

The Sesmarias In Brazil: Colonial Land Policies In The Late Eighteenth-Century

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Abstract

This article discusses the reasons for the promulgation of the Alvará of 1795, the most important of an entire series of decisions by the Crown to legalize the procedures by which *sesmarias* were granted. The abovementioned Alvará was the result of a consultation with the Overseas Council regarding the irregularities and unruliness which characterized the regulation of *sesmarias* in Brazil. Revoked the following year, the Alvará represented the effort of the Crown to stop the process of illegal land occupation. Its dispositions were object reasoning from D. Rodrigo de Souza Coutinho and Francisco Mauricio de Souza Coutinho, Para's governor and brother of Dom Rodrigo, State Secretary of the Navy and Overseas Dominions. Francisco de Souza Coutinho interpreted the articles set in the Alvará of 1795, in an effort to propose solutions to the problems resulting from the concession and demarcation of land. This article, therefore, analyzes the limits of State action in relation to land policies in its main colony, Brazil.

Keywords

Ancien Regime, Sesmarias, The Alvará Of 1795 Colonial Legislation, Francisco Mauricio De Souza Coutinho, D. Rodrigo De Souza Coutinho

Introduction

I- The Alvará of 1795: an Emblematic Example of the *Mariano* Period

The so-called *mariano* period in Portuguese history refers, as is well-known, to the reign of Queen Mary I, from 1777 to 1816, though in fact the Queen ruled only until 1792, when, prisoner of her own insanity, she was substituted by her son. Recent studies have

sought to understand the changes which occurred in this period in relation to the Marquis of Pombal's government. According to Serrão, the changes made during Queen Mary's rule were limited to the rehabilitation of the group of nobles persecuted by Pombal, and could be epitomized as "the acts of individual reparation that were almost always entreated to recover the memory of the good name of parents and friends" (Serrão, without date: 295-296). Further, and against Pombal's centralization, the government of Queen Mary I can be characterized as a "collective work, for the solution of problems of general order or for private long-waiting requests of fair decision." (idem, p.339).

Concerning the laws and administration of justice, Mary's reign was marked by the effort to reorganize the State's laws, particularly the subsidiary laws, and to formulate a new code, which was meant the production of a new set of reformulated laws, rather than the extinguishing of existing ordinances. Thus, during this period, various procedures for the administration of justice were promulgated, such as the Law of July 19th, 1790, which was designed to reorganize the Crown's judiciary districts.

In brief, despite the myth of the *Viradeira*, the *Mariano* period clearly exhibits a level of continuity with regard to the Marquis of Pombal's policies; in most of her governmental acts, the Queen held to the principles supported by *Pombaline* policy. In this way, the creation of the Royal Academy of Sciences, the retention, and even the elevation of *Pombaline* reformers like José Seabra da Silva, demonstrate that we should distinguish, as José Subtil states, the reform movement from the political actor. In sum, this suggests that *Pombaline* principles survived even after Pombal. (Subtil, 1998: 415).

As such, and as a consequence of these principles, there was a strong effort during Mary's reign to reform jurisprudence in accordance with the so-called Law of Good Reason (*Lei da Boa Razão*). This implied that a new legal code be produced, and signaled a new approach to the role of the state, beyond the person of the king.

This new approach to the state's role resulted in several measures centered on the colonies. The designation of D. Rodrigo de Souza Coutinho as Minister and Secretary of State of the Navy and Overseas Dominions (*Ministro e Secretário de Estado da Marinha e Domínios Ultramarinos*) in 1796 (a position he would hold until 1801) is perhaps the best evidence of the strong influence of *Pombaline* principles (Cardoso, 1989:127), even after the end of the Marquis's government. Nevertheless, to understand the role of D. Rodrigo and of his brother Francisco in the political context of the overseas policies, we must analyze, above all, the Alvará of 1795, whose text sought to regulate the granting of *sesmarias*¹.

