

Justice and violence in the Lands of the Assecas (Rio de Janeiro, 1729-1745)

MÁRCIA MARIA MENENDES MOTTA

INTRODUCTION

The land occupation processes of the huge territory known as Portuguese America still echo in today's intense conflict over land ownership. Land grant documents issued by the Portuguese Crown during the colonial period have been and are still being used in such conflicts to establish a «starting point» in the history of territorial occupation in the disputed areas. By using such ancient documents, litigating parties use History as a witness to build a case for the ancestry and lawfulness of their land settlements (Motta, 2004).

The property title called *carta de sesmaria* (land grant charter), a medieval term designating a grant for unused land, was created by a land grant regime enacted in Portugal at the end of the 14th century in order to foster agricultural production, solve the country's supply problem and put an end to a serious food crisis. As the medieval law of *sesmarias* aimed at leaving no suitable land unploughed, property titles thus granted were tied to mandatory cultivation (Rau, 1982). Later on, the *sesmarias* regime was transplanted

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Márcia Maria Menendes Motta is associate professor of Modern History at the Universidade Federal Fluminense, Rio de Janeiro, where she co-ordinates the Núcleo de História Rural. Address: Universidade Federal Fluminense, Campus do Gragoatá, Rua Prof. Marcos Waldemar De Freitas Reis, Bloco O, Sala 505, 24210-380 - Niterói – Rio de Janeiro. menendesmotta@ig.com.br or marciamotta@pq.cnpq.br

during the maritime expansion as a juridical framework for land property in colonial areas, notably in the Portuguese America captaincies (*capitanias*)¹.

However, alongside the grants of *sesmarias*, the territory was also reclaimed by means of a widespread squatting process. The search for precious metals, which intensified by the end of the 17th century, boosted the claims of colonial interests over the territory, turning hosts of poor men into wealth seeking explorers. Thus, intense dispute for the best lands often opposed landowners known as *sesmeiros*, i.e., those who held land grant charters, against squatters who would come in the 19th century to be called *posseiros*, i.e., those who held the land in actual possession without a grant charter. Struggles between theoretically legitimate title holders and actual occupants have thus, to this day, been a key element of the territorial expansion process in Brazil (Motta, 2009).

The above was not the only level of contention between different claimants. Colonial land grants could be held in entailed estates². The history of colonial entails is as yet little known. Some, as with the Casa da Torre in the State of Bahia, occupied vast expanses of land throughout the 17th and 18th centuries and saw repeated disputes for land possession. Many farmers without land property titles opposed the incorporation of what they alleged to be allodial land in entailed property (Motta, 2011). Others, such as the House of the Viscounts of Asseca, the object of the present article, are an example of a juxtaposition of patrimonial and jurisdictional rights which are hard to disentangle, as the owner of the entail was also the donatary of São Salvador da Paraíba do Sul.

Under the territorial governance system of captaincy, the Crown granted the territory to a donatary, whose obligation in turn was to implement colonization. However, in cases such as that of the Viscounts of Asseca, the ambiguity of patrimonial and jurisdictional rights could be used as a political resource for land appropriation, as much as a source of dispute over it. In short, patrimonial rights in land became entangled with jurisdictional

1. *Capitanias* were the territorial districts set up by the Portuguese Crown as the initial governance system in its overseas colonies. Each was held in grant by a *capitão donatário*, literally ‘donatary captain’ or simply *donatário*. These concepts will henceforth be translated as «captaincy/ies» and «donatary/ies». Cf. João Capristano de Abreu (1997): *Chapters of Brazil Colonial History 1500-1800*, edited by Fernando Novais and Stuart Schwartz Oxford, Oxford University Press, ch.5. (Translator’s note).

2. *Propriedade vinculada* in the original. In early modern Portuguese vocabulary on property, *vinculo* (literally: ‘bond’) could designate different ways of binding a property to a specific institution or descent line. Throughout this article, the institution alluded to is that of *morgadio*, the Portuguese form of the Castillian *mayorazgo*. It bound property to the direct line of descent of the founder, as a rule through primogeniture. In spite of differences in juridical detail and tradition, it was akin to the English institution of entailment and will henceforth be translated as such when referring to the institution, and as «entail» when referring to specific entailed estates. (Translator’s note.)

rights in territorial management, according to the rules in place for the powers of the donatary.

This article analyzes disputes over land property rights during the first decades of the 18th century that involved the interests of the Asseca family, the colonial administration, and a multifarious group of so called «dwellers» (*moradores*) in the disputed land. Some of them strove to legitimate land occupations by the Asseca family and their incorporation within the entail, while others contested it. Some of the dwellers were *sesmeiros* who held property titles granted by the Crown, while others had occupied several and sometimes wide extensions of land through squatting.

I am not going to dwell on the interesting developments of this dispute, which lasted the whole of the 18th century. The late 18th century has already been the object of an article by Sílvia Lara (2006), which discusses the relationships between Crown servants and local lords in the struggles between public and private interests in Campos dos Goitacases, in the area covered by this study. Lara identified land conflicts «that lasted for many years and used devices common to similar situations» (Lara, 2006: 81).

This article will specifically target the seminal conflict in this dispute, when settlement expansion into a poorly bounded territory of increasing worth led to legal and political struggle for the ownership of both jurisdictional and land property rights. The analysis rests on Portuguese Crown documents in reply to clarification requests sent by the Viscount and the dwellers to the Overseas Council, which had been set up by the Portuguese Crown in Lisbon in 1642 to discuss and propose resolutions concerning any issues regarding the overseas possessions³, as well as on the *corpus* collected by the geographer Alberto Lamago and first published in 1913 in Paris (Lamago, 1913).

New research has recently addressed land property in Portuguese America, which in my view has shed new light for a more attentive look at the workings of domination. Many such studies examined further the relationships between colony and mainland, drawing on debates about the multiple meanings of colonization. Some, such as João Fragoso (2001),

3. This corpus was collected as part of *Projeto Resgate*, which stored in microfilm all the sundry documents sent to the Overseas Council by the dwellers of the captaincies in Portuguese America. «*Projeto Resgate de Documentação Histórica Barão do Rio Branco* was instituted in 1995 by a protocol underwritten by Portuguese and Brazilian officials at the *Comissão Bilateral Luso-Brasileira de Salvaguarda e Divulgação do Patrimônio Documental* (COLUSO). It mainly aims to make documents available about the History of Brazil stored in foreign archives, mainly in Portugal and other European countries that participated in our colonial history». http://www.cmd.unb.br/resgate_index.php, downloaded on April 9, 2012.

revisited Caio Prado Junior's insights into the meaning of Portuguese colonization. Others pursued Prado Junior's theoretical perspective as later developed by Fernando Novais, into new reflections about the assembling of the productive structure and the rise of a dominant group that ruled over the colonial administration (Souza, 2006; Ricupero, 2009).

