



Linking Land Tenure and Use for Shared Prosperity

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**In Brazilian land ownership issues, History not only matters - it is
determinant**

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Abstract

From colonial to modern times, Brazilian agricultural property has remained immersed in a chaotic vortex of deregulation. Attempts of institutional reform - such as the Lei de Terras (Land Law) of 1850 - have been largely unsuccessful, whilst providing legal grounds for land grab by large estates and narrowing the scope of possibilities open for legitimate reevaluations of the first institutional landmark on land use and ownership in the country - the sesmarias. Understanding that the solution to the dilemmas still present in modern day Brazil might rest on the study of the specifics of Brazilian history, we aim, in this paper, to present a panoramic view of the turning points of land regulation in the country, so as to better understand the possibilities left for reform in guaranteeing egalitarian and democratic land ownership rights. On this intent, we present a brief overview of Brazilian agricultural history, with an emphasis on the political and economic legacy left by past institutional settings to modern day Brazil when it comes to the chaotic situation of overlapping ownership deeds.

Key Words: land ownership; Brazilian agricultural history; Historical Institutionalism;

On a formal requisition dated from 2012, the Brazilian MP Hugo Leal asks of the *Ministério do Desenvolvimento Agrário* (MDA - Ministry for Agrarian Development), as part of the attributions of the *Instituto Nacional de Colonização e Reforma Agrária* (INCRA - National Institute on Colonization and Agrarian Reform) information on a specific portion of land in the state of Rio de Janeiro - Fazenda Nacional de Santa Cruz. The author of this document goes on to state the reasons for this specific demand. In a nutshell, the lands which once belonged to the Fazenda Nacional are now split amongst several different occupants, who rank from the general populace (inhabitants from the city of Seropédica, only a few hours away from downtown Rio de Janeiro) to a public university (Universidade Federal Rural do Rio de Janeiro - UFRRJ).

The questions posed by Hugo Leal grow more and more peculiar as he delves into the matter of (a) the legal responsibility for the lands which once comprised some of the main sections of the Farm¹ being held by Incra, in itself one of the branches of the MDA and an institution operating on federal level; (b) the apparent contradiction between regularization procedures for which the institution is responsible and the blatant de-regulation in which this specific stretch of land rests; (c) the fact that occupation is maintained not only by one tenant (or a group of tenants, in what would be a more mundane case of land conflict related to inheritance, irregular economic transactions and so and so) but by hundreds of thousands of independent individuals. The absurdity of the situation reaches its peak when we conclude that the Brazilian Federal Government, in the figure of authority overseeing the federal university installed within the premises of the farm in question, would be responsible for illegally and irregularly occupying its own lands (since these would be under Incra jurisdiction).

This apparent paradox is not a single, casuistic, isolated case of land fraud or conflict pertaining to land property, transference or acquisition, but rests, as is our understanding, on the foundations of land ownership as an institution, in Brazil. In order to have a clear understanding of how such a thing is possible and, more importantly, how such chaos can be tamed by any attempt at reform, we must have a deeper look into Brazilian institutional history. Observing data recently obtained from *Sistema Nacional de Cadastro Rural* (SNCR - National System of Agrarian Cadastres), over 36% of Brazilian rural properties would be in an irregular (sometimes flagrantly illegal) state. This number amounts, in area, to at least 15% of the *entire* country (over one million square kilometers remain irregular - a territory as big as the extensions of France and Germany, combined).

Agrarian de-regulation is a problem in itself but more often than not it amounts to a series of consequences, observable not only in the rural landscape of countries affected by it. Its results are generally associated with aggravating income inequality issues, difficulties in providing egalitarian and democratic access to land and natural resources, and the maintenance of land as a form of archaic political currency, in which landholders automatically maintain political and economic power under the 'subjects' living off agricultural enterprises in areas where land property is heavily concentrated. Our peculiar institutional history would be one of the determinant factors in shaping Brazilian agrarian chaos.

Our aim, within this paper, is to present a brief overview of the terms in which the institutions and organizations responsible for regulating land ownership and transactions in Brazil have been shaped. With this goal in mind, we have structured this paper as a brief, panoramic overview of the transformations experienced in Brazilian land laws and regulations from the XVIth to the late XIXth centuries. Although glimpses on the XXth Century could provide us with further insight in the glaring land issues faced by Brazilian Agriculture in the XXIst Century, we have decided to limit our comments to this time period as a way of relating the formation of the institutions pertaining to land ownership and transference to present-day issues.

¹

Throughout this exercise, we will resort to two cases as exemplary of the historical foundations and social, economic and political consequences of agrarian chaos - the formation of the deeply complex institutional array of the state of Mato Grosso, which had, more than often, three conflicting institutions granting land ownership deeds; and the previously mentioned case of the Fazenda Nacional de Santa Cruz - which, besides being an example of how a federal government can be its own irregular tenant, dates back to the first centuries of Brazilian History, presenting an enlightening example of land regulation issues throughout our entire History.

The Foundations of Land Institutions in Brazil

“Durante os primeiros tempos da colonização do Brasil, os sítios povoados não passam geralmente de manchas dispersas, ao longo do litoral, mal plantadas na terra e quase independentes dela. Acomodando-se a arribada de navios, mais do que ao acesso do interior, esses núcleos voltam-se inteiramente para o outro lado do oceano” (HOLANDA, 1976).

It is important to note that, when of the discovery of Brazil by Portuguese sailors, in Portugal the Sesmarias Law of the Portuguese Empire was in full force (having been implemented in 1375). This specific law attempted to reverse the pattern of land abandonment and consequent reduction of the agricultural production of the realm (Guimarães, apud Barrozo, s / d, p. 44) in Portugal: “a prática da lavoura da terra pelos proprietários, arrendatários, foreiros e outros, e dá outras providências” (Lei de Sesmarias de D. Fernando, June 26th of de 1375). In 1536, with the creation of Capitánias system, the same criteria were implemented in the Portuguese colony.

Barrozo, quoting Castro, asserts that:

“O sistema de sesmarias, “gestado em uma dada conjuntura econômica e sócio cultural de Portugal, (...) quando transplantado para a Colônia”, em outro contexto sócio econômico, “resultou em um desvirtuamento da Lei de Sesmaria. A concessão de sesmaria na Colônia da América “foi um privilégio” que beneficiou a aristocracia, uma vez que era inacessível “a lavradores e homens sem posse.” (Castro apud Barrozo, op. cit., p. 208)

In Brazil, land grant were normalized by contract terms, which if not met, could lead to the return of land to public property. Among them was the requirement for use and improvement of land so given, measuring and demarcation, and proper registration of the Sesmaria letter; the payment of justice fees and the need for confirmation of the afore mentioned letter by the King. However, these clauses, in the case of mediation and demarcation of land, when not met prevented the land tract in question from being registered. Some scholars refer to this "return" to the public status (*devolução*, in portuguese) as the origin of the legal institution of *Terras Devolutas* (Public Vacant Lands, in a loose translation, or Lands Returned to the Public - Rocha et al, 2010). While in the Portuguese Courts the predominant reference for this are lands that did not receive proper care, being kept under control of their masters with but a few improvements and low productivity, in Portuguese America the public vacant land notion is readily associated with the idea of unowned land, or state ownership (Silva and Secreto, 1999). In the colony, the very meaning of the *sesmaria* has also changed; complementing the land occupation from the "hereditary captaincies,"even though there was concern about the cultivation, land grants donation was directly associated with the occupation of the land (Silva, 2011), in view of the need for settlement of the territory and the diplomatic dispute or for preventing its exploitation by other colonial powers.