¹ The sesmaria system was created in Portugal at the end of the fourteenth century. Its goal was to solve the problem of supplying the country, putting an end to a severe crisis of general food stuffs. The objective of the legislation was not to prevent land from remaining uncultivated, but rather to impose the obligation that the soil be utilized. In an effort to understand the peculiar characteristics of the system, researchers have stressed that, in Brazil, the Portuguese Crown needed to establish a judicial system capable of securing colonization. The sesmaria system was established in Brazil not to resolve the question of access to land and its cultivation, as was the thinking in Portugal, but to regularize colonization. Throughout the text, *sesmaria* is used to indicate concessions of land under this Portuguese system and *sesmeiro* is used to indicate one who holds title to land under such a system. These terms are used in part for lack of English equivalents.

First, we must stress the lack of attention given to the Alvará of 1795 by historical scholarship. The most plausible reason for this may be the fact that the Alvará was revoked only one year after its promulgation. The Alvará of 1795 was one of the many laws nullified soon after promulgation, passing quickly into oblivion. However, a more attentive review of the Alvará of 1795 raises important questions for understanding the efforts, as well as the limits, of the *ancien regime* with regards to its land policy, and more specifically, its land policy in Brazil, Portugal's most important colony.

Second, the Alvará was doubtlessly, among the many actions attempting to regularize how *sesmarias* were conceded, the major act of the Crown in this area; see, for example, the resolutions of April 11th and August 2nd, 1753. In both instances the Crown determined that in those cases in which "the lands given in the sesmaria [...] [contained] settlers cultivating the soil and paying rent to the *sesmeiros*, the former should be considered as the real cultivators and become the real owners of the respective pieces of land."

The Alvará, promulgated on May 3rd, 1795, was the product of the Overseas Council's deliberations with regard to the irregularities and disorders related to the administration of *sesmarias* in Brazil.² Among the reasons for the Alvará were the occurrence of several conflicts, conflicts among the *sesmeiros*, and the lack of any definite legislation that could establish clear limits for the concession and demarcation of land. This alone reveals the efforts of the Crown toward regularization in this area. But the Alvará suggested more. It also expressed the conviction that a true solution for the agrarian conflicts in Brazil would depend on a royal decision, meaning, a state policy personified by the Queen. This decision would have to be capable of finding or establishing rational principles for defining the *sesmeiros'* actions. The Queen ordered that the norms established by the Alvará be followed in order to produce the harmony desired by all. She expressed, by these words, the principles consecrated by the Law of Good Reason, based on the notion that it was possible to establish a new rationality for the concession of land through the elaboration of a specific law detailing the steps to be followed by the subjects. The Alvará thus becomes a detailed project to give legal patterns to land concession and to re-order the colonial territory. It is certainly a very ambitious project, revealing the intentions behind state policy at the time, as well as its limits. Based on those principles, twenty-nine articles are established, and these deserve a more detailed analysis.

As I have stated in previous research, "unsuccessful in its target and abolished the following year, the Alvará [...] shows how the reality of ownership and the liability of demarcation and cultivation of the sesmarias played an important role in the conflicts among the Portuguese Crown, landowners and colonists established in Brazil", (Motta, 1998). I now regard the Alvará as more meaningful than I had previously thought, despite the fact that it was abolished in 1796. It expressed the limits of Crown intervention in the affairs of colonial subjects, and revealed by this article an official objective of submitting the *sesmeiros*, as vassals of the Queen, to the authority of the Crown. Its constitutive logic – related to the Law of Good Reason – sought to investigate all the questions which involved disputes, in the belief that a legal determination that *organized* the territory and was *ordered* by the Queen would be sufficient to put an end to, or at least to mitigate, the conflicts fomented by

² The preamble of the Alvará is reproduced in Portuguese, in its entirety, in Appendix I.

antiquated concessions, by loose limits, and by multiple forms of land appropriation. The notion that it was possible to produce a legitimate title of occupation simply by updating a document, that is to say the Sesmaria Charter, implied a belief that the sesmeiros would be inclined to consider the demands enunciated by the law, to execute its orders, to accept their subjection, and as I have already mentioned, to limit their own dominions.