In spite of the unquestionable importance of those works, the topic of land and land property became a secondary concern. The statement that land was an easily accessible asset remains just as common today as its opposite, that it was under the landowners' absolute control. Either way, land property – or rather, the degrees and kinds of access to land – is seen as a given, not as a result of a historical process of tension, conflict and negotiations.

I believe that the disputed versions of the concerned parties are a major key to unraveling the historicity and the different interpretations of the rights to land in Portuguese America. They open new alleyways for analyzing an «old» theme: land conflict in colonial areas. In short, this article reassesses reasonably well known sources in order to bring a fresh outlook on the juridical disputes and conflicting versions concerning what I call the history of site occupation. In doing so, it unfolds into a debate on the notions of justice at the core of the arguments of the disputing parties.

2. THE CAPTAINCY OF SÃO SALVADOR DA PARAÍBA DO SUL AND THE VISCOUNT OF ASSECA

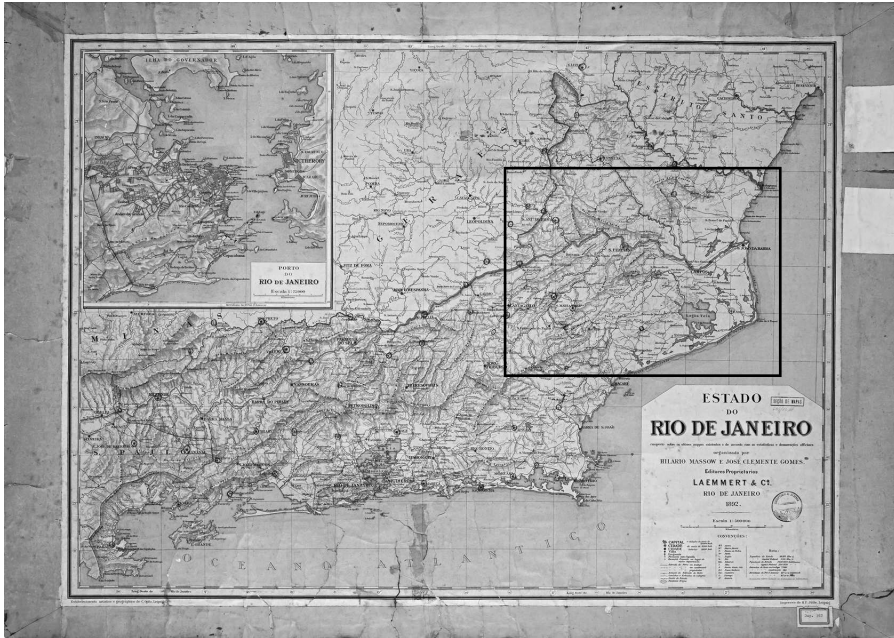
The captaincy of São Salvador da Paraíba do Sul was created out of the former one of São Tomé and was granted to the 1st Viscount of Asseca, Martim Correia de Sá e Benevides Velasco by the Prince Regent D. Pedro on September 15, 1674, under the obligation to establish two settlements: São João da Barra and São Salvador (Campos), both on the Paraíba River (Handelmann, [1931]). However, the grant did not specify precise geographic boundaries. Sheila de Castro Faria advises that the terms «Campos dos Goitacases» and «captaincy of Paraíba do Sul» «were still generic expressions that, until the 19th century, referred to a wide area currently known as the Norte Fluminense in the State of Rio de Janeiro» (Faria, 2003: 1). Map 1, dating from the late 19th century, roughly represents the area of the dispute, and is not meant to be a precise plot.

On May 6, 1726, the 3rd Viscount of Asseca, Diogo Correia de Sá, requested the Overseas Council for a new charter of donation of the captaincy of São Salvador da Paraíba do Sul⁴, which had previously belonged to his father, Martim Correia de Sá (1st Viscount),

4. Projeto Resgate. Rio de Janeiro DVD1\CD 02\020\001\ARQ. 091. 6 de Maio de 1726.

who had established the town of São Salvador dos Campos dos Goitacases in 1677, and to his firstborn brother Salvador Correia de Sá (2nd Viscount).

MAP 1
State of Rio de Janeiro, 1891



Source: Arquivo Público do Estado do Rio de Janeiro. Accessed on July 5, 2012. http://docvirt.no-ip.com/docreader.net/DocReader.aspx?bib=\Acervo01\drive_p\Trbs\Aper\REG_TERRA.DocPro.

This was not just any powerful claimant, nor were his lands just any lands. Coveted by many and reclaimed by a few they gave territorial substance to the meanings of nobility and honour conveyed by the grant. As for the 3rd Viscount of Asseca (1669-1745), he had inherited the nobility title created for his father in 1666. His grandfather, Salvador Correia de Sá, had served during the acclamation war of King João IV (Cardozo, 1950) and had been Governor of the Captaincy of Rio de Janeiro and Governor General of the Southern Captaincies. Diogo Correia de Sá also became *Alcaide-mor* (military Governor-in-chief) of Rio de Janeiro. He was *comendador* of São Salvador de Alagão and of São João de Cássia, an honorific title acknowledging the Viscount's or his ancestors' services to the Crown, the King or the Church⁵.

5. I thank Georgina Santos for this precious information.

His personal credentials were even more emblematic. Diogo Correa de Sá had been a member of the *Academia dos Generosos*, whose distinguished members had highly praised his declamation and poetry (Sousa, 1755: 256). This was one of a set of academies founded from the early 17th century «to foster national literature under the tutelage of the first nobility of the kingdom» (Kantor, 2004: 30). He was also one of the most prominent founders of the *Real Academia de História* in 1720, which incorporated the *Academia dos Generosos*. According to Iris Kantor, this academy played a decisive role in the formation of a national history in Portugal, «promoting the integration and socialization of lay and ecclesiastical elites while fostering the transfer of information and competencies from ecclesiastical to lay spheres» (Kantor, 2004: 30).

In short, Diogo Correia de Sá was an enlightened nobleman and a direct descendant of a powerful family that, according to Fátima Gouveia, had controlled the administration of the captaincy of Rio de Janeiro for a large part of the 17th century. Besides the family's political influence, its members owned sugarcane plantations and mills and traded in slaves, «with connections even with the Spanish provinces in the Río de la Plata region» (Gouveia, 2004: 110).

