



COLONIAL LAND LEGACIES IN THE PORTUGUESE-SPEAKING WORLD

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The Roots of Inequality: *Sesmaria* Land Grants in Colonial Brazil

Carmen Alveal

The inequalities and injustice that pervade land ownership and occupation in Brazil are notorious. While much of the population (in both urban and rural areas) lives in precarious conditions with no official title to the land on which they live, a very small minority owns vast estates and the wealth and influence that go with them.¹ This inequality permeates every aspect of social, political, and cultural life in the country. Numerous studies have emphasized the importance of examining colonial land legacies to better understand their impact on present-day realities. Tania Murray Li, Ann Stoler, and Brenna Bhandar have, from different perspectives, considered how the race and social class of the individuals involved in agrarian conflicts influenced property rights and judicial decisions.² These factors have had, and continue to have, a very significant role in land rights in Brazil, particularly given the close social ties between the Brazilian judiciary and landowning classes and corporations.

The origin and development of land inequality in Brazil is closely related to the system of *sesmaria* land grants, which the Portuguese colonizers introduced into the country in the mid-sixteenth century.³ The Portuguese jurist Marcello Caetano states that the social reality of the Portuguese colonization of Brazil led to distortion of the key principles underlying the original concept *sesmaria*, and Delmiro dos Santos has described the way in which the application of the *sesmaria* regime in the colony led to the creation of a dominant group of landowners (landlords) who controlled immense swaths of land.⁴ *Sesmarias* can be broadly described as a conditional right to occupy land in return for cultivating it. They were introduced in Portugal in 1375, as a response to the social and economic ravages of the plague. Rural areas had suffered drastic depopulation. Crops

withered in the fields and there was a persistent threat of food shortages in the towns and cities. In order to re-establish agricultural production, the Portuguese Crown issued *sesmarias* granting those who cultivated land lifelong rights to remain on it.⁵

With the expansion of Portuguese control over overseas territories in the sixteenth century, the Crown applied the system of *sesmarias* to the use and occupation of newly settled land. However, the attempt to impose the Portuguese model of *sesmaria* onto a vastly different territorial and social reality proved, in the long run, to be unworkable. Marcia Motta, in her work *Right to Land in Brazil*, describes in detail many of the serious problems that ensued in Portuguese America.⁶

Essentially, while *sesmarias* in Portugal were focused on the need to ensure agricultural production, in Portuguese America there were other pressing concerns. The territory was vast and sparsely populated by Indigenous people. Rival European powers were seeking to expand their possessions on the continent and there was an ever-present threat of invasion by other Europeans. The Indigenous populations in some areas were hostile to the Portuguese presence and engaged in armed conflict. The Crown's overriding aim was to ensure that its vast territory was occupied and secured against incursion. To that end, many of the *sesmaria* grants conferred in Brazil, particularly during the early years of colonization, were over very large areas of land that, in practice, were impossible for grantees to cultivate. Many of these grants were made to Portuguese nobles or others who had connections with the Crown or who had played key roles in the conquest and colonization of territory. Cultivation was not the primary objective of these individuals. The large land grants conferred social status and influence and considerable political power, akin to that of the seigneurial class in *ancien régime* Europe.⁷

The Portuguese Crown needed to ensure that it had allies in the colony who would defend its interests. That, to a very large extent, meant drawing on a relatively small group of people—namely, the *fidalgos*, Portuguese nobles, loyal to the Crown, who had access to the necessary social, political, and military means with which to exercise control in the colony.⁸ *Fidalgos* were appointed to key posts, such as *capitão-mor* (administrative and military governance), *ouvidor* (administration of justice), and *provedor* (administration and collection of taxes and other revenue).

Many *fidalgos* were granted *sesmarias* over vast areas of land as a reward for their services (or to ensure their continued loyalty). As the land area of the colony increased following further incursions into the hinterland and successful military campaigns against Indigenous populations, this practice of granting

sesmarias as a *mercê* (benefit) was widened to include land grants as a reward conferred on soldiers and other Crown agents in recognition for their service.⁹

The granting of *sesmarias* as a *mercê* had important consequences. In its original form in Portugal, the *sesmaria* was a conditional land grant—the main condition being that the grantee was to cultivate the land in order to ensure an adequate supply of agricultural produce to population centres. The *fidalgos* in Portuguese America, however, did not, in the main, consider themselves bound by this requirement. They were “nobles,” born to rule over others and to reap the benefits of social position and prestige. For these individuals, the purpose of an extensive *sesmaria* grant in the colony was to enable them to exercise their role as seigneurs (major landowners), as their forefathers had done in Portugal, with others cultivating the land for their benefit and subject to their control.¹⁰ Those who received land grants in reward for services rendered (e.g., army officers) were also inclined to this world view. They did not see themselves as the holders of a conditional grant. In their minds, they had the status of owners above the law, although in legal terms that clearly was not the case.

For a while, the system appeared to be working in some areas. The territory was vast and there was no shortage of fertile land. New settlers arriving in the colony, from Portugal and elsewhere in the empire, simply set up home in areas that were unoccupied, without the need to obtain any formal instrument or without knowledge of how to request a formal land title, and began to cultivate the land, mainly for their own subsistence. In many cases, they settled on land that had already been granted in *sesmaria* to another party. They were commonly referred to as *posseiros* (squatters) or *lavradores* (peasant-farmers). Over time, their number increased significantly. Other forms of land occupation emerged. For example, it was common practice for slave owners to give slaves (and former slaves) an area of land to cultivate for subsistence.¹¹ This coexistence of various forms of occupation and use of land became an established custom that was widely recognized in the colony, but was never reflected in legislation or the formal rules governing *sesmarias*.