Given this situation, the discovery of gold in 1718 poses a major problem for the Portuguese metropolis because of its proximity to the trade flows that animated the La Plata region, under Spanish rule.

From the metropolitan point of view, gold production was central to its trade balance while in the colony, the maintenance of this source of revenue implies institutional changes and also pressed for a political and spatial reorganization of the region. While these goals are pursued by the metropolitan authorities within the colony, local interests begin to grow and stir. Smuggling expands on the mining regions, both from Minas Gerais to Buenos Aires as from Cuiaba to the nearest Spanish colonies (Maxwell, 1996).

More importantly, the *sesmarial* regime implemented in Brazilian territory, although resulting from the Portuguese legal ordinances, had very little to do with its original motivations. If its origin in the *sesmarias* were linked to the obligation of tending to the land, a clearway to ensure the improvement of the scarce land available for farming in a country of smaller dimensions as Portugal, here it becomes a policy aimed at distributing the colonial plunder and spoils between the Portuguese imperial dignitaries. Thus, it worked better to the advantage of sectors of the administration and bureaucracy of the Portuguese colonial enterprise than to developing the area incorporated into the Empire.

In addition to the legal status of the *sesmarias* and their legitimacy (resulting from the dependancy of our laws to Portuguese codes), we must also weigh in the peculiar appropriation, by our early agrarian elites, of large territorial extensions, in the colony. In this sense, according to Oliveira and Faria (p.4), "The agrarian elites solidified, in their social imaginary that the opening and occupation of vast tracts mistakenly called possessions consisted of the legitimate way of securing the domain of these illegally occupied lands".

Also on this issue, Cirne Lima (Lima apud Oliveira and Faria) states that

“apoderar-se de terras devolutas e cultivá-las tornou-se cousa corrente entre nossos colonizadores, e tais proporções essa prática atingiu que pôde, com o correr dos anos, vir a ser considerada como modo legítimo de aquisição do domínio, paralelamente a princípio, e, após em substituição ao nosso tão desvirtuado regime das sesmarias.”

Another important tool that gives practical effect to the intention of greater control over the mining regions by the Portuguese is called "the favors policy" (*política das mercês*) that corresponds to the award of honorary degrees in recognition of a given officer's service to the Crown. Being of common use in the Portuguese Empire, the distribution of titles served as a reward for subjects whose effort improved the kingdom's revenue from the increased exploitation of natural resources.

It is essential to remember how exclusive is the character of the 'subjects' of the Empire at that time. Given the separation between white settlers, endowed with economic and political means to exercise power and control over land and the immensity of black slaves and poor mestizos at their mercy, it is established, promptly, severe disparity not only in access to land as to the gains from such access. This is how a curious duality in ownership is established from the colonial stage of our History to the present - if there is, on the one hand, irregular tenure marked by the expansion of existing properties, which derives from the practice of a nascent agrarian elite that sees untamed space of the Portuguese colonies in South America an almost inexhaustible source of wealth in the raw, ready for appropriation, there is also the participation of the marginalized populations through taking a strip of land by unlawful or illegitimate means, when, at the time, acting within legitimacy or legality would be impossible. In this respect, asserts Martins (apud Oliveira and Faria, p.3):

“até a extinção do regime de sesmarias, em 1822, a concessão real era o meio reconhecidamente legítimo de ocupação do território. O regime de sesmarias era racialmente seletivo, contemplando os homens de condição e de sangue limpo, mais do que senhores de terras, senhores de escravos. A sesmaria não tinha os atributos da propriedade fundiária de hoje em nosso país. A efetiva ocupação da terra, com trabalho, constituía o requisito da apropriação, revertendo à Coroa o terreno que num certo prazo não fosse trabalhado. Num país em que a forma legítima de exploração do trabalho era a escravidão, e escravidão negra, os "bastardos", os que não tinham sangue limpo, os mestiços de brancos e índias, estavam destituídos do direito de herança, ao mesmo tempo em que excluídos da economia escravista. Foram esses os primeiros posseiros: eram obrigados a ocupar novos territórios porque não tinham lugar seguro e permanente nos territórios velhos. Eram os marginalizados da ordem escravista que, quando alcançados pelas fazendas e sesmarias dos brancos, transformavam-se em agregados para manter a sua posse enquanto conviesse ao fazendeiro, ou então iam para frente, abrir uma posse nova. A posse no regime de sesmarias tinha um cunho subversivo.”

Information on the development of the *Capitania* of Mato Grosso, in 1748, reinforces this argument. Built as an extension of the *Capitanias* of São Paulo and Minas Gerais, the new region takes an

extractive and military profile early on, marked by the interest of the Portuguese Crown in precious metals and by the need to defend the western border of the colonial domains.

According to Silva (2008b), the Provisions of the King authorized land grant in Mato Grosso for men "of wealth". The legislation provided that each resident could require up to three leagues on the court or 13,068 hectares, for each *sesmeiro* in the spaces considered hinterlands, while, in the proximity of the mines, the Crown would grant only half a league of land.

The creation of an institutional structure, from a new *capitania*, associated with increased taxation, legitimize the Portuguese possession of this part of the colony. The practical significance of this combination of institutional policy elements is the control of the Portuguese Crown over the organization of a territorial occupation process that until then happened from strictly private commercial interests. At the same time, however, the enhancement of metropolitan control over the area also takes social and political pressures to a new level, since the usual smuggling runs now receive part of the mining output. A frontier, mining territory quickly takes shape (Jesus, 2011).

In 1740 the provider and steward of the royal treasury of the Cuiabá mines writes to the Overseas Council in Lisbon, complaining about the disorganization of the occupation of the land. Followed by interest in increasing their flocks, the owners ignored the need for a prior letter of donation of the *sesmaria*. An image of the conflict presents itself when we know that this same individual who apparently seeks to respect the decisions of the Court, is stuck in the moment of this complaint, accused by smuggling part of the gold produced on the new lands (Silva, 2011).