The request for a new donation charter was meant to assert the transfer of the *dominium utile* of a region in the captaincy of São Salvador da Paraíba do Sul, «fulfilled by rights in a well defined territorial area in the kingdom, under the category of Crown assets» (Saldanha, 2001: 45). The request for a new document reasserting his rights in those lands indicated a time of dispute and interpretations about the various jurisdictions of the Portuguese Crown, the different levels of power within Rio de Janeiro and, most interestingly from our point of view, the understandings about those who occupied those lands and their ability to operate within the colonial administration system in order to maintain and defend their own and their representatives' interests in Portuguese America.

Captaincies were eminently jurisdictional seigniories, to which were attached patrimonial rights in a wide stretch of land (Saldanha, 2001: 49). As seigniories, they carried the «delegated powers normally inherent to the Sovereign, which the holder exercises not as a function, but rather as a personal, generally hereditary right» (Saldanha, 2001: 52)⁶. The donataries' jurisdiction extended over all the territory of the captaincy. The confirmation request correctly assumed that the Assecas' rights were not 'natural', but rather

6. As we will see, the House of Asseca had held these rights ever since the days of the 1st Viscount, back in the 1600s, yet they had been interrupted by a sale after Diogo had inherited them from his brother, the 2nd Viscount, in 1692.

«royal rights, of which the delegation (or at least the long term of use) required proof» (Saldanha, 2001: 54). Moreover, the granting of Crown assets followed specific principles established in the *Ordenações*⁷ and which differentiated their regime. More specifically, such grants were governed by the so-called *Lei Mental*, which expressed the notion that the granting of Crown assets could never transfer the full domain. As such, succession was not governed by blood rights alone, but also by a «special right expressed in the granting title» (Saldanha, 2001: 57). The eventual transmission to an heir could not be an automatic process; it needed confirmation by the Crown. We can thus understand the 3rd Viscount of Asseca addressing the Crown to have his right confirmed. It is odd, however, that he should only place his request in 1726, which permits the inference that such confirmation was not always necessary in practice and that, somehow, the real reason making the 3rd Viscount's request necessary was the ongoing dispute over the region.

The request also brought forth a debate on the rights of the donatary regarding the Crown's grant, discussing «the transfer of rights arising from a grand act of disposition» (Saldanha, 2001: 45). Therefore, the request of a new grant charter involved the update of his *dominium utile* over a specific region of the kingdom as well, along with the confirmation of his authority as donatary with jurisdictional powers «beyond the functions of mere administration of private property, rent collection, nomination or confirmation – when conceded – of municipal officials» – and not the least, the delegated power to grant land in *sesmaria* (Saldanha, 2001: 49).

The Viscount's request also reveals the complex process of the registry of land grants. Since those were assets granted by the Crown, not only had the issuing and the registry of the charters to be recorded in the books of the Royal Chancellery in Lisbon, but the grant and its updates, if any, should also be recorded in the books of several offices in Brazil – the *Secretaria do Governo*, dealing with general government affairs; the *Ouvidoria Geral*, the main judicial authority; the *Provedoria da Fazenda*, the chief exchequer – and in the records of the Municipal Council of Rio de Janeiro (Saldanha, 2001: 74).

Thus, in spite of the huge power of the Assecas, it was not an easy task to obtain permission to inherit the captaincy. Following the premature and childless demise of his elder brother, the 2nd Viscount of Asseca, Diogo had intended to step into his shoes. However, as we have seen, the transfer procedures were very complex. According to the information collected by Lamego (1913, II: 169), Diogo's brother died in 1692, while current genealogical accounts usually assign his death to 1678. Diogo's request dates from 1726.

7. The *Ordenações* are compilations of royal laws, which made up the juridical mainstay of the pre-constitutional Portuguese monarchy.

Therefore, it was at least 34 years before the 3rd Viscount decided to request confirmation of his rights as donatary, hypothetically using it as a resource in his long running dispute against others who claimed concurrent territorial rights in the same region.

3. THE DYNAMICS OF THE CONFLICT

The reasons for the Viscount's move to request a new grant charter so many years after his brother's death are in fact easy to infer. At any rate, we know that he had made another attempt at it, which had proved unsuccessful. After inheriting the captaincy and the land from his brother, around 1709 Diogo sold them to Prior Duarte Teixeira Chaves, himself the son of a former Governor of Rio de Janeiro. This decision, however, started a dispute. The buyer had purchased, «for the modical amount of 10,000 *cruzados*» (Cortesão, 1952: 195), all the Viscount's free and entailed lands in Rio de Janeiro and in Campos, as well as the position of *Alcaide-mor* of the city and the captaincy of Paraíba do Sul. Although this information is confirmed by often quoted sources in studies about territorial occupation in the State of Rio de Janeiro, the reasons leading the Viscount to sell out his presumed rights are still unknown. What is more, since most studies point out that the Viscount had sold his land and offices without the «indispensable royal authorization» (Cortesão, 1952: 195), it is an interesting question why such a transaction had seemed possible to both parties.

And yet, according to the Chief Justice (*Ouvidor Geral*) and the Crown Attorney (*Procurador da Coroa*) in Rio de Janeiro, and the Overseas Council itself, the Viscount could not «sell to this so-called donatary his jurisdiction as he did, nor could the so-called donatary use it by virtue of that title»⁸. To make matters worse, the Prior had been accused of taking violent action in the land formerly belonging to the Assecas. He had evicted all the lessees before the end of their leases and replaced the *Capitão Mor* (captain-in-chief). Thus the Prior, in his role as a lord, had been accused by some dwellers of «disturbing the public order and usurping the royal jurisdiction, with great oppression of its subjects» (Lamego, 1913, II: 188). Due to the illegal sale that had broken the rules for grant transfer, in 1711 the Overseas Council decided to seize the captaincy and it only gave it back to the Assecas in 1727, as a result of the confirmation request. However, it must be noted that during the seizure Prior Duarte kept the *dominium utile* in the land and remained in charge of its administration, possibly with the help of his nephew, Governor Luis Vahia.

8. Instituto Histórico e Geográfico Brasileiro. Arquivo 1.1.24 (Copies made from the Arquivo do Conselho Ultramarino) p. 34.

As things were, the sale and the 16-year seizure of the captaincy happened to coincide with a particularly prosperous period in the history of the region, marked by the striking of gold in Minas Gerais towards the end of the 17th century. As the New Trail linking the seaport of Rio de Janeiro to the mining region up to the northwest was opened, population and agricultural settlement followed with the establishment of farms along the way. By the late 1720s, the lands the Viscount now claimed to be his were no longer of little worth; they were part of a highly coveted expansion front, both for direct appropriation and as a source of rent⁹.

