

Between rights and power asymmetries: contemporary struggles for land in Brazil and Colombia

Maria Backhouse, Jairo Baquero Melo, Sérgio Costa

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Contemporary Struggles for Land in Brazil and
Colombia

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Between Rights and Power Asymmetries

Contemporary Struggles for Land in Brazil and Colombia

Maria Backhouse, Jairo Baquero Melo, Sérgio Costa¹

Abstract

The struggles for land discussed in this paper have occurred in contexts characterized by some improvement of laws and policies designed to protect ethnic and cultural minorities in Brazil and Colombia, following the “multicultural turn” in international law. The paper discusses to a greater extent the cases of communities of Afro-descendants who live in areas disputed by agribusiness companies interested in expanding palm plantations mostly for biodiesel production. We found out that the introduction of new rights has first unleashed a local process of ethnic re-identification. In a certain way, minority rights themselves have created those minorities they are supposed to protect. Nevertheless, new minority rights have also reframed the conditions under which struggles for land are conducted and negotiated in Colombia as well as in Brazil. Seen as relays in an electrical circuit, minority rights serve to modulate power at the local level: in some cases, new rights amplify minorities’ power; in other situations, they can help contain the problems of abuses of power.

Keywords: minority rights | land conflicts | Afro-descendants in Latin America

Biographical Notes

Maria Backhouse is a Doctoral Student in sociology at Freie Universität Berlin and Doctoral Researcher for the project “Fair Fuels? Between Dead End and Energy Transition: A Social-Ecological Multilevel Analysis of Transnational Biofuel Policy”, a junior research group funded by the German Ministry of Education and Research (BMBF) (www.fair-fuels.de/en). Her dissertation is titled: *Die Palmölexpansion in Pará/Brasilien - eine grüne Landnahme?* [“Green Grabbing in the Brazilian Amazon? The New Expansion of Oil Palm Plantations in Pará”]. She holds a Master’s degree in sociology from the Freie Universität Berlin. Her disciplinary interests are political ecology, critical development and postcolonial studies. Recent publication: “Die Landfrage im Kontext der Palmölexpansion in Pará/Brasilien“, in: Burchardt, Hans-Jürgen; Dietz, Kristina. and Öhlschläger, Rainer (eds., 2013): *Umwelt und Entwicklung im 21. Jahrhundert. Impulse und Analysen aus Lateinamerika* (Nomos: Baden-Baden).

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Jairo Baquero Melo is a Doctoral Student of Sociology at Freie Universität Berlin and Doctoral Researcher at desiguALdades.net in Research Dimension IV: Theory and Methodology. His dissertation is titled “Territorial Conflicts, Primitive Accumulation and Agroindustries in Lower Atrato, Colombia”. He holds a BA in Economics and a MA in Political Sciences from Universidad Nacional de Colombia. He also holds an MA in International Relations and African Studies from Universidad Autónoma de Madrid. He was a Research Assistant at the Institute for Political Studies and International Relations (IEPRI) at Universidad Nacional de Colombia. His research interests include: lands and territories; global inequalities; agriculture and agrarian reforms; territorial rights of Afro-descendants; armed conflicts; and postcolonial/decolonial studies. Recent Publications: “Multi-scalar Resistance and Territorial Defense by Afro-descendants in Colombia: The Lower Atrato Case” (book chapter, Bielefeld University, forthcoming), and “Land Grabbing and Conflicts over Territories. Agroindustries in Lower Atrato, Colombia” (Conference “Global Land Grabs II”, Cornell University, Ithaca NY, *Working Paper* 2012).

Sérgio Costa is a Professor of Sociology at the Freie Universität Berlin. He is also one of the Spokespersons of desiguALdades.net and Principal Investigator of the Research Dimension on Theory and Methodology. His disciplinary interests are political sociology, comparative sociology and contemporary social theory. He has specialized in democracy and cultural difference, racism and antiracism, as well as social inequalities and transnational politics. Recent publications (of 2012): “Desigualdades, interdependências e afrodescendentes na América Latina” (in: *Tempo Social*, 24, 2), and “Freezing Differences. Law, Politics, and the Invention of Cultural Diversity in Latin America”, in: Araujo, Kathya and Mascareño, Aldo (eds.), *Legitimization in World Society* (Farnham, UK: Ashgate, 139-156). Sérgio Costa is co-editor of *Democracia y reconfiguraciones contemporáneas del derecho en América Latina* (with Stefanie Kron and Marianne Braig, 2012), and of “Decolonizing European Sociology. Transdisciplinary Approaches” (with Manuela Boatcă and Encarnación Gutiérrez-Rodríguez, Farnham, UK: Ashgate, 2010).