Some data on the *Capitania* of Mato Grosso, in that period, support the line of argument that we have developed so far. Observing the profile of *sesmeiros* in the *capitania* during this period, one can readily observe (1) the concentration of different tasks and social functions around the *sesmeiro* figure, which sometimes takes on the roles of political representative, plantation owner, mining and military at the same time; and (2) as the vast majority of the elements analyzed in this survey are associated in one way or another with the roles of the state administration and defense of the colonial territory or the dynamics of the mining expansion. The evidence confirms our initial issue - we can see the beginning of the occupation of Mato Grosso for the explicit purposes of military defense and auriferous extraction. This character is also emphasized by Silva, since "we must consider that we are talking about a border *capitania*, where military troops were important in the maintenance of borders and military positions represented prestige" (Silva, 2011, p.9).

We can clearly observe the construction of the territory in the western border of the Portuguese colonies as a space marked by the rigidity characteristic of military administration and the clear economic purpose of auriferous extraction. The authority enjoyed by landowners, first because they are not only holders of economic power but also military dignitaries at the service of the Crown, contributes decisively to the historical prevalence of structures that favor land concentration in the region. The border *capitania* status is fundamental to understanding the direction taken by the use and possession of land in Mato Grosso, in the following centuries; the political inflection of independence reaffirms the importance of maintaining this strategic territory and securing of the region, which dictates the permanence of the military component in the region's space and mentality.

If the Portuguese Empire's westernmost frontier is driven by its extractive-military character, in the area surrounding the city of Rio de Janeiro the reality is of an altogether different nature. It is in this space that the *Fazenda de Santa Cruz* formed in 1656. Organized around a few strips of land donated or acquired by the Jesuits, the farm had a peculiar lease system, in 1729, reaching the number of 26 tenants responsible for the maintenance and controlling part of the land. Adding to this is the use of indigenous and slave labor, the possibility of marriage for workers, the presence of strips of land which these same workers could employ in securing their livelihood, the various crafts practiced within the farm and its prioritary dedication to subsistence and the provision of small services necessary to maintaining the colonial administration in the region (Fridman, cit. pend.), one can see clearly the difference between the occupation profile prevalent in Mato Grosso and this peculiar space.

The origins of this area, however, are much more convoluted than its ordered state in the mid-eighteenth century would lead us to believe. If we look at the case of the indigenous village of *São Francisco Xavier de Itaguaí* (established within the borders of the farm), we have evidence of its establishment in 1615 on the island of *Itacurussa*; its transfer in 1647 (probably to *Seperetiba*), due to successive attacks launched by local residents and pirates; a new transfer, between 1718 and 1725,

towards land owned by the Farm. In its origin, the *Fazenda Nacional de Santa Cruz* already highlights some of the tensions present around land in Colonial Brazil - the arrest of the indigenous, native populations as forced labour, the difficulty of establishing clear boundaries of authority over a given range of land and the paradoxical relationship with the catechized natives mark the first century of its establishment.

These tensions are exacerbated by the expulsion of the Jesuits in 1759 and successive incorporation of the lands of Santa Cruz to the property of the Crown, now under the name of *Fazenda Real de Santa Cruz*. The new custody represented an even more problematic scenario for the indigenous inhabitants of the region, with the outbreak, in 1784, of an open conflict culminating in the destruction of the village:

"Manoel Joaquim da Silva Castro, adquirente do Engenho Novo dos jesuítas e administrador da Fazenda, além de obrigar os índios a limparem as valas, os acusou de roubo e se apoderou das terras com o objetivo de erigir um engenho, o de Nossa Senhora da Conceição de Taguay. Castro obrigou os 400 índios a deixarem a aldeia no período de quinze dias, entretanto depois de alguns dias, apesar das ameaças, alguns retornaram e foram exterminados. José Pires Tavares viajou para Lisboa com a finalidade de se queixar junto à soberana. Dona Maria I recomendou ao conde de Rezende em 1790 a entrega das terras aos índios e sua medição. Tais determinações não vingaram e o engenho foi inaugurado em 1793, movido a água e considerado "o mais perfeito do Brasil", para o qual foram deslocados 200 escravos. A escolha do local para o estabelecimento do engenho, em uma área de aproximadamente 108 km² e que incluía o aldeamento, deveu-se à fertilidade da terra e à existência de portos. Neste momento alguns índios requisitaram seu patrimônio em Itacurussá entretanto o dono da outra parte da ilha conhecida por Cutiquara-Mirim (depois Cabeça de Boi), Antonio Alves de Oliveira, havia arrendado o patrimônio indígena desde 1756 a Antonio da Conceição e Manoel de Andrade. Em 1806 estas terras ainda encontravam-se arrendadas e os índios para tomar posse deveriam, segundo as normas legais, pagar as benfeitorias. Em 1812 Dom João VI concedeu aos índios terras na Fazenda de Santa Cruz, "da parte esquerda do caminho novo, e em terrenos vizinhos uns dos outros" perto das terras de Thomas Lopes." (Fridman, cit.pend., p.3)

The space that before was preserved for indigenous settlements comes into rapid decay, and, as a solution, strong repression is employed by colonial authorities and permission to white settlers to occupy these lands are granted:

"O capitão Bernardo de Oliveira foi designado para dirigir a aldeia na ocasião em que se alastrava a bebida e a prostituição. Sua primeira medida foi a de instituir severas penas, o que deflagrou importante revolta. O índio José, seu líder, foi preso e enviado ao Rio de Janeiro para trabalhos forçados nas galés. A índia responsável pela prostituição foi degredada para Santa Catarina. O capitão mor da aldeia José de Souza Verneck, que sucedeu a Bernardo, permitiu na sua gestão que os brancos se apoderassem das terras do aldeamento. Os índios requisitaram sua substituição, mas o fato de serem atendidos implicou em outra revolta, ocorrida na gestão de José Pereira Barroso. Nesta luta as principais reivindicações eram a liberdade e a não-edificação de prédios em sua aldeia. Como Barroso não conseguiu controlar o motim, Pedro da Motta foi nomeado e imediatamente enviou soldados para debelá-lo. Os rebeldes foram enviados para trabalhos (forçados) em obras públicas no Rio de Janeiro."(Fridman, cit.pend., p.4)

The consequences of this disastrous sequence of events are observed in 1855, when the City of Mangaratiba informs that the municipality (resulting from indigenous land now held by white settlers) "exists in half abandonment a full league of land, once granted to a certain portion of Indians, that here lived, whose village is found all extinct and another half a league that they then seized and are in possession"(Fridman, cit.pend., p.5). As Fridman asserts at the end of the passage in question, "From this we can conclude that the land donated in allotments to Indian villages were invaded by masters of plantations and slave owners. This process is one of the most important features of capital accumulation in the Province of *Rio de Janeiro*."(Fridman, cit.pend., p.5). This process is clearly a source of a series of conflicts that mark the first steps of establishing an institutional framework of land ownership in Brazil, then still a possession of Portugal.

