many similarities regarding their ages and their family relationship, coming from different regions of Rio Grande do Sul (Botucaraí and Caçapava), as well other states of Brazil (Paraná and São Paulo). Furthermore, they belonged to the same socioeconomic status: Manuel Lemes da Silva, during his inquiry, when questioned about the object

of his accusation, answered that lived around two years and a half in the second district of Vila de Cruz Alta in “Coronel” Melo’s lands and, when questioned whether “had evidences to prove or to sustain his plea”, replied that “as he had seen since the year of 1851 the very same Bernardo Fagundes along with others planting in national government lands, he likewise planted in national government lands, unaware respondent”.⁹ Manuel also affirmed that his three sons planted on his order and not on their behalf. Manuel’s deposition was endorsed by his sons, that added that were not aware of the damage in proceeding the manner they had done. Francisco Antunes de Oliveira affirmed that started the plantation in national government lands “because he saw throughout his hunts plantations in national government lands made by the plaintiff himself and because he was unaware he the harm in it”. This argument is replicated by Antonio Lemes Pinheiro, whereas Francisco replied that “being as poor as he is and with the house full of children and not possessing lands of his, planted in those lands, unaware he was breaking the law”.¹⁰

All those depositions demonstrate that poverty and unawareness of the harm that they perpetrated when they planted were used in their pleas. However, those arguments were not sufficient to arouse compassion in both Chief Police Officer (Francisco Telles de Souza) and Municipal Judge (Diniz Dias – Baron of São Jacó) who condemned the defendants in the terms of Article 2 of the Land Law of 1850, in minimum degree. The sentence was announced on August 26, 1863, and, two days later, Francisco Lemes da Silva (Manuel’s father and Manuel Filho, Raimundo and Fidelis’ grandfather) lodged complaint against Bernardo José Fagundes; nevertheless, as seen formerly, the case file is closed abruptly.

The analysis of the source is not yet concluded: after the sentencing, there was the development of other incidents. On December 7, 1863, it was attached to the case file a document signed by the President of the Minister Council, Francisco José Furtado, dated October 15, 1864, which the content follows:

As willing to prove the clemency and the great joy of my Fraternal Heart on this present day, on which we celebrate the wedding of my dearest and esteemed daughter, the serenest imperial princess Dona Isabel and in the exercise of the powers granted by the article a hundred and one, eighth paragraph of the Constitution of the Empire, I shall grant remission to [the names of all of the seven defendants] of the penalty of two months prison and one hundred *réis* fine to which they were sentenced by Municipal Judge of the term of Cruz Alta, in the Province of São Pedro of Rio Grande do Sul.¹¹

As outlined previously, there was in the source some information that could reinforce the perception that the Land Law of 1850 “did not catch”. Certainly, this remission, nonetheless granted more than one year after the defendants’ condemnation, could indicate that the Empire government itself did not seem very concerned in enforcing the criteria of the legislation formulated and approved by it. However, as to be discussed furthermore, the explanation is not that simple, and the remission of the sentence does not reflect the simply failure of the enforcement. To certain degree, the criminal prosecution, the offense judged, as well as its repercussion in the local place it occurred, considering that the parties involved were not individualities apart, fulfilled a corrective function. The imperial indulgency, for its turn, illustrates that the path to be trailed from the existence of a Law until its effective implementation is not a harmonic straight line.

In this sense, from the events here exposed and experienced by the characters of both criminal prosecutions, many residents of Cruz Alta and of the region started to learn about one Law that punished those who insisted on maintaining the habit of planting in the called “national government lands”. Here lies the achievement of the corrective feature of the law. Thus, the presence of the litigation achieved what was announced formerly: by the means of punishment and legal proceeding, to avoid that “others join the same service” of planting in national government lands. If not obstructing, at least disseminating that such practice could be legally objected. On the other hand, one could argue that the Emperor’s pardon might diminish the power of the example of the punishment given to the defendants. Although considering this argument, the general population agreed that repression was much easier to happen in their lives than the Emperor’s interference on their behalf. Whereas it could be possible, it was remarkably uncommon.