The *fidalgos* and other major landowners, considering themselves to be landlords (*senhores da terra*) believed that the *posseiros*, *lavradores*, and other dwellers on “their” land were under a social and moral duty to pay rent (*rendas*) and yield, just as in the *ancien régime*. Charging *rendas* and yield was technically illegal under the applicable *sesmaria* legislation, but it was a widespread practice and was, in the main, tolerated, at least when the seigneurs were not excessive in their demands.¹² Jurist Paulo Grossi has stated that ownership of land is, above else, a matter of “mentality.”¹³ The powerful *senhores da terra* who held vast *sesmaria*

land grants were in fact the holders of conditional land titles, but their mental construct was such that they had special ownership rights over land and people.¹⁴

As the number of new arrivals to the colony continued to increase, so did the demand for land. That led to considerable conflict over land rights. When, in the eighteenth century, there was a shift away from cattle rearing and agricultural production toward large-scale sugar production and the mining of precious minerals, the *senhores da terra* sought to interfere directly in the established customary rights of dwellers who had no formal instrument. They used their wealth and influence to evict *posseiros* and *lavradores* and usurped the rights of the holders of small-scale *sesmarias*. Research into the historical records, particularly petitions filed to the Overseas Council (Conselho Ultramarino) in Lisbon and other correspondence exchanged between holders of *sesmaria* grants and the central authorities in Portugal, has revealed the extent of the bitter conflict that ensued between powerful *senhores da terra* and less influential *sesmeiros*.¹⁵ Some *sesmeiros* fought long and hard for recognition of their rights, occasionally with the support of local municipal authorities. Ultimately, however, the more socially and economically powerful landholders prevailed, and tens of thousands of *sesmeiros*, *posseiros*, and *lavradores* (the precise number is impossible to calculate) were unlawfully deprived of their land rights. The Crown was initially slow to intervene and when, from the 1750s onward, it made more serious attempts to tackle the gross violations being perpetrated in the colony, its efforts had limited success.¹⁶

In fact, the system of *sesmarias*, highly bureaucratic as it was, was weighted against less privileged members of colonial society. Settlers who wished to secure a definitive grant of a *sesmaria* were under a duty to cultivate the land following the provisional grant. These provisional grants were often very vaguely worded, and the precise area of the land unclear. The *sesmeiros* were required to arrange for formal measurement and demarcation (a complex and time-consuming process they had to pay for themselves) and then submit a petition to the king in Lisbon in order to receive formal and definitive land title.¹⁷

The way in which the system was administered also made life difficult for many *sesmeiros*. The Portuguese Crown sought to maintain ultimate control over colonial territories by establishing administrative bodies that had overlapping jurisdiction.¹⁸ This meant that much of the work done by these bodies involved overseeing each other. In the case of *sesmarias*, captains-major (*capitão-mor*), revenue officials (*provedores*), legal ombudsmen (*ouvidores*), and local councils (*concelhos* or *camaras municipais*) were all involved in the administration of grants of *sesmaria* and frequently clashed over the question which measures were to be implemented, and how. Captains-major (governors) tended to be

more concerned with security issues above all else and more inclined than other authorities to defend and even encourage occupation of land by undocumented *posseiros* and *lavradores*, because occupation of the land was a means of deterring invasions by foreign powers and Indigenous groups. The Crown, later, was more resistant to grants of *sesmarias* over large areas of land when the scale of the grants risked conflict with existing settlers.¹⁹ Captains-major tended to be more aligned with local interests, which often clashed with centralized Crown policies.²⁰ *Provedores*, on the other hand, were usually focused on raising revenue for the Crown, even when that meant undermining established (but undocumented) land rights or demanding a high level of payments from *sesmeiros*. *Ouvidores* jealously guarded their prerogatives of demarcating *sesmaria* land, in legal lawsuits (and charging the respective fees), but they had several other legal duties, over and above their function of dealing with *sesmaria* disputes and demarcations, and in practice they were unable to effectively meet the demand for land measurement. The demarcation process was unwieldy and involved travelling to remote areas and then walking around vast areas of land. Demarcation disputes were common and *ouvidores* quite often found themselves embroiled in bitter conflicts, with threats of violence or intimidation. Despite the substantial fees they were entitled to charge, it was not uncommon for *ouvidores* to avoid exercising their duties far away from urban centres.²¹

Given these limitations on the exercise of the functions of the centralized colonial authorities, much of the work of administering *sesmarias* in rural areas was left to local town councils, known as *câmaras municipais* or *concelhos*. Members of the council sat as judges (known as *juizes ordinários* and without a formal law degree), dealing with local issues, including land disputes. Frequently, the geographical location of the councils and the consequent difficulties in communicating with the rest of the empire led to their developing distinct styles of governing and administering justice, which was sometimes out of step with official Crown policy. In larger towns, many of the councils were controlled by groups of local landholders, who used their position to expand their own power and influence.²² In smaller towns and more remote areas, councils were often less homogenous in terms of their composition, with several illiterate members, as well as those from less privileged backgrounds, holding judicial office as *juizes ordinários*.²³ However, these smaller councils generally had less political leverage and were less able to effectively resist interference by colonial authorities or major landowners (*senhores de terras*).

The disparate nature of the councils meant that there was often a significant variation in their application of the rules on *sesmarias* and other land-related legislation. The *juizes ordinários* frequently relied on local customs when

interpreting the statutory provisions, applying a case-by-case approach that was typical of the *ancien régime*.²⁴ In Portuguese America, custom-based rules were particularly important, given that it was not easy to apply Portuguese legal codes to a very different local reality, and also because there was still a huge influence of the *ius commune*.²⁵ These customs and the *ius commune* included acceptance of the simultaneous existence of various forms of conditional property rights (both documented and otherwise) over the same area of land. From early colonial times the notion of the property rights over land (*propriedade senhorial*) held by major landowners (the *senhores da terra*), often extending over vast areas, coexisted with the notion of conditional property rights, including *sesmarias* and the informal rights of *posseiros*, *lavradores*, former slaves, and Indigenous inhabitants.²⁶ On the other hand, there was, as we saw earlier, widespread social acceptance of the right of the *senhores da terra* to demand payment (*rendas*) from *posseiros*, *lavradores*, and others, even though the practice was prohibited by the applicable rules.