In December of 1796, the Alvará was abolished by decree, motivated by *“the impediments and inconveniences that can possibly result from [its] immediate execution [...] or because the current circumstances are not the most appropriate for assuring safe establishment of the vast properties of my vassals in the provinces of Brazil, or by the absence of geometers that can fix secure measurements [...] or finally, by the many processes and causes that might arise in attempting to implement such healthy principles [...] without previously having prepared everything that is indispensable for them to have a full and useful application.”*

What is most remarkable is that the sesmaria charter was confirmed by the Overseas Counsel, such as it was established by the Alvará. Nevertheless, it is not so simple to bring the deepest reasons for the end of this project to light. The summons of D. Rodrigo de Souza Coutinho to the position of State Secretary of the Navy and Overseas Dominions exerted an influence on this decision, and revealed more urgent internal problems which needed to be solved.

II- The Souza Coutinho brothers: Perceptions of Power in the Overseas Territory

The eighteenth century put “man at the center of the world vision of the mechanism around which he also organizes his reflection” (Vovelle, 1992:7). Some of them became protagonists of this new era, “spokesmen of a new discourse,” in a century where cosmopolitanism, transformation, and the circulation of new ideas became more profound (Idem, 17). In Portugal, at the end of that century, two “enlightened” individuals sought to discuss the questions which involved the relationship of the Kingdom with the colonial territories, and presented proposals, as well as criticism of the actions of the Crown. These were the brothers D. Rodrigo and D. Francisco de Souza Coutinho. Both addressed questions relating to the sesmarias.

A complex personality, and object of “different judgments of value”, as Andréa Silva put it (Silva, 1993:XII), D. Rodrigo was the firstborn son of D. Francisco Inocêncio de Souza Coutinho, one of the most important members of the Pombaline Administration. The former was a descendant of one of the oldest noble families in Portugal, and served as Governor and Captain General of Angola, and as Ambassador to Spain. D. Rodrigo was born in 1755 and Sebastião José Carvalho e Mello (the Marquis de Pombal) was his godfather. He studied at the University of Coimbra, reaping the fruits of Pombaline reform and dedicating himself to several branches of learning. As Ambassador to Turin from 1779 to 1796, he acquired “the knowledge, and above all, the fundamental theories characteristic of the European Enlightenment, to which he appealed during his long political career” (Idem).

Invited to return to the Court in July of 1796, he was nominated State Secretary of the Navy and Overseas Dominions. In this position, he sought to apply his knowledge, gathered in his various years of study and diplomacy, to the defense of a set of “complex,

ambitious projects of reform and modernization of the Portuguese economy and society, at a moment of difficulty in terms of finance and diplomacy” (Cardoso, 2001:66).

According to Cardoso, in the first years of his mandate, D. Rodrigo was essentially dedicated to investigating the complex financial situation of the Portuguese Crown (Idem, 77). D. Rodrigo decided to abolish the Alvará, as an effort of his Ministry to institute a more substantive policy for Brazil. After all, he was conscious of the impact of the Brazilian economy and of colonial commerce on the “maintenance of the economic balance of the kingdom as a whole” (Idem). Advocating “a vision of Empire grounded in two basic principles: political unity and economic dependency” (Idem), D. Rodrigo attempted to find more effective means to establish a project of agrarian regularization in the colonies that did not put at risk the constitutive pillars of the Empire that he defended with such vigor.

Though he wrote little on the sesmarias, certain passages in his writings reveal his awareness of the problem. In other words, D. Rodrigo was aware of the obstacles that needed to be overcome, and for which the proposals contained in the Alvará could in turn be effective.

In his “Memoir on the Betterment of the Dominions of his Majesty in America”, written in 1797 or 1798, a short time after the Alvará was abolished, D. Rodrigo expresses his vision of a political system that “might be adopted with greater convenience by our Crown for the conservation of its vast dominions, particularly those in America, which are themselves the base of the greatness of our royal throne” (Coutinho, 1993:43).