The condition of the poor peasants in the countryside was not an object neglected by the responsible for administering the enforcement of the Land Law of 1850. Throughout MACOP’s reports, one can find a considerable number of references related to the condition of those people and related to the necessity of “conciliating, till the point it was possible, the interests of the less privileged class with the rules of the Law in course” (Nascentes de Azambuja, 1863, p. 52). The considerations on the subject were based on the Notification of April 10th, 1858, that established that the squatters who due to poverty did not fulfill the criteria established by the Rule of 1854, particularly those who held “lands of quite small extension, and of such value that did not reach the amount of the expenses” the measurement and legitimating should be “done

on the account of the Government”, provided that the extension required did not surpass 250,000 squared *braças* of land (121 hectares) (Império do Brasil, 1858, p. 144).

In practice, little was done with the purpose of attending the interests of the poor ploughmen and of applying the Notification of April 10, 1858. Nevertheless, it is worth to mention that the concern and the existence of the Notification indicated that the issue was not completely disregarded. Nevertheless, in the debates involving the *landlords and landowners* who owned large areas and the poor ploughmen, invariably, the former would prevail. MACOP's reports offers effective examples, especially when the theme approached is regarded to indigenous lands and areas for common use lands.

Concerning to the land areas for common use, in his report of 1861, the director of the Public Land and Colonization Directory wrote remarks on the current conflict in São Paulo Province. According to director Bruno Augusto Nascentes de Azambuja, the residents of “the capital suburbs, of the Santa Ifigênia parish, and the city council of São Paulo motioned against the alienation of the surrounding fields and floodplain areas – *várzeas* – claiming that they had been terrains for common use from remote times” (Nascentes de Azambuja, 1862, p. 16). In the view of these complaints, the presidency of the province ordered that the measurement works were interrupted so that the case could be examined. José Porfirio de Lima, engineer responsible for the measurement and demarcation of the lands at issue and for determining whether they were or not for common use, as he had been requested by MACOP, affirmed that the provincial administration had not declared those terrains as “public lanes”; therefore, they should be announced as “unclaimed”. The case was forwarded to a consulter associated to MACOP for assessment, who indicated that the decision over the incident should be delivered by the presidency of the province which, by its turn, decided for interrupting the work activity to investigate some pendent questionings. After that, no further information in the reports could be gathered towards the conclusion of this episode; however, with the examples provided here and the others offered by the historiography on the subject discussed, one can assert about the closure. Probably, these lands were declared unclaimed, sold and re-sold without regard those who claimed against their demarcation, especially if they were people who belonged to “the class of inhabitants less privileged”.

The question related to land areas for common use was essential in the context of the Brazilian southern provinces, since the regions where there were presence and exploitation of mate herb had been historically recognized as

areas of public servitude, to the point of some City Councils – the Cruz Alta’s, to mention – had elaborated specific regulation to control the exploitation of herbs. To approach the matter, MACOP released the Notification dated April 12, 1862, which aimed at responding consulting required by the Paraná Province on the occupation and sell of land where there were mate plantation. According to the Notification, the “mate plantations, as spontaneous product of the nature, must not be confused with the effective growing referred by the Law; I call, therefore, to be denounced those who profit with them, without possessing the legal ownership” (Nascentes de Azambuja, 1863, p. 45). However, considering this rule, the process of appropriation and privatization of mate lands, the eviction of poor herb growers from these fields along with the consequent impossibility of complementing their incomes with the exploitation of mate was recurrent in the southern province scenario.¹²

Similarly with the purpose of restraining the squatting of mate plantations, on April 26, 1881, MACOP issued a Notification repealing the Notification of May 20, 1861, which permitted, under some conditions, “the distribution of national woods in the zone of ten leagues from the border in São Pedro do Sul Province to the mate growers”. This decision was not isolated, but it was previous to and associated with another Notification, dated October 10, 1881, which repealed the Notification of April 10, 1858, that, as mentioned formerly, defined that the expenses of the land measurement, up to 121 hectares, would be afforded by the State. Minister José Antônio Saraiva justified the decision in the following terms:

It was not fair to extent such favor to squatters who for so long neglected the measurement and demarcation of the appropriated lands, infringed the Law, expanded their possessions and constituted new ones.