Throughout much of the colonial period, the courts upheld and sought to protect the custom-based rights of undocumented *posseiros* and *lavradores* to remain on the land. However, the advent of mineral and gold prospecting, particularly in the eighteenth century, led to an increased demand by the *senhores da terra* for unrestricted access to land. This in turn led to a surge in conflicts over land rights, including frequent allegations by smaller *sesmeiros* that their rights were being usurped by the *senhores da terra*. The local councils were, in the main, unable to curb illegal conduct by powerful *senhores da terra*. The individuals in question succeeded in consolidating their power either through violence or through influence trafficking with higher courts and the general government. Archived case records of local litigation and petitions submitted to the authorities in Lisbon reveal the extent to which small-scale *sesmeiros* and peasant-farmers (*lavradores*) were subjected to the greater power and influence of the *senhores da terras*. As a result, many “undocumented” inhabitants, including *sesmeiros* who had not been able to obtain royal confirmation of their definitive grant, were expelled from land their families had cultivated for generations.²⁷

The divergent nature of the local councils was a source of concern for colonial authorities, and in the seventeenth century, in a drive to increase control over the territory, the Crown appointed circuit judges (*juizes de fora*) to sit in the principal towns and cities for three-year periods.²⁸ While their duties were initially limited to Crown revenue matters, these judges soon extended their jurisdiction to cover all types of lawsuits, including land issues. According to the Brazilian researcher Maria Fernanda Bicalho, historians have generally viewed these judges as agents of the Crown who were frequently at odds with municipal authorities,

but it can also be argued that they played a valuable role in standardizing (and thus rendering more effective) the sometimes confusing legal and administrative parameters issued from Portugal.²⁹

The Crown also established an appellate court—the Tribunal de Relação, the highest-instance court in colonial Brazil, sitting in Salvador (from 1609 onward) and, much later (beginning in 1750), in Rio de Janeiro. Appeals were permitted to the Overseas Council—or Conselho Ultramarino—in Lisbon and to the Portuguese Supreme Court (Casa da Suplicação) and the Royal High Court (Desembargo do Paço).³⁰ Many individuals bypassed the first-instance courts and submitted their case directly either to the Tribunal da Relação or one of the appellate courts in Lisbon, or even directly to the king.

There was considerable rivalry between the courts (particularly between the *juizes ordinários*, the *juizes de fora*, and the Court of Appeal (Tribunal da Relação), and frequent disputes as to jurisdiction. In practice, it was difficult for most *sesmeiros* to file proceedings before any court other than the local council (*câmara municipal*), and there are few recorded instances of ordinary *sesmeiros* successfully challenging powerful landowners before the higher courts.

The lack of effective recourse to justice meant that some individuals took the law into their own hands, while many others were simply deprived of their rights because they had no means of enforcing them.

Case Study: The Guedes de Brito Family

One of the main aims of historical research into *sesmarias* is to examine how the legal rules worked (or failed to work) in real life. That involves detailed investigation of the original legislation, the deeds of *sesmaria*, the records of cases filed before the courts, petitions submitted to central authorities in Lisbon, correspondence exchanged between administrative authorities in Brazil and the Portuguese Crown and Overseas Council, as well as first-hand accounts by contemporaries of events in the colony. One of the most striking histories pieced together by researchers, using the sources referred to above, is that of the Guedes de Brito family, a history that is in many ways emblematic of the failings and injustices of the *sesmaria* system in Brazil.

A manuscript stored at the National Library of Rio de Janeiro traces back through time a bitter land dispute that had persisted for decades in colonial Brazil. The document is a petition sent by the municipal council of Jacobina (Bahia Captaincy) in the late 1770s to Queen Dona Maria I (1777–1816).³¹

In its petition, the council described the harassment and violence perpetrated against local *sesmeiros* by the agents of an individual known as Dona Francisca Joana Josefa da Câmara Coutinho, the widow of Manoel de Saldanha da Gama.³²

It was discovered from the records that in fact *sesmeiros* and other local inhabitants had been the victims of a concerted campaign of harassment that had started over fifty years earlier, perpetrated by the first wife of Manoel de Saldanha da Gama, Dona Joana da Silva Guedes deBrito. Further analysis of the document revealed that the problems had in fact begun with the actions of Joana's grandfather, Antônio Guedes deBrito.

Antônio Guedes de Brito (ca. 1627–94) was a notorious Indian-hunter who was given the title by the colonial authorities to the land he seized. He was granted several *sesmarias* that were registered in the Books of the Treasury in Salvador, but they were never formally confirmed in Portugal.

In fact, he obtained his first *sesmaria* in 1652, as a reward for military services, after he had “pacified most of the savage people” and had “spent a lot of money” doing so. On the basis that “there were pasture lands between the Tayaihu and Caguaohe hills that had never been populated,” and since Antônio Guedes and his father “possessed wealth and many cattle,” the colonial treasurer (*provedor-mor*) granted them an area of eight leagues each (approximately 1,118 square kilometres) “as it is merited, on the grounds of their financial capacity and the benefit to the common good.”³³

Antônio Guedes, together with his father, obtained a second *sesmaria* in 1655.³⁴ The historian Luiz Alberto Moniz Bandeira states that the Guedes de Brito family filed their applications for *sesmaria* land on the basis of a need to graze cattle (i.e., that they were going to use the land for agricultural purposes), whereas in truth their real interest was to obtain access to areas where there was a potential for mining.³⁵ In the light of the assets that the Guedes de Brito declared in their application, the colonial treasurer decided that they had sufficient means to adequately cultivate the land, and again he had no hesitation in granting the application.