In his defense of the kingdom, in the broadest sense of the term, beyond the territory of Portugal, D. Rodrigo attempts to solve problems that needed to be overcome for the maintenance of a prosperous Overseas Empire. Central among these was the important question of the careful choice of governors (remember that his brother was the Governor of Pará). Since “the distance of these governments [from the capital] requires reliability of power and jurisdiction, [governors] should remain subject to a great responsibility that binds their hands” (Idem). The choice of magistrates should also be meticulous, should fix the limits of their jurisdiction, and should keep them independent in relation to “those who they judge” (Idem).

Coutinho claimed that the need for a new code was illustrated by the emblematic example of the *sesmarias*. D. Rodrigo was grounded, at least in part, in the same arguments that had been announced by the time of the promulgation of the Alvará, and he defended, by other means, the same propositions. In one of his letters to D. Fernando José de Portugal, Governor and Captain General of the Captainship of Bahia, dated October 1st, 1798³, D. Rodrigo affirmed that in Brazil, and principally in its upcountry, “*cultivators of the land are oppressed and agriculture is discouraged by molestations*” He was referring to the obligation of the landowners to surrender their slaves for royal services. In his understanding, the prices

³ D. Rodrigo Coutinho, “Aviso de 1 de Outubro de 1798, pp. 42-44.” This document was also sent to the Governors of São Paulo, Pará, Maranhão and Pernambuco, in accordance with the original copy kindly given to me by José Luis Cardoso. The Count of Linhares responded to the document on December 28th, 1798. Making explicit the problems of the concessions, he writes that the disputes are endless, and that lands are conceded in sesmarias that have already been given to somebody else. Historical Overseas Archives. General Documents. Rio de Janeiro [Box 171, Document 104]. The following citations are taken from this document.

paid for the goods by the Royal Finance Ministry should be the same current price. Further, he argued that a more severe law should be enacted to prevent the escape of Afro-Brazilian slaves to Montevideo. He defended the stimulation of exports of distilled spirits to African ports, and demonstrated the benefits of establishing a public square in the main Brazilian cities.

D. Rodrigo talked further about the existence of “*a large number of vagrant people, who leave the country to inhabit the cities, with serious damage to agriculture, and to their own interests.*” He entreated that measures be taken to avoid this injurious situation.

The Secretary also wrote that the news regarding another problem was reaching the kingdom. In his words, “*it is also said that many times in Brazil sesmarias are granted to people who do not have the means or industry to take advantage of them, and that afterwards they perpetuate a right that is absolutely not worthwhile to them; on the contrary, this practice impairs the neighbors of the same sesmarias and the others that have the means and that could receive the sesmarias.*” Once more, D. Rodrigo was referring to the problems stemming from the way *sesmarias* were conceded, supporting – at least in part – the logic present in the Alvará of 1795. However, he did not make reference to the Alvará, recommending only that “*in this respect the points so laudably prescribed in our Ordinance should be followed, and it should be remembered that the Ordinance foresees that the sesmarias, if not immediately cultivated, should be transferred to the hands of more skillful individuals who have sufficient funds to make the land profitable.*” In other words, D. Rodrigo emphasizes cultivation as the legitimate criterion for occupation of lands by the *sesmeiros*.

D. Rodrigo’s brother, Francisco de Sousa Coutinho, was more severe in his criticisms of the *sesmaria* system and the Alvará of 1795, which sought – as we saw – to regularize land appropriation.