The overall history of the the Asseca lands is a challenge in itself, one which this article cannot fully meet. For the present purpose, it is important to point out that there was a group of people who did not objectively acknowledge Diogo Correia de Sá as the owner of the land, in spite of the Viscount being a representative of the Portuguese nobility eager to recover his domains. There certainly were local powers strongly entrenched in important colonial positions. It is important to note that the Prior's nephew Luis Vahia, held the same position as Governor that Salvador Correia de Sá had before his son the 1st Viscount of Asseca was granted the captaincy. All this goes to show that the 3rd Viscount had to overcome major difficulties. After the captaincy was seized by the Crown, Diogo Correia de Sá had to use his network of alliances, both local and at the Court, in order to recover it through the confirmation of his grant in 1727. Moreover, it is not hard to imagine that after so many years since the seizure some dwellers in the disputed lands might not easily accept his jurisdiction, and that the conflict over jurisdiction would pave the way to bring into question the very legitimacy of his appropriation of the disputed lands.

However, the dissatisfaction with the Viscount's power was not immediately apparent. Also in 1727, the Governor Luis Vahia Monteiro sent a letter to the King reporting that he had enforced the Crown's ruling to confiscate the land from those who did not hold letters confirming their rights in it, and at the same time that he had abided by the charter granting the captaincy of Paraíba do Sul to the Viscount Diogo Correia de Sá. However, he also stated that the Viscount's sons intended to appoint the posts of the militia and the offices of the captaincy without having proper jurisdiction, and he requested clarification on this matter¹⁰. It is relevant in this respect that the Crown had in 1725 openly expressed concerns that vast domains in Portuguese America were in the hands of a few

9. The so-called *Caminho Novo* to Minas Gerais began at the margins of the Guanabara Bay in Rio de Janeiro, crossed the Paraíba River and the Serra da Mantiqueira ridge up to the mining fields in Minas Gerais. It replaced the *Caminho Velho*, the Old Trail to Minas which took a different route «[...] simultaneously servicing the capital of the State of São Paulo and the mines in the State of Minas Gerais» (Lamego, 1963: 126).

10. Projeto Resgate. Rio de Janeiro DVD1\CD 02\022\002\ARQ. 302. 01 de Agosto de 1727.

families, such as was the case with the *Casa da Torre* and *Casa da Ponte*¹¹. In this context, it is unlikely that Luis Vahia would put any effort into enforcing the ruling without first having questioned the right of the Assecas.

The affair was certainly complicated. By then, the Governor was publicly known as an enemy of the Viscount of Asseca. Letters sent by the *juiz de fora* (town magistrate) Manoel de Passos Soutinho in 1726 reported the Governor's interest in protecting his uncle the Prior, who had purchased the captaincy and land from the Viscount. But if this was so, why did the Governor communicate that he had abided by the renewed grant of the captaincy? It is a reasonable assumption that while formally informing the Crown of his enforcement of the confirmation letter, the Governor had not in fact removed his uncle from the Viscount's land. This might explain the Assecas' move to request the confirmation of their lands from the Overseas Council after 1727, when theoretically the captaincy, and therefore the land that he owned as a donatary, had already been restored to them.

The confusion of different alleged rights in those lands was also a part of a broader process in which the Crown tried to control land occupation in its main colony. As was stated above, in 1725 the Crown expressed its concerns regarding the occupation of large tracts of land by a few powerful houses. On July 15, 1727, the Overseas Council advised the King to send mathematician priests to Maranhão and to Brazil to «map all the lands of the referred States, describing what should be under the jurisdiction of each captaincy» (Almeida, 1999: 80). Two years later, in October 1729, the King sent them. The instructions emphasized the need to map the Brazilian territory, which would be essential for the political control of the territory by the Crown. Work was to start in Rio de Janeiro, and

[...] proceed toward the quarters that seem to you as more useful for my service, because it is very convenient that as many maps as possible should be drawn of the large inland territory of that state, especially of the Mines that were newly discovered in the whereabouts of the Captaincy of Espírito Santo (Almeida, 1999: 82).

The timing of the problems with the Viscount's lands clearly coincides with the Crown's efforts to regularize occupation through cartographical description, which would be implemented years later, once Manoel Vieira Leão had produced the maps, including that of Espírito Santo (Map 2) which had incorporated Paraíba do Sul. The rea-

11. AHU. Ordem Régia ao Governador Geral do Brasil. 7/07/1725. Códice número 255. Apud. (SILVA, 1990).

By resolution of the 23rd of the current month, taken in consultation with the Desembargo do Paço [the royal high court] by request of the Viscount of Asseca for the revenues of many entailed farms in the Captaincy of Rio de Janeiro to be seized, which he had sold by means of a null and fraudulent contract with the Prior of Chaves, Duarte Teixeira Chaves, which he [the Viscount] kept claiming and was already back in effective possession of a part of the said entail by court ruling. I am pleased to resolve for the seizure of all farms that were thus sold and now are in the hands of third parties, from whom they are currently being claimed back, for they hold them under evidently null titles, and of such nullity as does not suffer any doubt, for the Crown and entailed assets cannot be alienated without license from the Viscountess, the wife of the said Viscount¹⁴.

Hence the sale was being challenged on two grounds: because it had dealt with entailed lands and because the deal had been settled without the approval of the owner's wife, which violated the norms in the *Ordenações*.

It is next to impossible for us to reconstruct the full dynamics of occupation, the different interests in those lands and the reasons for the hatred and revenge apparent in the sources. However, the two years from 1727 to 1729 seemed to mark distinct turns in the process. It might be expected that after 1727 the Viscount of Asseca would find it easier to assert his rights in those lands, since his credentials as donatary were deemed unquestionable and his arguments seemed consistent. On August 12, 1727, the Chief Justice (*Ouvidor Geral*) in Rio de Janeiro, Manoel da Costa Mimoso, sent a letter to King João V in reply to a royal order to inform him which donataries had been issued confirmation letters and exercised their power in the respective territories. In this, he stated that the Viscount of Asseca was the only one who had actually exercised his jurisdiction according to the letter of confirmation that he had presented¹⁵. Thus both the Chief Justice's and the Governor's positions in 1727 concerning the Viscount's jurisdictional rights seemed to indicate confirmation of the patrimonial rights of the Assecas in their lands, which they finally achieved with the 1729 royal resolution. But what exactly were those lands and those rights?