Antonio Guedes de Brito continued to wage war against Indigenous people and to hunt fugitive slaves who fled to *quilombos*.³⁶ This increased his prestige with the colonial authorities. He is also reported to have fought against Dutch forces in northeastern Brazil and to have led several expeditions into the hinterland to expand colonial territory.³⁷ He commanded what was, in effect, a private army, paying the wages of the troops from his personal resources.

The area of land held by Guedes de Brito in *sesmaria* was enormous, even by the standards of the time. The Filipinas Ordinances (Ordenações Filipinas) of 1603 did not place any limit on the scale of grants, merely stating that the area of land granted should be commensurate with the *sesmeiro*'s capacity to cultivate it. It was perfectly consistent with colonial policy at that time to grant Antonio

Guedes de Brito, a wealthy soldier who owned livestock and had a solid record of enslaving or expelling Indigenous people, all the land he requested.

In 1663, Antonio Guedes de Brito applied for a third *sesmaria*, this time jointly with Bernardo Vieira Ravasco, a former military officer who, interestingly, had been the secretary of state who registered Brito's two earlier *sesmarias* in the treasury records in Salvador. Brito and Ravasco justified their application on the grounds that the land they sought, in the hinterland, could be used for cattle rearing and crops and that they were prepared to cultivate it at their own expense. This, they argued, would be of great benefit to the royal treasury and the common good (the same grounds Brito had used for his previous applications). The application was successful, and they were granted a *sesmaria* over land extending from the source of the River Itapicuru up to the São Francisco River, and "also as many leagues as there are from the source of the Tapicurú to that of the Paraguassú" (a distance of approximately 250 kilometres).³⁸

None of the three *sesmarias* granted to Antônio Guedes de Brito were confirmed by the king in Portugal, which means that they were not completely legally valid, and could therefore be foreclosed by the Crown. This, however, did not prevent Antônio Guedes de Brito from becoming one of the largest landowners (*senhores de terra*) in the colony. In addition to amassing vast areas of land, he was awarded a series of military honours, including the titles of sergeant major (*sargento-mor*) and field marshal (*mestre de campo*).³⁹ In January 1671, he inherited title to a notary public's office—a highly strategic position in the colonial administration. Later, in 1679 he became a knight of the realm (*fidalgo cavaleiro da casa real*) by royal appointment, definitively establishing himself as a member of the colonial nobility.⁴⁰

Antônio Guedes da Silva married Guiomar Ximenes de Aragão in 1677, but they produced no heirs. He did, however, father a daughter, out of wedlock, by an Indigenous woman named Serafina de Sousa Dormundo. He appointed the child, Isabel Maria Guedes da Silva, his official heir. Following Antonio's sudden death in around 1692 (the exact date is unknown) Isabel inherited her father's fortune.

Isabel Maria Guedes da Silva grew up and married Colonel Antonio da Silva Pimentel, who also owned a considerable amount of land (including *sesmarias* that were not confirmed by the Crown in Portugal).⁴¹ They did not produce male heirs, and their vast wealth passed to their daughter, Joana da Silva Guedes de Brito.

Both Isabel Maria and her daughter Joana (Antonio Guedes de Brito's granddaughter) suffered considerable discrimination and ridicule because of their Indigenous ancestry.⁴² They nevertheless succeeded in protecting and increasing

their fortune and, over time, they were able to secure a certain degree of social status. In 1717, Joana da Silva Guedes de Brito married a *fidalgo*, Dom João de Mascarenhas (the son of Count Coculim), who, unusually for the time, agreed to move from Portugal to take up residence with his wife in the Portuguese colony. The marriage was widely considered to be a strategic alliance. Joana Guedes da Silva possessed vast wealth and Dom João de Mascarenhas was of “noble blood.” The match was not, however, a happy one. Dom João de Mascarenhas was contemptuous of his wife’s racial background. He also began to misappropriate property and money. Eventually, Joana and her mother joined forces and denounced him to the king. Dom João de Mascarenhas was arrested and returned to Lisbon in disgrace.

Joana da Silva Guedes de Brito married again, aged forty. Her second husband was another Portuguese *fidalgo*, Manoel de Saldanha da Gama, twenty-one years her junior. He was the son of Dom João Saldanha da Gama, the fifth Count of Ponte and viceroy of the Indies. Following Joana and Manoel’s marriage, the assets of the Guedes de Brito family were renamed the estate of the House of Ponte (Casa de Ponte) and the Guedes de Brito *sesmarias*, despite not having been confirmed by the king, were merged into the joint estate.

Joana died, childless, in 1762, leaving her husband as sole heir. The widowed Manoel de Saldanha da Gama returned to Portugal in 1776, where he married Francisca Joana Josefa da Câmara Coutinho and fathered four children,⁴³ who inherited the estate, including the former assets of Joana Guedes de Brito.⁴⁴

The wealth of the Guedes de Brito family was based on extensive *sesmaria* holdings. These holdings were never given the required assent by the Crown (in fact there is no record that the family ever applied to Lisbon for confirmation of their grants). In other words, the family did not comply with the requirements of *sesmaria* legislation.⁴⁵ In legal terms, their *sesmarias* lapsed approximately five years after the date of the initial provisional grant and thus could (should) have been foreclosed by Crown authorities. However, having succeeded, by strategic marriage and political alliances, to acquire the status of “nobles,” the family was able not only to retain and increase its wealth, but to exploit and disrupt the legitimate rights of other land users.