The Decree that revoked the Alvará urged that “*a notice to the governors of the captainships of Brazil be sent to inform them about the way they might avoid more easily and comfortably new questions and processes, and to make it possible for them to put in practice what is established there and to pick the desired fruit, without having to be submitted to any inconvenience or a sensible concession.*”

D. Francisco de Sousa Coutinho, Governor and Captain General of Pará, was the only official that responded to the solicitation. In comparison to his brother D. Rodrigo, there has not been much research undertaken on D. Francisco. He was a servant of the kingdom and as such, he attempted to respond to the demands of the State regarding the control of colonial territories and knowledge of natural resources (Capra, 1992:254). During his tenure as Governor of Pará, he pleaded with the government for the abolition of the authority of the Directory of Indians. His proposal was recognized by the royal decree of May 12th, 1798. He intervened decisively in the discussions about the region’s natural resources, contributing a great deal of information and observations on the question of timber extraction. He promoted various expeditions to delimit the boundaries of the territory of Pará, above all in relation to the captainship of Mato Grosso. He described the coast and the rivers of Pará, attempting to produce a cartographic description of the area. In this sense, he can be considered an explorer, in the sense this word gained at the end of the eighteenth century, when the military and pejorative connotation was eliminated and replaced by the idea of the explorer as scholar (Noelle Bourguet, 1992:210). On July 26th, 1797 he wrote a letter to the Queen, proposing solutions to the problems resulting from the

concession of the *sesmarias*, and in response to the Crown's order, by the time of the revocation of the Alvará of 1795.

The text produced by Francisco de Sousa Coutinho is essential in allowing us to understand a powerful man who was responsible for the governance of one of the captainships. Thus, in response to the solicitation of the decree that revoked the Alvará of 1795, Francisco de Sousa Coutinho wrote conscientiously, on July 26th, 1797, on the theme of the *sesmarias*. His document was titled, "*D. Francisco de Sousa Coutinho, Governor and Captain-General of Pará's statement, on the measures that should be adopted in order that the Law of the Sesmarias of October 5th, 1795 might produce the desired effect.*"⁴. In this text, Francisco extricates all the articles present in the quoted Alvará, suggesting his interpretation for its failure and his inferences with respect to what was necessary in order to more appropriately define the law of *sesmarias* in terms of the conditions of the colony.

First of all, he defends that all the orders related to the *sesmarias* be put together in a single document, since he was certain that these orders were too numerous, as well as unrelated, and, in addition, that many of them could not be found in the records. Even with the records, "*it is not permitted for lawyers or officials to access, or to enter the secretariat of the governments, the accountings of the councils, or other types of registries.*" He recognized that the gathering of all the laws on the *sesmarias* would result in a sizable document, though for him, access to all relevant laws outweighed the potential unwieldiness of the finished product. The laws should be collected so that "*everyone might understand the law so as not to feel disturbed, or lost, or trapped in the hands of the attorneys, and scholars, so as not to be sacrificed due to their ignorance, and finally so that the mines, and the establishments they have formed, should not be forgotten.*"

In defense of the principle of cultivation as the validating criterion for the concession of the *sesmarias*, Francisco stresses that to put in practice the disposition of the second article, where, as we know, it is ordained that governors and captains general should process and regularize the properties, it is necessary to go beyond what is stated. After an investigation resulting in the loss of land by an unproductive *sesmeiro*, it is necessary, once the land is returned, and barring the opposition of a third party, that the lands, as well as slaves, tools, and other necessary provisions, be individualized in number and in quality.

Being disposed to the task, the chamber should designate the extension of wild forests, of brushwood, of high and low meadows and fields, as well as define the extension of each piece of land to be cultivated with specific products, and evaluate the resources contained in the land.

Francisco Coutinho is reticent about the dispositions related to the demarcations, and dedicates paragraphs to demonstrating the reasons for his doubts. In the first place, he is clearly convinced of the difficulty of measuring the land, such as it was described in the fifth article of the Alvará, even when enacted by the professionals "*analogous to the work of this nature.*"

⁴ "Informação de D. Francisco de Sousa Coutinho, Governador e Capitão-General do Pará. Sobre As Medidas Que Convinha adoptar-se para que a Lei das Sesmarias de 5 de Outubro de 1795 produzisse o desejado efeito" 26 de Julho de 1797. *Revista IHGB*. Tomo 29. Parte 1, 1966, vol. 32: 335-351. The following citations were taken from this document.