14. 1729. March, 24, Lisbon. Decreto pelo qual se ordenou o seqüestro de todas as fazendas pertencentes ao morgado do Visconde de Asseca e que tinham sido vendidas indevidamente. Anexo ao n.º 6414. AHU_ACL_CU_017-01, Cx. 28, D. 6416.

15. Projeto Resgate. Rio De Janeiro DVD1\CD02\022\002\ARQ. 358. 12 de Agosto de 1727.

4. LANDS, RIGHTS AND ACTORS

There was one central question in all this: what was the territorial extent of the Viscount's jurisdiction? Where did his power as donatary begin and end? Where could he demand payment of *redízimos*¹⁶? According to Lamego, the 3rd Viscount would not receive confirmation of exactly the same extension as had been granted to the 1st Viscount. The letter of confirmation issued on March 23, 1727 took away 30 leagues at the Prata River since, according to the Crown Attorney, the land was actually abandoned in that region and «the Viscount and his predecessors had made no effort to populate it» (Lamego, 1913, II: 2020).

There was also another problem. Also in 1727 and two years after the Royal Order that indicated the problem of extensive land control by powerful estates, the municipal officials of the town of São Salvador de Paraíba do Sul sent a letter to the King, complaining about disturbances and jurisdictional abuse in the region¹⁷. The exchanged correspondence shows that the confusion over jurisdiction arose from the lack of the delimitation of the Viscount's property boundaries. He insisted on charging «tithes on all produce from the land under his administration»¹⁸. There is evidence of confusion between the land which the Viscount owned and that which simply fell under his administration as a Crown donatary. The ensuing correspondence is rife with accusations exchanged by different jurisdictions, laying the blame now on the Viscount, now on the dwellers. There was an overlapping of boundaries and rights which involved many owners, including the Viscount, the Prior (aided by his nephew, the Governor Luis Vahia) and Captain Domingos Alvares Pessanha, who had bought land from the Prior. Some dwellers called themselves '*sesmeiros*', others simply farmers, and yet others the Viscount's lessees.

One person, it seems clear, was key to understanding the dispute: Governor Luis Vahia Monteiro, who was in office from 1725 until his death in 1732 as a result of an epileptic seizure. Vahia Monteiro was also Lieutenant-colonel of Catalunha, Governor of Puebral and Senabria, Colonel of the Infantry in Chaves and Knight of the Order of Christ. He was also a member of the King's Council (*Conselho de Sua Majestade*)¹⁹. He was known for his aggressiveness and was nicknamed «*O Onça*» (the Jaguar).

16. *Redízimo*, literally 're-tithe', was a tax of one tenth over the tithe, which formed a part of the donataries' income. (Translator's note.)

17. Projeto Resgate. Rio De Janeiro DVD1\CD02\023\001\ARQ. 013.3 de Novembro de 1727.

18. Projeto Resgate. Rio De Janeiro DVD1\CD02\023\001\ARQ. 193. 25 de Julho de 1728.

19. Barata, Carlos Eduardo de Almeida. Coleção Ordens Régias – 1718-1807 Patentes. Catálogo das patentes constantes dos 38 Livros de Registros de Ordens Régias in: Colégio Brasileiro de Genealogia. <http://www.cbg.org.br/arquivos_genealogicos_o_01.html>, downloaded February 2, 2012.

Luis Vahia Monteiro's part in the disputes of the dwellers in the captaincy against the 3rd Viscount of Asseca was underlined by Alberto Lamego. According to the geographer, the Governor was zealous of his prerogatives, and for the Viscount and his sons he was «a terrible adversary both for his support of the Prior de Chaves who was in dispute with them and for the help he gave to the countryside dwellers who would not submit [to the Viscount]» (Lamego, 1913, II: 221). He goes on to mention «his wide correspondence with the Portuguese Crown about all that happened in the captaincy of Paraíba do Sul, and the unforgettable services he had provided to its dwellers in adverse times» (Lamego, 1913, II: 224).

There was yet another key player: *Desembargador* (High Court Judge) and Chief Justice in Rio de Janeiro Manoel da Costa Mimoso, nobleman of the Royal House and Knight of the Order of Christ, whom we have already seen vouching for the Viscount's performance as captain donatary in 1727. A Royal Letter dated March 28, 1729, the same month the Viscount requested the seizure of the farms, entrusted him to solve the dispute. On September 24, 1729, the Portuguese Crown further appointed Mimoso to assess the judicial procedure (*correição*) concerning the lands of the Assecas, «not only to meet justice to the dwellers in these lands, but also for the crimes there committed to be punished according to their quality».

In 1731, in a message to the Secretary of State Diogo de Mendonça Corte Real, the Municipal Council officials and the people of the town of S. Salvador in Paraíba do Sul informed that the Viscount obstructed «the good application of justice»; and that according to the dwellers «they so fear their [the Viscount's sons'] carrying on that they flee their land in search of peace»²⁰. Moreover, Luis José, one of the Viscount's sons

*[...] had the Judge and the Officials of said Municipal Council sign blank sheets of paper, so he could represent whatever he wished to Your Majesty on their behalf, with which abuses the royal income is already decreasing for poor collection because of the fear of the Viscount's sons, who also levy taxes on the small sugar mills [Engenhocas], causing some to be abandoned and others to be torn down, with great harm to the Royal Finance for the loss of Tithes, for which they ask Your Majesty to give them remedy by subjecting them to His Royal Crown alone instead of a Donatary, or giving them time to evict that Captaincy*²¹.

20. Instituto Histórico e Geográfico Brasileiro. Arq. 1.1.26. (Copies made from the Arquivo do Conselho Ultramarino.)

21. Idem.

The Assecas too had a point of view on the conflict. The Viscount had given his sons Martim Correia de Sá and Luis José Correia de Sá powers of attorney to exercise his full jurisdiction on his behalf. They in turn complained of continued violence from Luis Vahia Monteiro,

[...] disturbing the good harmony of justice and obstructing with feigned pretexts the execution of Your Majesty's orders, disturbing the dwellers of the Captaincy of Paraíba do Sul and causing the utmost distress to all, stopping at nothing in order to tend the interests of this uncle Prior Duarte Teixeira Chaves, they beg Your Majesty be pleased to provide satisfaction to the damages they suffer and help against the vexation those vassals were submitted to²².

Martim Correia de Sá also complained of the hindrance the Governor of Rio de Janeiro had caused to his exercise of his father's jurisdiction as captain donatary, for which he had the patent, by arresting him. According to Martim, the Governor had interpreted a 1704 order that empowered Governors to appoint the captains-in-chief in the donataries' districts when the latter were remiss in doing so themselves. He alleged that the Viscount had fulfilled this duty, contrary to the Governor's claim.