Throughout the eighteenth century the Guedes de Brito family and its successors engaged in legal battles and in unofficial, illegal manoeuvres (including threats and violence) to expel local residents from their lands or to otherwise exploit them. The family, which lived in Salvador and later in Portugal (following Manoel de Saldanha da Gama’s return to Lisbon), relied on a network of agents (lawyers, bailiffs, and henchmen) who acted on their orders.

The Historical Overseas Archives (Arquivo Histórico Ultramarino) in Lisbon contain several representations, petitions, and reports submitted to the Crown by colonial authorities in Brazil reporting abuses perpetrated by the Guedes family against the inhabitants of the land that fell within their *sesmarias*. The records of the National Library of Rio de Janeiro (Biblioteca Nacional do Rio de Janeiro) also contain a similar representation to the king submitted by the Jacobina municipal council.

The conflict in the Jacobina region came to a head during the eighteenth-century gold rush. Mines had been discovered in Jacobina and Rio de Contas and the area offered the potential for great wealth.⁴⁶ This led to disputes over the control of the best sites (*datas*). Smallholders (*posseiros*, *lavradores*, or small-scale *sesmeiros*) who discovered gold or other precious minerals on the land they cultivated were targeted by powerful individuals and groups, who used official and unofficial means (including violence) to evict them.⁴⁷ Joana da Silva Guedes de Brito and Manoel de Saldanha da Gama began to extort payment of rent on “their” land in an attempt to persuade the occupants to move away. When that failed, they likely resorted to forced evictions.

The residents of Jacobina filed suit before the municipal council, arguing that they had been the first settlers to make productive use of the land and that they were already paying heavy duties to the Crown in the form of tithes and duty on foodstuffs, slaves, and religious sacraments. Now the Guedes de Brito family was demanding further payments.⁴⁸

They asked the first-instance judge to examine the “fantastical” land deeds held by the Guedes de Brito family. The petitioners were fully aware that the *sesmaria* instruments were not valid in the eyes of the law because the grant had not been confirmed by the Crown and that the areas in question were much larger than the half-league of land stipulated in the current legislation. In a subsequent submission to the king they wrote that “the Respondent [Joana Guedes de Brito] holds no valid title whatsoever, but is merely an intruder.”⁴⁹

In fact, even before the case was heard at first instance, Dona Joana Guedes de Brito filed suit before the Court of Appeal (Tribunal da Relação) in Salvador, where she lived, requesting eviction orders against dwellers on land in the Jacobina region and asserting her legal rights as the holder of a *sesmaria*. The court in Salvador ruled in her favour, on the basis that the defendants were in default (i.e., they had not travelled 365 kilometres to attend a hearing, about which they had probably not been notified).⁵⁰ Following her victory, Joana Guedes de Brito’s agents, together with armed soldiers from Salvador, went to the home of some of those who opposed her and caused “significant destruction.”⁵¹

Appalled by these events, a member of the Jacobina municipal council, João Dias Rego, appealed on behalf of the inhabitants of the town of Santo Antonio de Jacobina to the Supreme Court (Casa da Suplicação) in Lisbon and directly to the king himself.⁵² In accordance with standard practice, his petition was submitted first to the Council for Overseas Affairs (Conselho Ultramarino) before being forwarded to the king.

In their representation to the king, the residents of Jacobina stated that Joana Guedes de Brito had secured a favourable court order by manipulation (*induztriozamente*)⁵³ and that her agents had then perpetrated acts of violence in the area, “unlawfully evicting dwellers from their farms, then selling or leasing the land to whom they saw fit, committing the greatest barbarities, for which losses we beg redress from Your Majesty.”⁵⁴

The Council for Overseas Affairs (Conselho Ultramarino) consulted the Portuguese secretary of state, Diogo de Mendonça Corte Real, in Lisbon. He voiced suspicions as to the decision taken by the Court of Appeal in Salvador, Brazil, and stated that Joana Guedes de Brito was seeking “to charge rent [*rendas*], on the basis of alleged and supposed *sesmarias*, over lands that contain gold mines, which belong to your Majesty.”⁵⁵ The Council asked the ombudsman-general (*ouvidor-geral*) of Bahia, José dos Santos Varjão, to hear the parties, investigate the *sesmarias* of Joana Guedes de Brito, and report back.

Having considered the report then sent to him, the king, Dom João V, in 1737 ordered the Court of Appeal (Tribunal da Relação) in Bahia to take all the necessary measures to “put an end to the violence perpetrated by Donna Joana da Silva Guedes de Brito.” The king further directed that the order granted by the Court of Appeal (the Tribunal da Relação in Salvador) in favour of Joana Guedes de Brito be stayed and that Joana Guedes de Brito submit all *sesmarias* for inspection by the “highest authority.” Astonishingly, the supreme justice of the Court of Appeal simply refused to submit to the king’s order, almost certainly at the instigation of Joana Guedes de Brito, and it was effectively ignored.⁵⁶

The final outcome of the appeal of the residents of Jacobina to the Supreme Court (Casa da Suplicação) is still unknown as it has not been possible to access all of the case records at the National Archives of the Torre do Tombo in Portugal.