As numerous are the cases in which the concessionaires of unclaimed public lands had assumed and transferred the concession, prior to the mandatory measurement, payment, and registry requisition, it resulted convenient to cease this malpractice, so harmful to the interests of the National Treasury. (Saraiva, 1882, p. 113)

The Notifications and the remarks by Minister Saraiva emerged 31 years later than the Land Law had been approved, and at the same period when a new draft bill was introduced to the Chamber of Deputies to substitute the Land Law of 1850, which was under consideration, but it was not approved due to the fall of the Empire government in 1889. Reflecting in the sense of

modifying the Land Law, by its turn, had been frequent in the MACOP's reports since the foundation of the Ministry; nevertheless, from the 1870s, these analyses started to gain presence and force.

FINAL CONSIDERATIONS OR HOW BELONG TO "THE FIFTH PART OF AGRICULTURAL POPULATION"

In 1886, the Lands and Colonization Special Inspector of the Espírito Santo Province reported to General Inspector of IGTC Francisco de Barros e Accioli Vasconcelos and, when addressing the regulation of the land appropriation, he wrote:

in order to fathom the extension of the trespassing of the terrains in this province, it is sufficient to say that, if one did, as it should, punish the trespassers, surely a fifth part of the current agricultural population would be condemned. For this purpose that was firmed the Notification n. 35 of October of 1873, commanding Engineer Deolindo José Vieira Maciel to proceed to the measuring of the terrains occupied by invaders that were willing to legitimize the ownership via acquisition, conforming the Article n.1 of the law n. 601.

And for that such act produced the expected effect – finally, the discrimination of the public lands unclaimed – it would be necessary, in the first place, to stem the source of difficulties of this discrimination – to impede the invasion.

This providence failed, and we had to witness the absolutely opposite – enthusiastic by the guarantee of acquisition of the criminal seizure, the appropriations were legitimized and the invasions were realized increasingly in large scale.

...

And there will be 32 years that has been in course the law n. 601 and its rules! (Pacca, 1886)

Additionally to these remarks, the especial inspector, Joaquim Adolpho Pinto Pacca, added that that province was the one "that held more discrimination committee" and, nonetheless, the trespassing of public lands was recurrent. As explaining the reason of this reality, Pacca warned to the fact that, in the inspectorate under his rule, there were approximately 200 requests of acquisition of lands illegally appropriated and that this figure did not represent the twentieth part of "criminal appropriation". In the depiction of the

situation, the inspector was fairly specific and provided some maneuvers used to deviate from the rules of the Law, or, in the last instance, make it work from certain configuration and stratagems:

among the documents viewed, delivered as exhibit of the right to the land, it could be found some quite curious, as formal as partitions in which municipal judges, *registrars of unclaimed public lands*, regard as legal assets the criminal appropriations, the partitions of heirs, others on which figured, as invaders, individuals who held position in the police force and to whom, for this reason, was granted the custody of the public lands. (Pacca, 1886, p. 6, emphasis in the original).

These ploys, along with others, as has been highlighted, lead to the disrepute of the Land Law capability in solving issues that provoked its elaboration, so much that the new legislation was proposed in the 1880s. It is undeniable, however, that many appropriations, regardless whether illegal, according to the terms of the Law, were legitimized and became private propriety, registered and acknowledged. In the case of the illegal appropriation, when it happened, they changed the status, as they were granted the seal of the State, and the trespassers turned into legitimate owners of the land they trespassed. Nevertheless, this was not valid for all the squatters and “intruders”, because the small, as in the episode aforementioned occurred in the second district of Vila de Cruz Alta, hardly managed to become owners of the shares of land they had occupied. The Lemes da Silva, for instance, did not have the ownership of the areas they exploited legitimized when the Emperor granted remission to their offenses.