The two versions were obviously conflicting. On February 1, 1730 the Governor charged Martim Correia de Sá with evicting João Alves Barreto from the post of Captain-in-chief of Campos de Goitacases, to which he had been appointed by the Governor, and appointing Manoel Ferreira de Sá instead. Moreover, he argued, Martim and his brother Luis José provided shelter to «perpetrators of atrocious crimes and deserting soldiers from the Captaincy of Rio de Janeiro». The Governor also charged the Viscount with fraud alleging that, contrary to his statement, he did not «fulfill any of the requisites to have his donation confirmed», which had been informed in 1727²³.

The clashes between the Governor and the Viscount end up disclosing the dwellers' views on the events. The Governor and the Viscount were blamed in turn for the dispute. The Viscount also tried to avail himself of the dwellers' alleged opinions on the Governor. On May 28, 1730, some dwellers in the Captaincy of Paraíba do Sul complained of the «unbearable injustice they had suffered from Governor Luis Vahia Monteiro by his preventing Martins Correia de Sá from exercising his father's, the Viscount of Asseca, donated jurisdiction.»²⁴. All his hatred, they wrote, resulted from the private affairs of the

22. Idem.

23. Ibidem.

24. Ibidem.

Governor's uncle, Prior Duarte Teixeira Chaves, who had unfairly leased the «vacant farms and the stray livestock [*gado do vento*]» to Francisco Manhães Barreto, «a rebellious man who, driven by his bad temper and because of the terms of the lease, had made many extortions and invaded fenced farms and convents' fields, thereby causing great scandal and general vexation».

The reference to «vacant farms and stray livestock» was not just a figure of speech; it expressed the perception of a land occupation process that as it expanded towards allegedly vacant areas, concomitantly ensured property rights to some to the detriment of others. The weight of that statement also conveyed that the process of constituting property was characterized by intense violence among many social actors. This shows that the dispute was far from being merely about jurisdictional conflict, and that it also put at stake the effective property rights in the involved lands²⁵.

The Overseas Council described the conflict surrounding the Governor's complaints in a long document in 1732:

Obeying Your Majesty's orders, this Council analyzed the enclosed Letter dated August 12, 1729, in which the Governor of Rio de Janeiro, Luis Vahia Monteiro, reported the affront by Martim Correia de Sá, son of the Viscount de Asseca Donatary of the Captaincy of Paraíba do Sul, despoiling the said Governor of his exercise by taking possession of it based on his father's proxy, and that in keeping with the orders of September 10, 1704 and July 9, 1728 which stated that Martim Correia de Sá should not be allowed to govern the Captaincy, he the Governor had appointed a Captain-in-chief and after the latter had been entered in office by the Municipal Council, Martim Correia de Sá had removed him from the post and appointed another with a Patent letter from the Donatary Viscount, while he and his brother Luis José Correia assisted criminals in their House and committed other disturbances with great harm to Your Majesty's service and harassment of that people, and with said letter he has sent over many documents, which together with this one shall reach Your Majesty's Royal Hands²⁶.

However, the Overseas Council was aware of another version of the events as reported by the Municipal Council, and instructed the Chief Justice in Rio de Janeiro to take such resolution as seemed fair to him, and that inquiries must be made next to the Governor about the dwellers' complaints of violence.

25. Ibidem.

26. Ibidem.

The Prior Duarte Teixeira Chaves dismissed all the Viscount's complaints of his nephew the Governor as false and fantastic, in turn blaming the Viscount for «countless acts of insolence committed in the Captaincy of Paraíba do Sul, with his power and his suit of many relatives, doing violence».

It was up to the Chief Justice Manoel da Costa Mimoso to address the provision of January 21, 1730, commanding him to inform on his assessment of the Governor and of the petition by Martim and his brother, the Viscount's sons.

And having seen it [the Chief Justice's assessment] the Crown Attorney replied that this diligence had been very useful, as it had provided evidence that Martim Correia de Sá and Luis José Correia, sons of the Donatary of the Captaincy of the South, did not commit any excess for which they would deserve as much as a reprimand, and that the Governor of Rio de Janeiro, due to his bad temper and his aversion for them, acting in the interest of his cousin [sic] the Prior Duarte Teixeira Chaves, has caused all the disturbance; since all is calm now, it would be wise to drop this matter, and only to hold responsible the Governor of Rio de Janeiro for the excess of sending a detachment of thirty soldiers and a captain to destroy the dwellers in that Captaincy and of, without orders from Your Majesty, letting to a criminal the office of the stray livestock, only to destroy the cattle raisers in Campos²⁷.

The brief and emblematic reference to cattle raisers hints that the process of occupation was characterized by constant violence against them. However unfounded the complaints, though, they still stood, for shortly afterwards Martim Correia de Sá was again accused

[...] of the rough manner in which he took possession of the Captaincy of Paraíba do Sul from his father, [...] and [the plaintiffs] also mention the requests they made to the Governor of Rio de Janeiro, and the favourable sentences they obtained in the Court of Appeal [Relação] in Bahia, and that he wanted to see them enforced in the restitution of the posts from which they had unjustly been removed [...], and much as they tried they were not able to achieve it, and having requested it from the Chief Justice in Rio de Janeiro Judge Manoel da Costa Mimoso, who lived there at the time, he had granted none of their requests, for this Minister is completely partial to said Martim Correia de Sá; and finally beg Your Majesty to have their injuries repaired, and to free them from being subject to Donataries by taking that

27. Ibidem.

Captaincy back in his Royal Crown and having them ruled by one of his Ministers [...]»²⁸.

5. THE STRIVE FOR LEGITIMACY: BETWEEN LEGAL AND MORAL ARGUMENTS

The accusation made to Judge Mimoso related to a concrete element of physical appropriation of the territory. While measuring the Viscount's captaincy, he had damaged the interests of the Royal Crown. Instead of just taking the ten leagues which rightfully belonged to the captain donatary according to the terms of donation, out of the 30 that made up the coast of the captaincy of Paraíba do Sul, the Judge had ten leagues thrown in out of the neighbouring territory of Cabo Frio. With this ruse, «the Viscount now had twice as much coastal land, without limits into the interior, and was evicting the people from the lands they possessed, as well as from those of the college of the Jesuits»²⁹. The location of the region of Cabo Frio in Map 3 shows the locus of the dispute.