He is clearly in disagreement regarding the limits of the concessions of the sesmarias and affirms: *"A half of a league squared seems to be an area of two million two hundred and fifty thousand fathoms squared. A farmer who has about one hundred slaves of various ages and both sexes and chooses thirty of each sex capable of work, most of which will be able to understand their clearings in such way to take advantage of them, and that he can give the time needed to reap the benefit, might cultivate two hundred fathoms in the front with equal measure in the back, according to what I could gather in this respect, and from what I heard from people who have confidence in their intelligence, though they still doubted that they can achieve accuracy."* He continues: *"but to do a safe calculation, imagine the double, and consider forty thousand fathoms squared, eighty [thousand] of which a farmer can cultivate annually; in this way, dividing that area of two million and two hundred and fifty thousand fathoms squared by this eighty thousand, the quotient of twenty eight indicates that the farmer subject to the referred circumstances, with half a league squared of land, will have enough to clear and to work for twenty eight years, even though he makes two clearings per year, each one with two hundred fathoms in square; if making only one of this same size, he will have land for fifty-eight years [...]."*

His critique of the fact that the sesmeiro received an excessively large area of land was neither devoid of common sense nor was it abstract. Francisco Coutinho had extensive knowledge of agriculture and made explicit references to the production of manioc, rice and sugarcane on lands effectively occupied. As he was aware of the concessions made in other territories, he was able to make a brief comparison with the Dutch colony of Suriname, "[...] where the colonists have a maximum concession of five hundred acres of land."

From this comparison derives Coutinho's critique of the bases for granting land. In his understanding, these granted lands should have been the base, from the beginning of colonization, of a "well-understood economy." As the Governor of Pará, he had to face the invasion and destruction of the forests and the disrespect demonstrated by innumerable royal decisions in this area. For this reason, he was cautious. It was not enough to make a decree, or even new regulations. To demarcate the lands and preserve the forests, what was necessary was an *"anticipated general recognition of all the rivers, and the lands watered by them, or a general, more exact, and individual map, which certainly is impossible to design with little time, and without which all is arbitrary."*

The different forms of appropriation and their corresponding orders were the central object of article thirteen of the Alvará, which merited deep consideration as to the reasons for its failure. Francisco Coutinho states in detail that there are very few lands effectively demarcated and – it is worth saying – if the demarcations were not effected by *"intelligent and adequate people for such tasks, there might be a large alteration, and the discussion about the legitimacy of titles or of the [lands] conceded by the lord of the province that was his, or by the government, might endure for centuries[!]"*

For residents of such villages as Macapá and Bragança and of the populated islands, the distribution of lands *"was made among them in the same way in which it is practiced in the kingdom and the islands."* Besides, *"all of the indians arranged in settlement villages have their small farms, not obeying the dispositions of the Directory [of Indians]; and those who live dispersed, as well as others already mixed, also live by various rivers and districts in the same conditions; and all of them, by their rusticity and ignorance, deserve particular arrangements [...]."*

There were still many cases, such as that of the Island of Joannes (or the "Ilha de Marajó"), in which above all an exact plan needed to be made. This would determine the common public spaces for the herds of the estates, in addition to the wells and shipping of animals. Further, it was necessary for all the landowners, with or without a title, to make an

appearance. Then, *“by the chronological order of the legal titles each one should be informed, not of the totality of the lands mentioned in his property document, but of the lands proportional to the number of heads he possesses, since nobody informed the authorities about how the lands were obtained, and otherwise all the lands according to the law would be void.”* He continued: *“after these landowners, those who hold titles should be similarly identified, along with those who had titles, or those who had illegal, or false titles, which should then be given all the legitimacy deserved [...]”* In other words, for Francisco it was impossible to implement the same general procedure in all regions, since in some areas it was impossible to find even one landowner who had obeyed the royal orders. Some even had illegal or forged titles.