Failures in registering and complying with the obligations generated land conflicts that led the State to suspend the *sesmarial* system, through Resolution No. 76, of July 17, 1822, implementing the tenure system. Under the new system the squatter explored and had access to the land, only later to legitimize his claim through the proper documents, with his right recognized by the Government (Rocha, 2010). Oliveira and Faria (cit.pend) believe this preponderance of irregular tenure to be a kind of "legal vacuum" existing between the Independence of Brazil (when the Portuguese legislation is repealed) and the establishment of a new legal code.

The fundamental institutional framework of the imperial jurisprudence regarding land ownership is, without a doubt, the *Lei de Terras* (Land Law) of 1850.

The seizure of public lands was already common practice in the *sesmarial* system, so it was common for a *sesmeiro* to own more land than the limit established by law. This was due to a large extent to the difficulties faced by the Portuguese Crown in enforcing the law and maintaining administrative control of land occupation.

Thus, the Land Law (1850) is enacted so that restrictions are built on access to land in the Empire. Ultimately, this was a measure of access to land rationalization: if before this was given almost exclusively by the profligacy inherent to custom and free (and creative) interpretation of local politicians, the 1850 Act provides an institutional framework fundamental to the purchase, sale and use of land. Anecdotally, its main explicit objectives were: to organize access to land; derail access to unoccupied land; establish a land registry to set unoccupied areas (of the state) and turn land into a reliable asset for use as collateral for loans.

Decree No. 1,318 / 1854 brought the administrative procedure to be performed for regularization of possessions, setting deadlines for measurement of previously acquired properties. The penalty for those not fulfilled as determined by the decree was severe: the loss of tenure. The same decree is responsible for the creation of the *Repartição Geral de Terras Públicas* (General Bureau of Public Lands), which today is the *Superintendência de Patrimônio da União* (Superintendency of Union Equity), disciplinary body of the legal regime applicable to public lands. It would be up to that body to manage and ensure the public property with its competence arranged in art. 3 as follows:

“Art. 3º - Compete à Repartição Geral de Terras Públicas:

§ 1º Dirigir a medição, divisão e descrição das terras devolutas, e prover sobre a sua conservação

§ 2º Organizar um Regulamento especial para as medições, no qual indique o modo prático de proceder a elas, e quais as informações, que devem conter os memoriais, de que trata o Art. 16 deste Regulamento.

§ 3º Propor ao Governo as terras devolutas, que deverão ser reservadas: 1º., para colonização dos indígenas; 2º., para a fundação de Povoações, abertura de estradas, e quaisquer outras servidões, e assento de Estabelecimentos Públicos.

§ 4º Fornecer ao Ministro da Marinha todas as informações, que tiver acerca das terras devolutas, que em razão de sua situação, e abundância de madeiras próprias para a construção naval, convenha reservar para o dito fim.

§ 5º Propor a porção de terras medidas, que anualmente deverão ser vendidas.

§ 6º Fiscalizar a distribuição das terras devolutas, e a regularidade das operações da venda.

§ 7º Promover a colonização nacional e estrangeira.

§ 8º Promover o registro das terras possuídas.

§ 9º Propor ao Governo a fórmula, que devem ter os títulos de revalidação e de legitimação de terras.

§ 10º Organizar e submeter a aprovação do Governo o Regulamento, que deve reger a sua Secretaria e as de seus Delegados nas Províncias.

§ 11º Propor finalmente todas as medidas, que a experiência for demonstrando convenientes para o bom desempenho de suas atribuições e melhor execução da Lei nº 601, de 18 de setembro de 1850, e deste Regulamento.”

To the Land Law, the registration of the property was not mandatory, being made along the Parish Records, or under the responsibility of the local religious authority (ie, the vicar of the parish where occurred the said record). In order to expand the control of the imperial political unity on the institution of tenure, as established in 1864 to Law No. 1237, in turn, gives rise to the *Cartório de Registros Geral e Hipotecas* (Public Notary), a reform mechanism of the mortgage legislation and a foundation for credit societies. Although the registration of the mortgage was required, it was entirely

optional whether to register property and this could be transcribed when transmitted to new owner (Rocha et al, 2010).

The mandatory registration is an interesting point, since it marks one of the strongest trends of institutional reform efforts with regard to land ownership in Brazil throughout its history. As stated Ligia Osorio

“O governo imperial, assim como a metrópole nos tempos coloniais, acreditava que levaria os posseiros a regularizarem a sua situação se a legislação fosse bastante flexível. Mas a história subsequente da apropriação territorial mostrou que esse modo de ver as coisas era falso. Isso porque as razões da resistência dos posseiros e sesmeiros eram, parece-nos, de duas ordens. Em primeiro lugar, ressalta o padrão de ocupação que se desenvolvera até então, cuja característica fundamental era a contínua incorporação de novas terras ao cultivo. Somente pressionados pelas necessidades impostas pelo desenvolvimento do capitalismo os fazendeiros modificariam essa prática. Em segundo lugar, pesou na atitude relutante dos proprietários o consenso que foi se formando no meio dos juristas de que a lei de 1850 não obrigava sesmeiros e posseiros a regularizarem sua situação porquanto a alegação de "morada habitual" e "cultura efetiva" garanti-los-ia nas suas terras.” (Silva, 1996, 216-217)

Although the Land Law attempts, at first, to pose as a substitute to irregular tenure, the way in which it takes effect, by custom and its application, is something completely different - landowners would only register their lands as a last resort, and maintaining irregularity was the usual case. The clear and objective statement of this principle is the interpretation of Teixeira de Freitas of the third edition of the *Consolidação das Leis Civis*, 1875, also quoted by Ligia Osório Silva (Freitas apud Silva, 1996 p.217):

“A revalidação e legitimação, das posses de terras, nos termos da legislação das terras devolutas e públicas, não é uma obrigação dos possuidores, a cujo cumprimento possam ser compelidos judicialmente ou administrativamente. É um direito, que lhes foi facultado, e de que podem usar, se quiserem. Não usando, deixando de proceder à respectiva medição nos prazos marcados, incorrem em comisso do artigo 8º da Lei de 18 de setembro de 1850. Não se confunda com este comisso o da legislação das sesmarias atendido nos casos de revalidação.”

The final passage is instructive - not to be confused with this commission the law of the land grants met in the case of revalidation. This sets out the legal status of the land in Brazil but does not negate at any time, the reference to the order of the first land grants in the *sesmarial* system. The balance of the expert on the result of this first attempt on regulating land ownership in Brazilian territory is essentially pessimistic:

“Quando o regime monárquico chegou ao fim, deposto por um golpe militar, a situação da propriedade territorial continuava confusa. Mais uma vez os proprietários de terras tiveram uma participação destacada nos desdobramentos do episódio. Ainda assim, é raro encontrar-se na bibliografia sobre o fim do Império qualquer referência ao desagrado dos proprietários de terras com os rumos da política de terras do Estado imperial.