The Municipal Council of Cabo Frio took a stand about the encroachment, denouncing the fact that that the captaincy of Paraíba do Sul would thus have jurisdiction over 40 leagues of coast, while Cabo Frio would lose ten. The Chief Exchequer had to take a stand too, since those developments might harm the royal interests. His assessment was that in fact

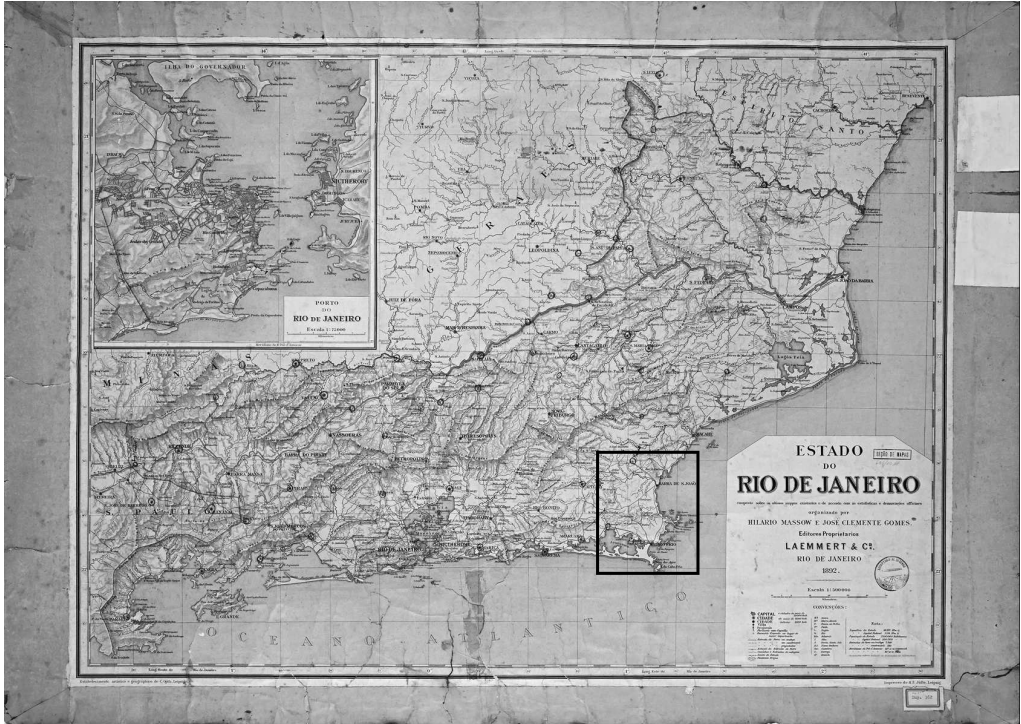
[...] there was harm to Your Majesty's Royal Finance, and that the Governor rightly insists in classifying as excessive the measurement and the record of said Captaincy for the reasons presented, which are visibly justified in view of the grant and the confrontation identified therein, and therefore the complaint of the Municipal Officials of Cabo Frio is shown to be equally justified, which territory the Donatary has unduly claimed by means of that biased measurement [...] including in Rio de Macahé and the Ilha de Santa Anna, which have always belonged to Cabo Frio, as well indicated by the landmark placed in Carapebus ever since the time of the donation, thus establishing the correct boundaries of the old Captaincy [...]»³⁰.

28. Ibidem.

29. Ibidem.

30. Ibidem.

MAP 3
Cabo Frio in the State of Rio de Janeiro, 1891



Source: Arquivo Público do Estado do Rio de Janeiro. <http://docvirt.no-ip.com/docreader.net/DocReader.aspx?bib=\Acervo01\drive_p\Trbs\Aperj\REG_TERRA.DocPro>. Accessed on July 5, 2012.

The Chief Exchequer also recommended that the donatary lose his grant while legal measurements were not performed. In his view, it would be meeting that the «mathematician priests» who were in the State of Brazil were in charge of the measurements:

When consulted, the Crown Attorney replied that the boundary delimitation that had been done by the Chief Justice in Rio de Janeiro requires better examination, for in it he has followed whatever those he trusted wanted to suggest, and since Priests Diogo Soares and Capaci were in the Captaincy drawing the Map, they should be appointed to examine the accuracy of the boundaries.

This suggestion portrays a context where territorial claims involved not only disputes between colonial powers, namely Spain and Portugal, but also struggles with the participation of various Crown agents for the delimitation and the legitimacy of the internal boundaries of their respective properties, possessions and jurisdictions.

Besides the strictly legal arguments, the litigating parties attempted to legitimize their versions of the facts by means of an aggressive contrast of the image of the other party to an ideal of justice. Social norms and transgressions are the bases of moral wrath, as well as of the perceptions of justice and injustice. People can be angry because they feel either that the prevailing norm was transgressed, or that it is wrong in itself and another one is necessary. Without norms ruling social life, there would be neither indignation nor feelings of injustice. Awareness of injustice would likewise be impossible if human beings could be convinced to accept all and every norm (Moore Jr., 1978: 20).

In our view, the use of overtly offensive language was made in order to legitimize the «truth» of each party's appropriation to the detriment of the others'. Some sentences are emblematic for our discussion about this discourse of intransigence towards the other. For instance, according to the Governor, the sons of the Viscount of Asseca «assisted criminals in their House, and committed other disturbances that severely damage Your Majesty's service and disturb the people [...]». The Governor was said to disturb «the good harmony of Justice, [...] obstructing with feigned pretexts the execution of Your Majesty's orders». Dwellers of the Captaincy of Paraíba do Sul, in their turn, complained of «unbearable injustice» in the hands of Governor Luis Vahia Monteiro; and depicted Francisco Manhães Barreto, to whom Prior Duarte Teixeira Chaves had leased the vacant farms and the stray livestock, as «a rebellious man who, driven by his bad temper [...] had made many extortions, invading fenced farms and convents' fields, thereby causing great scandal and general vexation».

It seems clear that feelings of (in)justice were expressed in the requests to the King, in the many interpretations of the laws, in the complaints and the uprisings, which may help us acknowledge the fact that moral wrath and the sense of social injustice should be researched, because they are fundamentally historical (Moore Jr., 1978: 35). Such feelings are grounded on undermining the morals of the other, on the use of language aiming to destroy the honour and the personal trajectory of the object of wrath. Through this bias, the legitimacy if not the legality of the rights of an alleged holder of a specific portion of land might be questioned, and claims could be made for alternative legitimacies.

It is also interesting to observe that discourse based on wrath and demoralization of the other might also be aimed at «protecting» those «unfavoured by fate», bringing forth the classification of the miserable proposed by 18th century jurist Manuel Álvares Pêgas (who also happened to be the author of a book on entailment). Jurists were quite cautious when referring to the rights of the poor but, according to Hespanha, the «idea that the poor had a natural right to surplus goods was widely prevailing» (Hespanha, 2010: 234). Hence

Judge Mimoso's adamant statement that where «the poor suffer, the rich do as they please»³¹.