What is known is that almost forty years later, the situation was largely unchanged, and the descendants of the Guedes de Brito family were still perpetrating abuses in the Jacobina area. The municipal council, in 1770, again petitioned the king. The Guedes de Brito/House of Ponte were accused of extorting unlawful payments from smallholders and other residents and of harassment and threats. The council again stated that the House of Ponte had failed to comply with the legal requirement of cultivating *sesmaria* land within the statutory period of five

years, and that their entitlement to title had therefore lapsed. According to the petitioners the Guedes de Brito family was farming only a few small areas on the banks of the São Francisco River, yet at the same time was using its influence in the area to impose a series of obligations on residents, such as the payment of duties on certain products or rent on lands they (the House of Pontes) were (unlawfully) leasing out.⁵⁷

The argument of failure to cultivate the lands raised a key legal issue.⁵⁸ According to the applicable ordinance—tome 4, title 43, paragraph 16—if *sesmaria* land was not cultivated within the stipulated period, it was to be transferred to another *sesmeiro* or to the persons who effectively cultivated it. The residents argued that as the Guedes de Brito family had neither demarcated their land nor adequately cultivated it, they had forfeited their right to the *sesmarias*. In such circumstances, those who were actually occupying and farming the land had legitimate entitlement to acquire title, which was also presented in *ius commune* tradition.

Conclusion

The various arguments as to the facts and the law raised in this litigation were symbolic of the social forces at play, and of the construction of discursive practices and mechanisms of power.⁵⁹ The Guedes de Brito/House of Ponte regarded themselves as *senhores da terra* exercising land ownership rights (*senhorio*), so that their titles to the land, unlike an unconfirmed *sesmaria*, were not subject to any requirement for cultivation.

While there was provision for status of *senhor da terra* in the legislation applicable to colonial Brazil, and the law distinguished such individuals from ordinary *sesmeiros*, both the Manuelina and Filipinas Ordinances made it very clear that any disputes as to *sesmarias* involving *senhores da terra* were to be resolved by the courts. In that sense, the *senhores da terra*, despite their privileged social status, were officially subject to the same treatment as “common” *sesmeiros* and had no authority to take the law into their own hands. Furthermore, the use of “agents” (*procuradores*) to manage and administer land was prohibited by the legislation, although this rule was often ignored in colonial Brazil.

The Guedes da Silva/House of Ponte believed themselves to be legitimately and morally entitled to own huge swaths of land, and to demand rent (*renda*) from those who farmed it (i.e., they considered themselves to have ownership rights over land and rights to charge rent). The residents of Jacobina, on the other hand, believed themselves, on the basis of *ius commune* and the *sesmaria* system, to have an undeniable right to the land they cultivated and from which they contributed to the royal coffers.⁶⁰ It was the local settlers, they argued, that had

been responsible for the development of the region, and for securing the land against hostile incursions. They also argued that as mining lands were subject to the jurisdiction of the Crown, only the king was entitled to exercise the relevant prerogatives.⁶¹

At the time of the submission of this representation to Dona Maria I, the lawsuit filed by João Dias Rego before the Supreme Court (Tribunal de Suplicação) forty years earlier had still not been decided. The order issued by the king had been ignored, as described above, and the successor to the Guedes de Brito/Casa de Ponte estate, Dona Francisca da Câmara Coutinho, was continuing to exploit and harass local residents. The residents argued before the queen that, pending a final order on the Supreme Court case, no one was entitled to “innovate” in terms of making demands of the residents based on recent mining legislation, nor could anyone be deprived of their legitimate possession of land they cultivated even if the *senhores da terra* were *fidalgos*.⁶²

The residents expressed a fear that the records of the long-standing case before the Supreme Court might somehow be lost, thereby benefitting their opponents.⁶³ Their concern was that the records might be deliberately removed by someone with a vested interest, or indeed that they might already have been lost in the major earthquake that devastated Lisbon in 1755.

The final outcome of the representation sent to Dona Maria is not known. Given the fifty-year history leading up to it, however, it seems unlikely that the response (if any) led to a timely and just solution. This dispute exemplifies the way in which the occupation and use of land was viewed by different agents in colonial society. The *sesmaria* was a conditional property right governed by a complex, highly bureaucratic administrative and legal system. The distribution of lands by *sesmaria* was a privilege that was highly sought after by influential individuals who aspired to be being *senhores de terras* in the Portuguese Empire.