Pelo que podemos constatar por meio das observações dos organismos encarregados da aplicação da lei de 1850, forçoso é admitir que o governo imperial não conseguiu atingir seu objetivo primordial que era a demarcação das terras devolutas e particulares. O artigo 2º da Lei de Terras que proibia a posse também não foi aplicado e o apossamento continuou (ou, na terminologia do Império "a invasão dos terrenos devolutos"). É também verdade que nos dispositivos da lei encontravam-se elementos que permitiam supor que os posseiros que efetivamente cultivavam seus terrenos estavam garantidos nas terras que ocupavam. Dada a complexidade da situação em pauta, entretanto, que envolvia uma extensa gama de interesses contraditórios, não nos parece que seria correto concluir-se simplesmente que a lei de 1850 não foi aplicada. Mesmo porque a história da lei de 1850 não se encerrou com a queda da Monarquia. [...] No Império, enquanto durou o regime escravista, o senhorio rural continuou tendo acesso às terras devolutas porque o governo imperial não conseguiu impedi-lo.” (SILVA, 1996: 222)

With the advent of the Republic in 1889, the unoccupied lands would be the responsibility of the states, as established by the Republican Constitution of 1891. With the legitimacy given to the individual states to administer the unoccupied lands, from 1892, state-based Land Laws began being implemented.

Economically and politically, the situation of Mato Grosso evolves in a peculiar way, on this period. We will look at these changes in the following paragraphs.

After the enthusiasm for the export of gold and diamonds during the eighteenth century, when the population of Mato Grosso peaked at 40,000 inhabitants, at the beginning of the following century this number had declined to barely over 27,000 inhabitants, maintaining vegetative growth throughout the century. We observe something close to the involution towards subsistence economy observed in Minas Gerais (which legitimizes ultimately, reading the institutional constitution of Mato Grosso as an extension of the Minas and São Paulo territories). In addition, internal migration flows also give evidence of the reasons for this behavior of the local population (Borges, 2001: 39).

This population movement, however, does not change the density of the Province, which continues as one of the smallest in country.

Besides this properly economic aspect, this demographic picture is also manifested in the midst of a great political conflict, marked by violence that originates in the instability of the Regency period.

At that moment, the participation of the Portuguese in administrative positions is perceived as a privilege inherited from the colonial period and creates an insurmountable divide within the Province that worsens during the conflict with Paraguay, when the Mato Grosso territory was invaded. After the war, in the South of the Province new leaderships rise, clashing with the old military leaders of the North for control of land and reestablishing a political tension that develops into banditism in the words of Correa (2009). Thus, according to the same author, the story of Mato Grosso in the late nineteenth to the twentieth century is the "story of an armed people" (Correa, 2009, pp.66).

This state of political dispute, mediated by violence between the vested interests affects any attempt at economic growth. Thus, there were times when exports accounted for 1/15 of imports coming into the Mato Grosso and if not for the bailout of the Imperial Government, the Province's accounts would have quickly become unsustainable. The export ratio gained some momentum in the late nineteenth century with increased exports of rubber and tea: in 1901, the two items accounted for 80% of the value of exports of state. This prevailed until a few years before the outbreak of the First World War, when crisis faced by local rubber extractors, added to the advance of cattle in the state provided for the formation of a new product Tariff.

We could say that once exhausted the economic boost provided by mining, the nineteenth century was marked by economic stagnation, and extractive activities held under way in extremely limited scope, linked to circumstantial demand.

Although extensive livestock farming is the hallmark for land occupation in Mato Grosso, the use and land tenure do not follow the same path. Therefore, it is important to establish some mediations in observing the economic organization of the region, particularly with regard to the possession and use of land.

Although concentrated in the southern region of the province, the Mato Grosso livestock has the important function of integrating the region to new commercial channels in the Empire. If the economy of Minas Gerais absorbed workforce and poured over the territory a pattern of spatial organization guided by small towns of uncertain future, cattle served a very different purpose: the occupation of vast stretches of land in the frontier, necessary for the defense of the Western borders. With the Proclamation of the Republic, this occupation is reinforced by the preponderance of livestock and their products in Mato Grosso exports.

The agricultural interface, in the region, takes more complex forms than direct opposition between the two forms of land use. On the one hand, some cultures are linked to livestock and logging, giving rise to a system called wood-rice farming, where deforestation offers wood to build corrals and rice cultivation softens the soil, protecting it from the weeds and preparing the ground for the expansion of the herd.

As for the appropriation of land, this framework legitimizes a peculiar situation of occupation and taking hold of the open spaces of Mato Grosso:

“Em Mato Grosso, a pecuária extensiva bovina é a forma na qual se desenvolve o processo de abertura de áreas destinadas à agropecuária como forma de apropriação e legitimação para uso da terra... a disponibilidade de terras permitiu que ficassem, muitas vezes, alguns pastos, sem demarcação e sem preocupação com a propriedade, fazendo-se uso” (Bonjour et al, 2008, pp. 2).

This reality is a reflection not only of general changes in the institutions governing land in the Empire, but also on the peculiar political and institutional shape they take in Mato Grosso. In the state, the first Land Law was No. 20/1892, regulated through Decree No. 38/1893. In general, the state's land law was structured based on the principles of the Imperial Law of 1850, adapted however to the interests of landowners - so giving ample conditions for the recognition of *sesmarias*. The deadlines for mediation and settlement areas were enlarged to 15 November 1889, which was deliberately against the terms of the 1850 Land Law; it secured the right of first refusal to purchase public vacant lands that were under the particular domain, which titles did not meet the requirements for revalidation or legitimacy. Judging from these measures, the state law clearly benefitted the interests of large landholders (Moreno, 1999). The regularization and legitimation of possessions were made on the basis of records made in the Municipal Executive Governments, the Commissioners Court, validating the size described in the title, thus counteracting, the limits imposed by Imperial and state Land Laws. Thus, between 1892 and 1930 the efforts of the state government focused on the legitimacy of old possessions, even after the federal ban, covalidating titles that individuals had in hand. Even during the administrative procedure between the issue of provisional basis until the final, changes took place in the measurement of lands.

The measuring, recording and marking of areas were the responsibility of a Commissioner Judge, appointed by the President of the Province, and a surveyor. In the case of vacant land, however, measurement and demarcation were the responsibility of the applicant, being the Commissioner Judge, the approval of the service and the routing of the maps.

In the case of Mato Grosso, the legislation allowed for the incorporation of surrounding vacant land to the occupied areas, provided it did not exceed 150 ha, a feature that was incorporated into the land sold by the state after 1892. The number of expansions of regularized areas was such that between 1899 to 1929 of 910 land titles issued by this expedient, there was the sum of 650,877.50 hectares of tenure and 4,294,216 hectares of excess area (ie, arising from the merger of neighboring lands). One of the problems presented in this movement is the observation, by a student of institutional land in Mato Grosso, the incorporation of an average of approximately 5,000 ha that did not keep relation with the areas occupied in fact or were even in neighboring areas to the original allotment. (Moreno, 1999, pp. 70)

The creation of "Measurement Districts" and the Commissioner Judge figure make the organization and regulation of land ownership subject to local political interests, since the judge's position was more often than not one that rested with the established local interests. There were so many excesses that the figure of the Commissioner Judge was abolished in 1897.