Still, Francisco Coutinho was careful enough in his defense of the demarcation of lands. He was aware that the process was delayed, costly and needed qualified people to accomplish the project. For him, without the execution of previous measures, the law only succeeded in exciting *“larger disorders with ordinarily come about without sufficient motive, but being sufficient enough that someone would want to demarcate [his lands] as soon as the demands begin, with animosities and hatred then materializing, which have serious consequences.”*

To delimit means to impose restrictions on the actions of others, and the Governor of Pará recognized that this work brought to light the fact that its final result – a properly executed demarcation – was the fruit of a detailed process attentive to the multiple forms of occupation. It was neither, thus, a task to be entrusted to auditors or exiles, nor could it be inserted into judicial ordinances. This is not the case of an isolated property in need of demarcation, where *“there is no doubt that a guide with his compass, and a fathom cord, can draw a quadrilateral on the ground, and where all four sides are practically equal; though even then there may be many differences in the way to draw a perfect square that is regularly conceded, because he does not have the ordinary principles necessary to determine the base from which it should be measured.”* Thus, in this case, the *sesmeiro* would be told of the extent of his concession, after which the minister could give him legal possession of the land. Damage resulting from this measurement would be reduced to a few fathoms of land lost or gained.

The problem was the demarcation of contiguous and expansive lands. In these cases, *“through without bad intentions, the guide cannot avoid committing injustices.”* According to Francisco Coutinho, the task of demarcating these areas required *“the help of trigonometry to improve the geographical delineation of the coast, and the map of the country.”* Moreover, it was necessary for an astronomer to be present, who could rectify *“by repetitive astronomic observations, the exact position of the main points of the same tract of land, and its respective map, so that geometry could set right and improve the action [of the guide], correcting the imperfection of his directions, of his instruments, and of his measurements.”* He continues, *“after which, the legitimate titles also investigated and the extensions that should be conceded to each sesmeiro being thus determined, the geometer has to accommodate them on the map, and afterwards competently divide and mark them on the land.”*

One of the consequences of modern rationalism was, without a doubt, the consecration of mathematics as “a prototype of the unintelligible reality” (Simões, 1991:121). Thus, “by the impulse of mechanization and rationalism, the mathematical procedures permitted not only the rationalizing the physical nature, but also the formulation of a prototype of coherent organization of thinking that transforms geometry into an exact paradigm” (Idem). For Francisco Coutinho, only by utilizing geometric and astronomical knowledge would it be possible to undertake a true demarcation of colonial lands.

For him, this was the first reason for revoking the Alvará, since without the necessary provisions it would not be possible *“to execute or to understand any demarcation.”* Without the

presence of geometers and astronomers, the most the magistrate could do was to judge the legitimacy or illegitimacy of titles, that is, *“the most appropriate means to avoid the processes and questions; while the geometers and astronomers entrusted with the demarcations were measuring and observing, in whatever district they were needed, and with the judge in their company, involved in the same diligence, called on residents, and obliged them to produce their titles, verify the legal ones and denounce those that are illegal; however, he has to keep in mind the establishments that the residents own, and respect them [...]”*

Thus, where there was no conflict about property rights, it might be possible to guarantee to the *sesmeiros* the extension of their previously demarcated lands. However, there was an urgency to solve the disputes over lands in areas where poorly made demarcations produced injustices.

In brief, the Governor of Pará tried to extricate the articles contained in the Alvará of 1795, in an attempt to propose solutions to the problems originating from the concessions and demarcations of the *sesmarias*. In his evaluation, it was clear that – if taken into consideration – the Alvará did not resolve problems, but might do the opposite, and aggravate them. Coutinho was aware that the royal apparatus could do little in practice. The Alvará was a letter of intentions of questionable efficiency, since it ignored, among others things, the fact that the process of measuring lands was extremely complex, involving various fields of knowledge that went beyond law. Nevertheless, the question remains: if the members of the Portuguese Crown shared the same knowledge exhibited by Francisco Coutinho in the defense of a more substantial project, why does the Alvará seem imprisoned in a certain vision of intervention, and based on wide presumptions, as well as orders that, though apparently precise, proved unacceptably inefficient in practice?