NOTES TO CHAPTER 1

- 1 Less than 1 per cent of agricultural landowners own over 45 per cent of rural land. Large land estates (i.e., those of over 1,000 hectares in area) receive over 43 per cent of government agricultural credits but produce only 40 per cent of the country's agricultural yield, 70 per cent of which is produced by smaller landholdings. "Menos de 1% das propriedades agrícolas é dona de quase metade da área rural brasileira," Oxfam Brasil, 27 August 2019, <https://www.oxfam.org.br/publicacao/menos-de-1-das-propriedades-agricolas-e-dona-de-quase-metade-da-area-rural-brasileira/>.
- 2 Tania Murray Li, *Land's End: Capitalist Relations on an Indigenous Frontier* (Duke University Press, 2014); Ann Stoler, ed., *Imperial Debris: On Ruins and Ruination* (Duke University Press, 2013); Brenna Bhandhar, *Colonial Lives of Property: Law, Land, and Racial Regimes of Ownership* (Duke University Press, 2018).
- 3 José da Costa Porto, *Estudo sobre o sistema sesmaria* (Imprensa Universitária, 1965); Ruy Cirne Lima, *Pequena História territorial do Brasil: Sesmarias e terras devolutas* (Sulinas, 1954). *Sesmarias* existed only in the Atlantic Portuguese Empire. In Mozambique the term used was *prazos*, as explained by José Adelina in this volume.
- 4 Marcello Caetano, "As sesmarias no direito luso-brasileiro," *Revista do Instituto Histórico e Geográfico Brasileiro*, no. 348 (1985): 19–34; Delmiro dos Santos, *Direito Agrário: Sesmarias, terras devolutas, registro paroquial e legislação agrária* (CEJUP, 1986).
- 5 Virginia Rau, *Sesmarias medievais Portuguesas* (Estampa, 1946).
- 6 Marcia Maria Menendes Motta, *Right to Land in Brazil: The Gestation of the Conflict 1795–1824* (Universidade Federal Fluminense, 2014).
- 7 Alberto Passos Guimarães, *Quatro séculos de latifúndio* (Paz e terra, 1988); Erivaldo Fagundes Neves, *Estrutura fundiária e dinâmica mercantil: Alto sertão da Bahia, séculos XVIII e XIX* (EDUFBA/UEFS, 2005); Luiz Alberto Moniz Bandeira, *O feudo: A Casa da Torre de Garcia d'Ávila: Da conquista dos sertões à independência do Brasil* (Civilização Brasileira, 2000); Margarida Sobral Neto, *Terra e conflito: Região de Coimbra 1700–1834* (Palimage Editores, 1997); Porto, *Estudo*.
- 8 Rodrigo Ricúpero, *A formação da elite colonial* (Alameda, 2009); João Fragoso, "A nobreza da República: Notas sobre a formação da elite senhorial do Rio de Janeiro (séculos XVI e XVII)," *Topoi* 1, no. 1 (2000): 45–123.
- 9 Fragoso, "A nobreza"; Carmen Alveal, "Converting Land into Property in the Portuguese Atlantic World, 16th–18th Century" (PhD diss., Johns Hopkins University, 2007).
- 10 Célia Nonata da Silva, *Territórios de mando: Banditismo em Minas Gerais, século XVIII* (Crisálida, 2007); Carmen Alveal, "De senhorio colonial a território de mando: Os acossamentos de Antônio Vieira de Melo no Sertão do Ararobá (Pernambuco, século XVIII)," *Revista Brasileira de História*, no. 35 (2016): 41–64.
- 11 Ciro Cardoso, *Escravo ou camponês? O protocampesinato negro nas Américas* (Brasiliense, 1987); Jacob Gonderer, *O escravismo colonial* (Editora Ática, 1985). See also Rohrig, this volume.
- 12 Bandeira, *O feudo*.
- 13 Paolo Grossi, *História da propriedade e outros ensaios* (Renovar, 2006), 30.
- 14 Carmen Alveal, "A eficácia da ordem régia de 1697 na zona de pecuária das Capitanias do Norte," in *O domínio de outrem: Posse e propriedade na Era Moderna (Portugal e Brasil)*, ed. Márcia Motta and Monica Piccolo (Editora UEMA, 2017), 69–90; Carmen Alveal, "As vexações e opressões dos senhores coloniais e a constituição da carta régia de 1753 no Brasil colonial: A tradição da posse e o justo título," *Outros Tempos* 14, no. 23 (2017): 158–74.
- 15 In this chapter, we refer to the holders of *sesmaria* grants as *sesmeiros*. Originally, in Portugal, the term *sesmeiro* referred to the official who was responsible for the grant and administration of *sesmarias*.
- 16 Porto, *Estudo*.
- 17 Porto.
- 18 José Mattoso, *História de Portugal* (Editorial Estampa, 1994); António Manuel Hespanha, *Às vésperas do Leviathan: Instituições e Poder Político—Portugal, Século XVII* (Livraria Almedina, 1994).
- 19 Only in 1697 was the maximum size of a *sesmaria* finally established at 3 leagues by 1 league. Porto, *Estudo*; Lima, *Pequena*; Nelson Nozoe, "A aplicação da legislação sesmarial em território brasileiro," *Estudos Históricos* 6, no. 12 (2014): 1–26; Alveal, "A eficácia."
- 20 Porto, *Estudo*; Lima, *Pequena*; Nozoe, "A aplicação"; Alveal, "A eficácia."
- 21 Patrícia de Oliveira Dias, "O demarcador de terras: Atuação do desembargador Cristóvão Soares Reimão no processo de demarcação de sesmarias na ribeira do Jaguaribe (Capitania do Ceará—Brasil) (1700–1710)," *Revista de História da UEG* 5, no. 2 (2016): 86–109; Alveal, "Converting."