With this measure, the process of land regularization became the province of a registered surveyor, but still appointed by the President of the Province. Looking at the numbers mentioned above, it is seen that the concentration of expertise in the surveyor's figure was not enough to overcome the problems in the regularization of land tenure.

One can speculate that exactly the opposite would be true: political vested interests intensify their influence on the results of the surveyor's work. In the observation of existing political configurations in Mato Grosso, one realizes that the Republic crystallized a set of power relations throughout the nineteenth century and running through all the instances of public life, irrevocably shaping land issue in the state by means of exertion "customary violence" by political representatives

“Em Mato Grosso, a luta armada obedeceu a um padrão mais ou menos invariável. Um coronel, ou grupo de coronéis, levantava-se em armas contra o governo, ou autoridades locais, sempre que seus interesses eram de alguma forma afetados. Como resposta imediata, outros coronéis armavam-se em defesa da situação, formando-se assim, em ambos os lados, batalhões paramilitares. Os componentes da oposição eram armados e sustentados pelos coronéis da oposição, enquanto que seus adversários eram mantidos pelo próprio governo estadual constituído. Esses batalhões eram então fortalecidos por agregados, por mercenários estrangeiros (sobretudo na região da fronteira), e por bandidos” (Corrêa, 2009, pp. 68-69).

In short, the establishment of the first institutional framework of land in Brazil and its consequences point to a consolidation, in Mato Grosso, of the repressive apparatus associated with the ownership of land by large landowners. Marked by a selective flexibility, these regulatory institutions of land property show blatant structural deficiencies in their construction, favoring those with sufficient power or resources to assert themselves as owners of the disputed land on the frontier. With the integration of Mato Grosso to the national economy (through the expansion of activities such as cattle farming and latex extraction), the tensions rose on this space, which becomes even more valuable, economically. With the increase of migration and state interest in the region in the following decades, this situation becomes even more problematic.

Throughout the nineteenth century, the *Fazenda Real of Santa Cruz* undergoes a series of transformations. In the first half of the century, after quarrels with the indigenous populations that inhabited the region, the settlers started growing corn, raising livestock and building improvements in the management of the population of slaves who took care of the land in question (Fridman, cit.pend., p.6). The management of the farm itself undergoes changes in August 31, 1808, with its subordination to the Stewardship of the Royal House and the establishment of a superintendent responsible to increase the yield of the land. It took a number of improvements, such as lifting bridges, road improvements and the transformation of the former Jesuit residence in summer palace (Fridman, cit.pend., P.6). From its origins as a set of contractual settlements confusingly arranged by the Jesuits, the farm became a kind of production center in the service of the Portuguese Crown (now installed in Brazilian territory).

The structures are not the only transformation experienced by the farm, in the period - we can also observe changes in the composition of social classes among the tenants of *Fazenda de Santa Cruz*:

"Nobres passaram a ocupar as terras das recém-fundadas feitorias de Bom Jardim, Santarém e Peri-Peri. Nesta última, como vimos, os índios expulsos de sua aldeia haviam se instalado. Ali foi construído um engenho de farinha às margens do rio Guandu, ao lado do engenho de aguardente que foi adquirido em 1822 (?) pelo Coronel Ignacio de Andrade Souto Maior Rondon, Comandante Geral das Milícias do Litoral. O ex-marido da Marquesa de Santos, Felício Pinto Coelho de Mendonça, foi administrador da feitoria durante um breve período. Em 1834 terras em Peri-peri foram arrendadas ao coronel Ornelas que possuía 86 escravos e que de lá foi expulso sem que saibamos a razão. Nesta feitoria também se instalou o padre Francisco Moreira Correia da Silva que pagava de foro 1:472\$000 anuais. [...]

Com vistas à transição do trabalho escravo para o livre, medidas de incentivo à imigração estrangeira foram promulgadas. Em Santa Cruz foi criada uma colônia de chineses para a criação do bicho da seda logo substituída pela plantação de chá no terreno que ia do aterrado do Leme até a baixada de Saquassu. Os 45 chineses que vieram de Macau em 1815 instalaram-se no Morro dos Chinas, depois Morro do Chá, onde foi criado, em 1820, o Jardim do Cercadinho (ou do Cascarinho) com um horto de plantas medicinais que eram permutadas com o Jardim Botânico. Havia um lago artificial, labirinto e canteiros. Estavam próximos da lavoura dos espanhóis e das roças dos escravos. O Sítio/Morro do Chapecó na realidade lhes agradou mais, entretanto já estava ocupado por foreiros. Apesar das promessas, a relação de trabalho mantinha características escravocratas pois os chinas recebiam apenas cento e sessenta réis por dia, não podiam comerciar nem ir à cidade, dormir fora da colônia ou receber visitas. Sua alimentação era composta por uma ração de arroz, carne, sal e toucinho. A partir de 1819 muitos fugiram e alguns foram recapturados em Guaratiba em 1822.

Em 1815 chegaram oito famílias espanholas em um total de 145 pessoas, instaladas na localidade de Frutuoso construíram suas moradas - a Aldeia dos Espanhóis. Como a atividade agrícola não alcançou os resultados esperados muitos foram deslocados para a Olaria do Curtume que, por este motivo, passou a ser conhecida como Olaria dos Espanhóis. Ainda em 1817 chegaram os portugueses do Minho com a ajuda de custo de 2:400 réis a cada mulher com idade variando de 12 a 25 anos mais mil réis para cada filho, que estariam isentos do serviço militar. Além disso recebiam uma espingarda, enxadas, sementes, duas vacas, uma égua e um ano de ração. Estes agricultores trouxeram seus instrumentos de trabalho. Na década de 60 lavradores portugueses do Algarve dedicaram-se à fruticultura e horticultura no Frutuoso.

Accompanying the changes in the political and economic order of the country, the farm goes focuses on coffee (1817), with the concomitant urbanization of some sectors (1816), mentioned as early as 1818, a "central area of the village ", "comprised of the house of Ministers, the driven home built by the Rio Seco Viscount for his private use in the Rua Nova da Olaria and the famous residence of the

Count of Arcos at the City Hall square at the corner of Rua Direita, among others . "(Fridman, cit.pend., p.7). These transformations are followed by the incorporation of *Fazenda de Santa Cruz* to Imperial administration, with the Constitution of the Empire (1824). The history of this space becomes decidedly more interesting in 1827, with the start of a new measurement of the farm by Boaventura Delfim Pereira, Baron of Sorocaba.