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1. Introduction

Many factors explain the contemporary increasing visibility of land conflicts in Latin America. To begin with, this intensification involves a reconfiguration of conflicts that date back to the European colonization and to the expropriation from the original populations during this period. Over the centuries, these conflicts have taken on new forms following the variations of the dynamics of capital accumulation and the changes in legislation and policies that regularize land ownership and use.

The recent repositioning of Latin America within the global division of labor, marked by the growing importance of a new mix of commodities on the regional export agenda, aggravates these existing conflicts. Lands that previously had little value, and that are far away from the larger settlements, come to be disputed to such degree that the exploration of their subsoil or surface to cultivate agricultural products has transformed them into a promising source for generating profits (Gudynas 2012).

Additional reasons for these land conflicts are the search for new energy sources and the expansion of transportation and communication infrastructures. In this regard, the growing production of agro-fuels and the expansion of the areas occupied by hydro-electric dams, in addition to new highways, railroad lines, electrical transmission lines, etc. transform the way large extensions of land are used and in many cases lead to the removal of traditional occupants from these areas. A similar process is found in negotiations regarding climate change control or national/local initiatives to compensate for the environmental impact of human activities (through the creation of parks, protected areas, etc.). These measures impose limits on land use and restrict opportunities for the survival of the resident populations. In other cases, these populations are transformed into guardians of the areas integrated to the imagined global environmental patrimony, and are financially compensated to do so (Ulloa 2012).

Finally, the growing interest in the speculative use of lands should also be emphasized. It is well known that land is a traditional instrument store of value - and not only in Latin America. In the conjuncture of the current economic crisis and the strong volatility of financial applications, the importance of speculative investments in land has grown dramatically, aggravating local conflicts.

The exacerbation of land conflicts in Latin America takes place in a context marked by enormous growth at the international and local levels in the body of environmental law and of the rights and guarantees established for cultural minorities. The issue of land titles is at the core of the new minority rights, as defined in a broad and bold way in 1989

by International Labor Organization Convention 169, as well as by the UN Declaration on the Rights of Indigenous Peoples in 2007 and other international agreements. Latin America is the region of the world with the largest number of countries that have not only ratified Convention 169 but also whose local laws have included legal protection for minorities (ILO 2009).

The importance of granting titles to land in order to protect cultural and ethnic minorities rests on the pivotal relationship between these minorities and their physical environment. This relationship is central to the constitution of the very idea of cultural minority in Latin America. It involves, in most cases, indigenous populations, *quilombo* or *palenque* communities; that is, settlements originally formed by people who had escaped slavery, in addition to other groups treated as traditional populations and who, in general, inhabit remote regions far from urban centers. The self-definition of these populations as minorities is fundamentally based on the demand for recognition of certain distinct forms of use of land and environmental resources, supposedly guided by the knowledge of the environment transmitted across many generations. In this sense, the land, or more suitably, the territory that carries the keys to identity is represented as a central source of material and symbolic reproduction of these populations (Arruti 2006; French 2009; Ojeda 2012).

From a geographical point of view, there is as a rule an overlapping between, on one hand, lands that have won new economic and political meaning in recent years due to the repositioning of Latin America as a supplier of commodities and as a global environmental reserve; and on the other, territories occupied by minorities (Zhourri/Oliveira 2012: 187ff). This causes the local land conflicts in Latin America today to be frequently marked by confrontation between seemingly irreconcilable rationalities, discourses, political strategies and legal frameworks, such as:

- (1) The priority given to economic development and the need to use all available land surfaces for productive activities: agribusiness, mining, expansion of transportation infrastructure, diversification of the energy matrix, etc.
- (2) Appeal for moderate use or even a complete renunciation of the use of natural resources in order to compensate for global climate and environmental impacts of economic activities undertaken in other regions.
- (3) The need for the (re-) conversion of land into cultural territories to conserve traditional ways of life and the transmission of ancestral knowledge.

This is the broader political context in which the two case studies presented in this paper take place. Our arguments are divided into four sections. The first section briefly discusses some of the current interpretations of the expansion of the rights of cultural minorities, and based on this debate, it proposes an analytical framework in which social and/or minority rights are understood as relays in asymmetrical power structures. The second section presents a case study of a land conflict in the Pará State in the Brazilian Amazon, which involves the expansion of an area occupied by oil palm plantations for the production of biodiesel and its impact on negotiations of the *quilombo* territories in the region. The third section is dedicated to the study of conflicts observed in the Lower Atrato region on the border between Colombia and Panamá, specifically the issues involving the expansion of the cultivation of African palm trees on lands whose control is disputed by traditional rural oligarchies, new agrarian entrepreneurs, paramilitary groups, and indigenous, mestizo and Afro-descendent communities. The final section explores different elements of these three arguments in order to show how minority rights, in some situations, can serve to strengthen the power of the local populations in their struggles to reach the guarantee of title and ownership of the lands that they occupy.