Furthermore in this respect, it is worthy to mention that to have good connections or to belong to the select group responsible for administering the matter was clearly a valuable asset to enhance the conversion from squatter to owner. The report provided by the Espírito Santo’s Public Lands Special Inspector offered a concrete evidence of it, since the *registrars of the unclaimed public lands* benefited of their position to hold improper ownership of the public lands.

Despite these examples that demonstrate the inefficiency and the complete disrespect to the terms of the Land Law of 1850, it demands a high level of naivety to believe that in 39 years (1850-1889) this Law would solve a situation that had been persisting for more than three centuries. The legislation of *sesmarias*, in force from colonial period to the independency, did not account for implementing its principles in Brazilian lands. As its turn, between the

years of 1822 and 1850, the system of ownership was in course, but there was no legislation to regulate the process of land occupation. Thus, in practice, the Law of 1850 ultimately grounded legal and administrative base to the realization the historical logic of land appropriation in Brazil. That is, it would always turn into a reasonable organizing solution to the cases that apparently seem unsolvable, since, in last instance, it could be applied for the pleading of certain interests.

Although this context contributed to ambiguous character of the Law of 1850, since it could be demanded by different interests in litigation (small and major squatters, for instance), the dominant rural groups would always have on his behalf the possibility of mobilize a set of – economic, social, and cultural – connections not available to the subaltern and the “subalternalized” groups. In this sense, it seems that the core issue is neither the assertive that the Land Law was “dead letter” nor that was not effectively accomplished, as the key of its understanding, as well as of the period does not lies on what the Law failed or managed to achieve, but on what it effectively achieved. Considering what has been narrated by the historiography, it is agreeable that the legacy was not much. Nevertheless, if one recognizes that it served as foundation for laws that followed it, and that its effects constitute important ground upon which, in terms of structuring of the land policy reality in Brazil, what succeeded was organized and elaborated, the conclusion is that if was “dead letter” and/or “did not catch” diminish the relevance.

The existence of the Law assured, among other things, the increasingly reduction of the access to the land for the poor ploughmen, as it is illustrated by the episodes presented in the criminal prosecutions. Likewise, the fails and tricks employed in its implementation guaranteed that the members of the economic elite would not have their interests deeply affected. This is evidenced when the “owners” were the ones responsible for regulating their land registration, and yet the task was executed administratively by a Judge Delegate appointed by the president of the province, as they both maintained intimate – to put it politely – relationship with the regional elites of the districts in which they assumed position. On the other side, those aspects that could frustrate the interests of this elite were constantly altered, what is explicit in the frequently conceded extensions of the deadlines that the Rule of 1854 had determined to registry, demarcation, and validation of the appropriated lands – extensions also granted by the presidents of the province. Additionally, it was also responsibility of the presidents to remit the fines that were stipulated to those who

ignored the terms of the Law. This proceeding was so common that several Ministers gravely criticize it in MACOP's reports.

The transformation of the land into commodity, in Brazil, did not begin with this legislation; nevertheless, the Land Law of 1850 was fundamental to it. This law did not mold the conception of the land as an asset, since it was sold and bought before its enforcement. However, it enabled the construction of a discourse, of a vision of world and social practices that took place or that were then, during the course of the consolidation of this conversion, guided entirely by the marketing character of the land. This is a step very important to transform the land into propriety in the modern sense of the word, that is, something that can be the object of acquisition and trade; nevertheless, it would be necessary to actually delineated limits. Thus, the traditional manner as some groups (the indigenous, to mention) possessed the land, as well as the inaccuracy that marked the access to the land in Brazil since the colonial period became inappropriate, since they obstruct the process of the transition.

This allow us to understand why the indigenous policies developed in Brazil throughout the years adopted as their main acts to enclosure the indigenous populations within reserved areas and to impede that they performed their nomadic lifestyle, that is, these groups need to respect the limits of the property. Likewise, the Land Law of 1850 indicates that it was required that farmers, major squatters, *sesmeiros*, and owners of the great extents of land – landowners in general – learned that their expanding and seizing interests as they were then performed, in some moment, would come to an end. If not an end, their interests should be delimited by the criteria of the Law, and, in such case, the main aspect was the one that established that acquisition was the only manner to own land. In different terms, the expansion of the land would not be prohibited, but it would be based exclusively on the land market that the Law helped to build. Therefore, similarly to the poor rural workers, the landlords and landowners of large areas had to learn to deal with the limited property, abandoning the belief of the land as a gift.