The problem, of course, is due to the irregular tenure maintained by a number of large owners of parcels of the farm:

"Neste mesmo ano foi elaborada pelo Juiz da Coroa uma relação de 153 fazendeiros e lavradores que nunca reconheceram a Fazenda de Santa Cruz como senhorio de suas terras. Este não-reconhecimento provinha sobretudo de sua posição econômica e social: 14 destes fazendeiros possuíam entre 100 e 540 escravos e eram responsáveis por uma enorme produção. Outros 118 lavradores, que contavam com menos de 50 escravos cada, também alcançavam resultados econômicos significativos. Sentindo-se prejudicados pela Medição de 1827, que teria incluído as terras das freguesias de Valença, São João Marcos, Sacra Família do Tinguá, Curato das Dores, Pirai de Santana, 224 proprietários (de terras e de 7.681 escravos), formularam uma representação à Assembléia Geral solicitando sua anulação, fato que culminou com o Decreto de 25 de novembro de 1830 que definiu os limites da Fazenda: "Somente compreende terrenos em cuja efetiva e legítima posse se achava o senhor Dom Pedro I no dia 25 de março de 1824." Os terrenos que haviam sido anexados por uma medição posteriormente feita "ficam pertencendo àquelles, que no referido dia 25 de março legitimamente os possuíam, ou a elles tinham direito, e a quaesquer seus legítimos sucessores, em favor dos quaes a nação renuncia qualquer direito (...) As pessoas que aproveitarem da presente renuncia, serão obrigadas a guardar os contractos de aforamento feitos pela Coroa até o referido dia 25 de Março de 1824; ficando somente com o dominio directo dos terrenos que assim tiverem sido aforados." Na tentativa, desajeitada, de manter os bens públicos, José Maria Velho da Silva em sua rápida gestão (1830-1831), incorporou as casas na foz do rio Itaguaí ao patrimônio da Fazenda."(Fridman, cit.pend., p.10)

Emblematic of the difficulties in land tenure attempts even in scenarios dated previously to the enactment of the Land Law, the above passage shows the trend we have been trying to outline throughout this paper, so far - although marked by sharp differences with regard to its occupation, the production undertaken in its space or the proximity to the decision-making centers in the Empire, land in Brazil has always been at the mercy of the designs of large landowners, supported in the irregularity of non-registered tenures or loose regularity of allotments, in themselves a juridical translation of their political and economic power.

Immediately after the Independence, the Farm accompanies some of the political and economic changes experienced by the Brazilian reality in the period. It is the target of attempts of installing industrial plants, cotton planting, tanning facilities. A series of imperial administrators follow one another, guided by the principle that the farm, as part of the Empire must ensure its own maintenance and provide some revenue to the imperial coffers.

"Ao pesquisarmos o Registro de Terras da freguesia de São Francisco Xavier de Itaguaí de Itaguaí (1854/1855), encontramos 129 declarações de posses das quais 56 são foreiras à Fazenda Imperial da Santa Cruz e em 74 não está assinalada a origem das terras. As localidades eram: Matto do Rey, Boa Vista e Morro Grande, Fazenda Morro das Couxas, Casas Altas (situação), Espigão, Mineiro (na freguesia de Bananal), Monte Carmello, Lagoa Nova, Fazenda Chapecó, Três Morros, Fazenda Espigão (que pertencia a Domingos Diniz de Andrade), serra das Caveiras (freguesia de São José da Cacaria), morro do Guizón, Fazenda Santo Inácio (que possuía 1.540.942 braças quadradas sendo 803.492 foreiras à Santa Cruz e 734.150 desmembradas do engenho de Itaguaí), Rio Preto e na rua Direita, localizada no povoado de Itaguaí. Na maioria dos casos as informações dão conta de médias propriedades (as grandes propriedades eram poucas) e que no lugar chamado Alagado viviam pretos foros. Cada prazo possuía "400 braças de testada e outras tantas de fundo" que, como assinalamos anteriormente era o padrão. Há 48 registros de porções de terras compradas a vários índios ("perto da Estrada Geral que segue serra acima e fundos para a Guarda Grande"). Muitos dos documentos afirmam serem as terras próprias, adquiridas dos índios. Destacamos a declaração da Câmara Municipal da Vila de Itaguaí que afirma ter recebido seu patrimônio através do Alvará Régio da criação da vila. Há ainda declarações dos próprios índios. Registros nos indicam a cadeia sucessória das terras do engenho de Itaguaí: o surgimento de fazendas, como a de Santo Inácio, Rio Prêto, Rodeio ou posses nas localidades de Três Barras, Grimaneza e Saco do Mazomba. [...]

Entre 1845 e 1898 os documentos apontam 309 arrendamentos e 120 aforamentos. Dos primeiros havia 9 na avenida da Princesa Imperial, 8 na Boa Vista, 15 na rua Dom João VI, 11 na estrada do Curral

Falso, 9 na rua da Imperatriz, 10 na feitoria de Santarém, 9 na estrada de Ferro, 25 nas imediações do Matadouro, 9 na Passagem do Gado, 11 nas proximidades de Petrópolis, 13 sem localização precisa, 10 na rua Sete de Setembro, 7 na rua da Olaria, 9 na rua do Campeiro-Mór.

Alguns dados são reveladores do processo de ocupação urbana. Em 1838 havia 237 prédios em Santa Cruz (37 na área interna do Paço), enquanto em 1888 já eram 1.332. Vários chalés e solares ali tinham sido construídos e o mais requintado deles, do ponto de vista artístico, pertencia ao Barão da Taquara, acionista majoritário da concessionária de bondes entre Santa Cruz e Sepetiba. O curato de Santa Cruz já mostrava, entre 1885 e 1892, claros indicadores de urbanização pois os logradouros públicos estavam devidamente delimitados, já havia uma rua do Comércio e serviços de abastecimento de água, além do transporte ferroviário e de bondes. Havia a rua do Encanamento cruzando com a rua da Caixa d'Água, o "centro" definido pela presença do Palácio Imperial, da Praça da Coroa, dos equipamentos públicos e das senzalas. Surgiu na época, para este terreno, um projeto de divisão em prazos para aforamento. Nestas duas décadas (1870-1890) o crescimento populacional em Santa Cruz, atingiu mais de 200%, percentual justificado pela decisão do governo, de 1886, de estimular a imigração voltada para a produção agrícola na zona oeste da cidade. Tal posição visava contornar a crise de abastecimento iniciada em 1884.