III- Sesmarias and the Ancient regime: Internal Borders and Performance in the Overseas Empire

The innumerable royal dispositions with respect to the *sesmarias* and the attempts to investigate concessions were neither able to inhibit the non-observation of the orders nor impede that *sesmeiros* from continuing to illegally occupy lands, which in turn required demarcation and cultivation.

The laws that dealt with these subjects were very old. At the end of the seventeenth century, the Crown attempted to fix the maximum extension of areas that were being conceded by the *sesmaria*. Also, by this time royal orders, such as the Royal Decree of 1695, were published which reiterated the idea of obligatory cultivation. Even so, the laws were not executed, and conflicts and demands became recurrent phenomena, in direct proportion to the density of occupation and the fertility of the soil.

In a previous work, I claimed that the Crown was preoccupied with at least three complex and interlinked problems. The first was that the implantation of a judicial institution, created to promote cultivation, be used to guarantee colonization. In the colonial lands, the main question was not limited to the necessity of exploiting the lands, but fundamentally implied that these lands be occupied and profited from, defining them as colonies. Moreover, the obligation and the incentive to cultivate stimulated the growth of social categories, different from that of the *sesmeiros*. Finally, the incapacity of the Crown to effectively control the execution of its demands stimulated the growth of the figure of the

possessor, i.e., one who takes possession of lands that are allegedly or truly unoccupied (Motta, 1998).

However, at the time I wrote this work, I wasn't completely aware of what it meant that the Crown was unable to solve the problems stemming from the *sesmarias*. Today, the question that I ask myself is: was the incapacity structural or not? What does this incapacity reveal if we look at the way in which the system for occupying lands was instituted?

The logic behind the Alvará and the considerations of Francisco de Sousa Coutinho are the keys to the answer. To concede lands by the system of the *sesmaria* was, above all, a political concession and not a territorial one. The concession, by expressing the power of he who concedes – in this case, the Crown – implied the submission of those who received the concession, in the belief of a State based on the hierarchy of society as a whole. If the State was, so to speak, the agent of harmony and justice, this does not mean that its agents could solve the conflicts arising from the occupation of land, since the conflicts were structural. In other words, because the conflicts were reported through petitions to the crown, the *sesmeiros* could recurrently appeal to the Crown to solve demands between confronting parties or among *sesmeiros* using the documents relative to the same territorial space. The governors donated the lands, which were subsequently confirmed by the Overseas Counsel (Conselho Ultramarino), but the donation did not represent an accurate geographical measure.

It became more and more obvious that the *sesmeiros* resisted royal orders. But the Alvará – as a unique moment in the Crown's effort to constitute new regulations – brought to light the conflict that needed to be hidden because it was followed by discord, hatred and rancor among *sesmeiros*, and between many *sesmeiros* and the Crown. It was preferable then that the solutions to the conflicts be sought in the judicial system, in individual judicial demands, where the political strength of some guaranteed their possession of lands, to the detriment of others.

But then why didn't the Crown design a new system of occupation, more adequate to colonial conditions, and paying attention to the considerations of Francisco de Souza Coutinho's text?

The *sesmaria* was the instrument of colonization, and in this sense, an instrument of power. But the relation between boundaries – internal and external – and power is not so simple. Every authority is predisposed to circumvent his power in a territorial space. This circumscription reinforces authority, but also limits it. The colonial Portuguese Empire was constituted by the conquest of colonial spaces, supposedly unoccupied. If, as Jean Pierre Raison affirms, political power can establish its strength in diverse ways when it defines internal limits (Raison, 1986), it is true that not establishing precise internal limits among landowners can strengthen this same power, principally when we consider that the accuracy of limits was not enunciated in practice, and confirmation of concessions occurred on the other side of the Atlantic, in the Overseas Counsel. For this reason, the Crown manifested its capacity for mediation, exactly because it could not bring to light the conflicts originating from the way land was conceded.

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