- 22 Maria Fernanda Batista Bicalho, "As Câmaras Ultramarinas e o Governo do Império," in *Antigo Regime nos Trópicos: a Dinâmica Imperial Portuguesa, Séculos XVI–XVIII*, ed. João Fragoso, Maria de Fátima Gouveia, and Maria Fernanda Bicalho (Civilização Brasileira, 2001), 189–221; Pedro Puntoni, "Bernardo Vieira Ravasco, Secretário do Estado do Brasil: Podere Elites na Bahia do Século XVII," in *Modos de Governar: Idéias e Práticas Políticas no Império Português, Séculos XVI ao XIX*, ed. Maria Fernanda Bicalho and Vera Lúcia do Amaral Ferlini (São Paulo: Alameda, 2005), 157–78.
- 23 E.g., Santo Antonio de Jacobina and Nossa Senhora do Livramento das Minas do Rio de Contas, in the captaincy of Bahia, and the town of Moucha (now called Oeiras), in the captaincy of Piauí. Alveal, "Converting."
- 24 Arno Wheling and Maria José Wheling, *Direito e Justiça no Brasil Colonial: O Tribunal da Relação do Rio de Janeiro (1751–1808)* (Renovar, 2004).
- 25 Antonio Manuel Hespanha, *Como os juristas viam o mundo (1550–1750): Direitos, estados, coisas, contratos, ações e crimes* (Livraria Almedina, 1994).
- 26 Carmen Alveal, "Land, Politics, and Society in Late Colonial Brazil: A Native American Perspective," in *International Seminar on the History of the Atlantic World, 1500–1800*, ed. Bernard Baylin (Harvard University, 2004), 1–31; Maria Regina Celestino de Almeida, *Metamorfoses Indígenas: Identidade e Cultura nas Aldeias Coloniais do Rio de Janeiro* (Arquivo Nacional, 2001).
- 27 See the authoritative work of the legal historian Laura Beck Varela, who studied the transition in Brazil from the system of *sesmarias*, with its emphasis on conditional ownership of land, to modern laws of property (as expressed in the Napoleonic Code and other civil codes), which make far greater provision for absolute property rights based on formal, registered title. Laura Beck Varela, *Das sesmarias à propriedade moderna: Um estudo de história do direito brasileiro* (Renovar, 2005).
- 28 *Juízes de fora* sat both as first-instance judges and as appellate judges, hearing appeals from the *juizes ordinários*, who were first-instance local judges, members of the municipal councils, who tried local issues.
- 29 Bicalho, "As Câmaras."
- 30 The Royal High Court, or "Court of the Royal Palace" (*Desembargo do Paço*), became a higher appellate court in its own right in 1521, when it was granted autonomy from the Supreme Court (*Casa de Suplicação*). Ana Maria do Rosário S. Rodrigues, *Desembargo do Paço* (Instituto dos Arquivos Nacionais/Torre do Tombo, 2000), 13–27. Unfortunately, the archives of civil lawsuits before the *Casa da Suplicação* are not yet available for public inspection, unlike the records of criminal proceedings.
- 31 The petition was signed by the following representatives of the council: the judge José Moreira Maia São Payo and council members Manuel Pimenta, Vasconcelos, João Mariano Xavier, and Pedro José Gonçalves Vitoria. "Representação da Câmara de Jacobina a S. M. pedindo obstatse a continuação dos vexames que faziam os procuradores de D. Francisca da Camara, viúva de Manoel Saldanha aos moradores ali, e historiando a origem da sesmaria da dita senhora," 3 February 1775, 425, Manuscript Section, II-33, 27, 8, National Library of Rio de Janeiro. Hereinafter referred to as "Representation."
- 32 Representation, 425.
- 33 "Carta de sesmaria a Antonio Brito Correa e Antonio Guedes de Brito," in *Documentos Históricos* 18 (1928), 346–8.
- 34 "Carta de sesmaria a Antonio Brito Correa e Antonio Guedes de Brito," in *Documentos Históricos* 18 (1928), 339–41.
- 35 Bandeira, *O feudo*, 161.
- 36 A *quilombo* is a settlement founded by people of African origin.
- 37 André João Antonil, *Cultura e Opulência no Brasil* (Edições Melhoramentos, 1976), 233–5, 211.
- 38 "Carta de sesmaria a Antonio Guedes de Brito," in *Documentos Históricos* 21 (1928), 185–7.
- 39 Neves, *Estrutura*.
- 40 The term "colonial nobility" in this context refers to the group of people, born in the colony or émigrés from Portugal or another part of the Portuguese Empire who settled in Brazil, cultivated and developed lands, and were actively involved in local political and administrative circles. For further analysis of the term, see Fragoso, "A nobreza."
- 41 Bandeira, *O feudo*, 174.
- 42 For a biography of Isabel Maria Guedes da Silva and her daughter Joana da Silva Guedes da Silva, see Maria Aparecida Schumacher, *Dicionário Mulheres do Brasil: De 1500 até a Atualidade* (Jorge Zahar Editor, 2000), 283–4, 291–2.

- 43 Including the sixth Count of Ponte, João de Saldanha da Gama Melo Torres Guedes de Brito, who inherited the family fortune and came to Brazil in 1808 together with the Portuguese royal family. He was governor and captain-general of Bahia until his death one year later.
- 44 Pedro Calmon, *História da Casa da Torre: Uma dinastia de pioneiros* (Livraria José Olympo Editora, 1958), 85.
- 45 Some scholars argue that Antônio Guedes de Brito legally altered his assets (estate) into a primogeniture (*morgado*), which was then inherited by Isabela Guedes de Brito. See Bandeira, *Ofúedo*, 161; Calmon, “*História*,” 83. If that is in fact the case, it could be argued that some provisions of the *sesmaria* legislation no longer applied to the estate (e.g., the requirement to cultivate the land).
- 46 No specific date is given for the discovery of gold in Jacobina. Boxer fixed the discovery of gold in the Rio das Mortes and Rio Doce regions between 1693 and 1695. Charles Boxer, *A Idade de Ouro do Brasil* (Nova Fronteira, 2000), 62.
- 47 Boxer, *A Idade*, 74.
- 48 “Consulta do Conselho Ultramarino ao rei D. João V sobre o pedido de João Dias e como procurador dos moradores e roceiros do continente das Minas da vila de Santo Antônio da Jacobina,” Papéis Avulsos, Bahia, Arquivo Historico Ultramarino, 17 March 1736, Box 65, Doc. 47.
- 49 Consulta, “A suplicada não é dona de título algum, mas somente intrusa.”
- 50 Seigneurs (*senhores de terra*) who were also *fidalgos* were legally entitled to file suit directly before the Court of Appeal bypassing the first-instance court. *Ordenações Filipinas*, book 2, title 25.
- 51 Consulta.
- 52 Consulta.
- 53 Representation, 428.
- 54 Representation.
- 55 Consulta, Diogo de Mendonça Corte Real was appointed secretary of state for the navy and overseas affairs in 1750, as a substitute for Antônio Guedes Pereira.
- 56 Representation, 428.
- 57 Representation, 425.
- 58 Representation, 426.
- 59 Pierre Bourdieu, “A força do direito: Elementos para uma sociologia do campo jurídico,” in *O Poder Simbólico* (Difel, 1989), 209–54.
- 60 The representation also confirms that the region had been cultivated by “the people,” some of whom participated in the mining of gold, with others spread throughout the countryside, establishing smallholdings and farms for their subsistence and constructing mills. Representation, 426.
- 61 *Ordenações Filipinas*, book 2, titles 27 and 43.
- 62 Representation, 429.
- 63 Representation, 430.