Mesmo que em Santa Cruz os índices não tenham se modificado substancialmente entre 1870 e 1890, os escravos libertos dedicados às atividades urbanas, por falta de moradias, começaram a pagar aluguel no valor de dois mil réis. Santa Cruz, com iluminação a gás desde 1877, foi o primeiro "subúrbio" do Rio de Janeiro a receber luz elétrica, em 1889, fornecida pela usina geradora do Matadouro. Neste ano havia 348 senzalas. Em 1886, 3245 pessoas e 1235 libertos. O aumento populacional e de ocupação e a existência de alguns serviços de infra-estrutura geraram o decreto 7.051 de 18 de outubro de 1878 que regulamentou a arrecadação do imposto predial. Neste decreto estavam incluídas a área do Curato de Santa Cruz, em processo de urbanização. Em 1888 havia em Santa Cruz três fábricas - de sebo (indústria química), de cadeiras e de escovas." (Fridman, cit.pend., 18-21)

Therefore, from a space in which land distribution, allocation and property are chaotic, rises an important and flourishing urban center - without any additional measures of land regularization being undertaken.

The name *Fazenda Nacional de Santa Cruz* dates of the Proclamation of the Republic, with its incorporation into the Union prerogatives. Previous tenures are regularized indiscriminately, as parte of the change of order:

"O Decreto de 26 de novembro de 1891 revalidou os aforamentos concedidos no Império e, no ano seguinte, a lei 126B de 24 de novembro no seu artigo 14 concedeu a remissão dos foros situados no estado do Rio de Janeiro. A instrução de 26 de julho de 1893 regulou o preço da remissão em 20 vezes o valor da anuidade e permitiu a transformação dos arrendatários em foreiros. Foram, por esta lei, revalidados os contratos de aforamentos concedidos após 1830. Ainda em 1891 foi definida uma área adjacente ao Curato de Santa Cruz para ser dividida em lotes: neste momento foram distribuídos 291 títulos de aforamentos cuja frente era de 11.584,70 metros e fundo variável. Na feitoria de Santarém foram aforados a particulares 1,32 km² e na localidade de Bom Jardim 10,6 km². Antes de 1892 havia 874 foreiros e 476 arrendatários na Fazenda. Pela lei 360 de 30 de dezembro de 1895 os arrendatários passaram à condição de foreiros."

Concluding remarks

The cases of Mato Grosso and of the *Fazenda Nacional de Santa Cruz* are each in their own way revealing of some of the historical roots of the problems faced by attempts at changing the institutions responsible for land regulation in Brazil. Each, though marked by their specifics, is representative of a broad and complex general framework in which the revalidation of previous legal codes, successively legitimates the mechanisms of concentration and illegal land grab in effect since the implementation of land grants in the colonial territory.

Mato Grosso, the result of the expansion plans of the Portuguese Overseas Empire, still keeps the features of a frontier region, torn by institutionalized violence of landowners against settlers, landless workers and migrants. According to the *Comissão Pastoral da Terra* (CPT, 2013), the struggle for land in Mato Grosso in 2013 totaled 33 registered violent conflicts (with records of at least 2,150 families involved), including 8 cases related to indigenous populations (in legally established indigenous reservations), 8 landless labourers, 4 "retireiros" and 13 settlers. According to the study, in

addition to the violence used against the occupation and ownership, land grabbing is a major cause of land conflicts, highlighting the case of conflicts involving the retireiros and squatters in the city of Luciara of that year. The state remains one of the 'leaders' in cases of land conflicts, in Brazil.

If we go back to the requirement signed by Hugo Alves in 2012, there is a list of irregular situations identified from information obtained from the Regional Superintendent of INCRA, in Rio de Janeiro, pertaining to the *Fazenda Nacional de Santa Cruz*. They are:

- "- Terrenos cedidos por aforamento e por ocupação, mediante cobrança de foro e taxa, respectivamente, que beneficiam somente o usuário, acarretando ao proprietário da terra, no caso o INCRA ou a União, prejuízos sem conta, pelo pequeno valor desses tributos, mesmo assim sonegados por inúmeros foreiros e ocupantes;
- Desmembramento de áreas foreiras e de ocupação, sem anuência do INCRA, tanto na área urbana como na rural, e venda dos lotes desmembrados, quase todos com benfeitorias do comprador;
- Ocupação indevida de áreas por ocupantes sem título, porém com benfeitorias;
- Áreas inscritas em nome de um ocupante e na posse de outros;
- Áreas cujos aforamentos foram transferidos de titulares sem o devido registro no INCRA;
- Terrenos foreiros transferidos mediante procuração em causa própria;
- Imóvel único pleiteado por mais de um interessado, configurando conflito;
- Terreno foreiro arrematado em leilão judicial com consequente autorização do juiz para transferência do domínio útil;
- Terrenos cujos foreiros ou ocupantes faleceram e os herdeiros não fizeram prova de sucessão, mas continuam pagando foro ou taxa em nome do falecido;
- Terrenos aforados com caducidade do aforamento declarado administrativamente, porém com registros no RGI, sem caducidade judicial declarada;
- Terrenos aforados, com os respectivos canones em atraso por mais de três anos, sem a devida caducidade declarada;
- Imóveis objetos de ação de usucapião do domínio pleno, mas que pertencem ao patrimônio da União, portando não podendo ser usucapidos." (Alves, 2012:4)

Thus, the farm still faces issues extremely similar to those faced in the various moments when attempts were made at measuring and regulating the lands of the farm, still in the nineteenth century. In our view, previous attempts at settlement were not effective for two clear reasons - (1) the use of previous legal codes, with adherence to previous standards of legitimation of irregular tenures which, per se, admitted this same tenure as an important element for validation of the ownership of a given strip of land; and (2) how the recognition of ownership takes place in particularly selective manner, due to the power of large landowners, their ability to come to blows with the Federal Government in settlement attempts, or even their representation within government decision-making spheres, as in the case of the Land Law (which acts to regulate the large ownership - when the squatter so saw fit - punishing the small squatter with the risk of loss of access to land).

In summary, we believe that thinking of a deep, wide reaching reform of the legal mechanisms of regulation of property, use and access to land is only possible if we start from the historical specificity of the institutional construction of these mechanisms on Brazilian soil. It is essential that we keep in mind the fragility of previous statutes of land ownership, founded on the shortcomings of the land grants scheme and the selective adjustment of the 1850 Law, and that new mechanisms are not built as repairs of legislation that proved deficient in so many occasions, but as a way of facing the inequality and rampant violence in the Brazilian agricultural landscape. Therefore, it is necessary to (a) focus on a reform of existing institutions taking into account the disparity of political representation mechanisms and access to economic distribution channels between large and small owners, by not classifying these different strata as agents which are individually indistinguishable from each other; (b) upholding the prerogative of the social function of land, as defined by the Federal Constitution of 1988, understanding the rural areas not only as a space for production and wealth, but as a another viable locus for of addressing the difficulties faced by Brazilian society in its long way to modernization; and (c) providing means of regularizing tenure and distributing land to small landowners, before these possibilities are blocked out due to the lack of material means to afford the demarcation and settlement costs (such as those faced by smallholders in implementing the 1850 Act) or by political pressure faced by farmers and settlers in various regions of contemporary Brazil.