However, the time and the terms that this group had to undergo this metamorphosis was longer and milder, as they could apply the Law on their behalf, since it was elaborated by them or by those intimately connected to them and, additionally, they maintained associations to those who were responsible for implementing the principles of the Law. Due to the relations and the economic power they held, these landlords and landowners ensured favorable treatment even though invading and trespassing public land or areas legitimately occupied by poor ploughmen, as unprivileged free men could not

afford this type of connections. After all, this social class represented the civilization; many of them held diplomas, were nationally or locally acknowledged politicians, worked at government administration, were bestowed with titles of honor, were literate, compared to illiterate: to sum up, they were distinguishing gentlemen.

Simultaneously, they demonstrated all their roughness and brutality as they dealt with the people that, many times, only simply because they exist or because of their skin tone, threatened the realization of their coercive and contradictory sense of civilization and civility. After all, for these gentlemen, it was and it is always possible to be, in the name of civilization, uncivilized. Thus, if a poor ploughman settled on borrowed lands or small squatter represented an obstacle to the farm and its expansion, the fact and the scenario were studied. If possible, the individual would be eliminated and his rough facilities would be fired. However, if that possibility would bring more problems than solutions, the alternative was to file an eviction order of an attitude similar to this direction. In this case, the State would be responsible for the “dirty”, nonetheless legal, “work”, since that empowered by legal principles, in the words of the Judge. Magical words that have, par excellence, the power of constructing and achieving whatever they uttered (Bourdieu, 1989, pp. 209-254).

For this to be effective, it is required that the law exists and may be applied, as well as, that the legitimacy of this law is a consent, to the extent that including those who are not directly benefited by it believe in its universality and, if possible, apply it as well. When this is achieved, the rule reaches the required symbolic efficiency to interfere effectively in the reality that aims to control. Thus, the success of the Land Law of 1850 was not in its enforcement, but in the form in which was executed, in its effects, and its results, which remained below the expectation and transcended both the Law itself and the period in it was in course. Finally, even though it was not respected in its integrity, in different manners, it did not fail to produce effects within the perspective of its regulatory content, as well as, although in the long term, it found effectiveness in the practice.

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NOTES

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² *O Alienista*, p. 40. “The people, in their blindness ... can demand from the government to act along certain lines; the government, however, must remember its duty and not practice those acts, at least in part, and such is our situation ... Let us unite, and the people will obey.”

³ Cf.: www.ibge.gov.br/home/estatistica/economia/agropecuaria/censoagro/default.shtm.

⁴ Regarding this matter, see: SILVA, 1996; VARELA, 2005; MOTTA, 2009.

⁵ Due to the limits established for the paper, it is not possible to add details of the social, economic and political changes that characterized the period of the second half of 19th century in Brazil. For further information on the matter, as well as the impacts within the rural sphere, see: LINHARES; TEIXEIRA, 1981; COSTA, 1999.

⁶ ARQUIVO PÚBLICO DO ESTADO DO RIO GRANDE DO SUL (APRGS). *Processo-crime*, nº 1.793. Cruz Alta, Maço 45, 1863.

⁷ *Idem*.

⁸ APRGS. *Processo-crime*, nº 1.796. Cruz Alta, Maço 45, 1863.

⁹ *Idem*.

¹⁰ *Idem*.

¹¹ *Idem*.

¹² Regarding this matter and to gather more specific examples of the illegal occupation of the mate lands – therefore, according with the legislation in course, areas for common use – carried out by the major farmers and speculators, see also the Paulo Afonso Zarth’s, Cristiano Luís Christillino’s, and Marcos Gerhardt’s works referred in the reference section.