Finally, if one of the key notions of the *Ancien Régime* is that of «honesty», the discourse of intransigence can be interpreted under yet a different light. According to Hespanha, «the acquisition of wealth follows proceedings and timings. It should not be pursued for its own sake, but rather result of the careful management of one's own» (Hespanha, 2010: 258). Moreover, wealth can become a legitimate way to a «change of estate, provided it does not result from an illegitimate process of acquiring assets» (Hespanha, 2010: 259). In the occupation of Portuguese America, as we could see in the case in hand, the complex meanderings of territorial occupation were unveiled, which often opposed honesty and wealth – or rather allowed for different definitions of honesty in order to legitimize or de-legitimize the acquisition of wealth. The Assecas were a powerful and well known family, acknowledged as the epitome of nobility. The nobility status of the Viscount did not and could not inhibit excesses of power. However, he might not occupy land that was not recognized as his, any more than he might collect tithes in land that belonged to the Crown or to other donataries. In the interplay of honesty and wealth, their adversaries did not consider it fair and legitimate that the Assecas should continue to lead the occupation process in those lands, along with local jurisdiction and taking advantage of it. But their main opponent did not manage either to legitimize his ownership of the disputed land. The making of property was thus the result of reiterated violence in the efforts of local potentates as well as small and medium farmers in order to claim for themselves a portion of the land of the Captaincy of Paraíba do Sul.

6. OF RENEWED DISPUTE AND A PROVISIONAL CONCLUSION

The story did not end here. The death of the 3rd Viscount of Asseca in 1745 certainly reignited the dispute over the land occupied by the Assecas, in the areas that were, at least hypothetically, a part of the family entail. His successor was the firstborn, Martim Correia de Sá de Benevides Velasco. Born in 1698, he married D. Mariana Josefa Joaquina de Lancastre, daughter of the Viceroy of India and D. Joana Bernarda de Noronha e Lancastre. However, since the marriage was childless the estate was passed on to his brother Luis José. Both, as we know, had actively fought for their father's interests as they were coveted by his adversaries.

31. Ibidem.

Already in 1742, three years before their father's demise, Martim Correia had requested «the renewal of the landmarks demarcating the boundaries of Campos dos Goitacases, located in the district of Rio de Janeiro *and belonging to the entail he had inherited from his father*»³². It was still difficult to maintain control over those lands, as once more in 1747, and in two documents, Martim reiterated his request, asking to be delivered the sentence justifying his status as the firstborn of the Viscount of Asseca Diogo Correia de Sá, as well as the donation charter of the Captaincy, as his father had requested in 1726³³. In the following year, in a series of letters, he again disputed the demarcation of the boundaries, reclaiming the land that, according to him, had been «[...] unjustly taken possession of by many dwellers in his captaincy and by others in the Captaincy of Cabo Frio»³⁴.

But it is not important at this point do discuss the upcoming chapters in this story, but rather to highlight some issues that, in my view, are enlightened by the compelling history of the Assecas.

Firstly, it is possible to state that in spite of the specificity of the Viscount of Asseca's trajectory and of his importance in the metropolitan elite, the disputes and the ideas of justice and injustice expressed in the discourse of the litigating parties were not unique in the history of domination, negotiation and resistance between potentates and farmers regarding the possession of land. Although not a central topic in the studies of Angelo Pessoa about Casa da Torre, in the State of Bahia, both his writings and the documents made available by project Resgate confirm the existence of intense dispute between the owners of the entail and the farmer, which culminated in the Crown decision to declare vacant the land that had been granted in *sesmaria* to the entail, and which were contested by settlers in the Sertão do Piauí (Pessoa, 2003; Motta, 2009). Casa da Ponte, another entail belonging to the Guedes de Brito family, was also at the centre of intense dispute throughout the 18th century. Dwellers in many locations of the captaincy of Minas Gerais questioned the entail's right in the land of those parts (Neves, 2003). When studying the region of Bahia, Marcio de Santos also stressed that the historical analysis of the property definition of the Brazilian back-countries (*sertões*) shows that the process was characterized by gaps and discontinuity, contrary to the still prevalent model of a continuous territory (Santos, 2010).

32. Projeto Resgate. Rio De Janeiro 017-01, Cx 55. D. 12940, my emphasis.

33. Projeto Resgate. Rio De Janeiro 017-01 Cs 57 D. 13346 e D. 13347.

34. Projeto Resgate. Rio De Janeiro 017-01 Cs 59 D. 13893-13894, 13895, 13896-13897.

Secondly, although it may be too soon to draw an informed conclusion on the 18th century land conflicts involving entails in the Americas, there is strong evidence that such processes also took place in Mexico and other colonial regions. The literature about issues involving the right to land and the dimensions of property in that country are more significant, especially due to the weight of the Mexican tradition of peasant resistance, always recalled and inscribed in the memory of its inhabitants. Spanish-speaking historians, influenced by Clavero (1974), have endeavoured to retrace the trajectories of appropriation of many *mayorazgos* in New Spain. Among them, Jesús Gómez Serrano's study of «an unfounded entail» stands out (Serrano, 2007). Even though the author's aim was not to discuss the right to the land, the conceptions of justice and the discourses of intransigency as delineated in the present work, several indications in his work point in this direction. For this reason, I submit that recovering the histories of different conceptions of rights and their entanglements may prove to be a new window for us to understand the history of conflicts and the different perceptions on possession and property in the Americas.

Thirdly, according to Rosa Congost, three problems hinder the historical analysis of the property rights. Like Levi (1988) and Thompson (1976; 1991), she believes that there is an excessively linear conception of history that unfolds as a search for evidence of progress and economic growth, coupled with an excessively legalistic perspective that assigns an almost exclusive role to the law and the State. Lastly, and perhaps most important of all, there is a reification of the concept of property that obscures the plural, open and transforming character of the history of property rights (Congost, 2007: 43).

However, and to conclude, the concrete experiences of 18th century land dispute in colonial areas operate with juridical discourses that are hard for us to apprehend. Both settlers and rulers used concepts such as *sesmarias*, entailment, and domain, which had not originated in the disputed regions. In other words, they tried to translate their perceptions of (in)justice using the legal norms they knew and which had originated in the mainland. Therefore, the reflection about these discourses will always depend on the access to documentation about the conflicts, detailed enough to enable a reconstruction of both the disputes themselves and the different views that they convey upon the history of site occupation.

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