2. Analytical Framework

The scope of this paper is certainly not broad enough to discuss the vast multiplicity of analyses available within the specialized scholarship on the recent expansion of minority rights in the international political agenda and their incorporation into national and local legal and political frameworks. Nevertheless, delineating the extremes of the spectrum of analyses is a worthwhile and relevant endeavor that will contextualize our analytical-theoretical proposal within the realm of the existing debates. On one hand there is liberal multiculturalism that sees the protection of cultural minorities as a necessary extension of individual rights. On the opposite extreme of the spectrum of interpretations are subaltern studies, which see social and minority rights as a dispositive that allows the domestication and governmentalization of differences.

Following the position of liberal multiculturalism, as represented paradigmatically in the work of Will Kymlicka and his collaborators (e.g. Kymlicka 1989, 1995, 2007; Bashir and Kymlicka 2008), cultural belonging corresponds to a fundamental space for the formation of choices and personal judgments. In this sense, the protection of cultural minorities is indispensable to individual autonomy and conforms, for this reason, to a necessary extension of contemporary citizenship.

Historically, the constitution of modern nation states has implied the oppression of cultural minorities, which justifies, according to liberal multiculturalism, contemporary efforts to extend their rights:

This conception of [multicultural] citizenship attempts to replace or supplement nation-building policies with those that explicitly recognize and accommodate groups whose cultural differences have been excluded from the national imaginary, whether they are indigenous peoples, national minorities, racial groups, religious minorities, immigrants and refugees, or stigmatized groups such as gays and lesbians. This generates the familiar set of debates around minority rights and group representations that characterize multiculturalist literature (Bashir and Kymlicka 2008: 12)

In this sense, the incorporation of minority rights into international law and into the agenda of international organizations observed in the past three decades, a process described by Kymlicka (2007) as “multicultural odysseys”, represents what he considers a political and legal correction of the errors committed during the constitution of modern nation states.

The analyses undertaken under liberal multiculturalism contain various analytical-theoretical deficiencies. They essentially involve, as discussed at greater length in other contexts (see Costa and Gonçalves 2011; Costa 2012), the adoption of a pre-political and ahistorical concept of cultural identity, as if cultural belonging was constructed outside of the spaces of the dispute for resources and political and social power. Apart from these theoretical deficiencies, another fundamental methodological limitation can be observed: in general, the studies linked to the field of liberal multiculturalism have a normative-prescriptive character. Therefore, they do not provide the instruments that allow for a discussion on the existing processes of negotiation, and of the reconstruction of cultural belonging observed in the specific contexts in which the implementation of rights and policies aimed at the protection of cultural minorities take place.

The analyses of the expansion of minority rights located at the opposite extreme of liberal multiculturalism, subaltern studies, recuperate a fundamental aspect completely absent from the formulations of authors such as Kymlicka, namely the nexus between power and cultural difference.² The work of Partha Chatterjee (among others 1998, 2004, 2012) represents perhaps the broadest contemporary effort to build, on the theoretical foundations offered by Foucault; an innovative analytical perspective on the expansion of rights and public policies in contemporary post-colonial societies.

2 This aspect is also emphasized by many Latin American authors identified with the fields of cultural and postcolonial/decolonial studies, such as Bocarejo (2011), Escobar (2008), Restrepo (2004), among others.

Based on the concept of governmentality, as developed by Foucault in his lectures at the Collège de France in 1978, Chatterjee establishes the distinction between citizens and bearers of rights on one hand, and the population, that is, the target of control and of government policies and bearers of entitlements, on the other:

Rights belong to those who have proper legal title to the lands or buildings that the authorities acquire; they are, we might say, proper citizens who must be paid the legally stipulated compensation. Those who do not have such rights may nevertheless have entitlements; they deserve not compensation but assistance in rebuilding a home or finding a new livelihood (Chatterjee 2004: 69).

Citizens and populations, according to Chatterjee, form two different genealogies and refer to opposite practices of and narratives about politics and social policies. While the citizen-narrative relates to the nation-state and to a correspondent rule of law, as well as to a demographically small civil society, populations represent the bulk of inhabitants of postcolonial societies like India, who only relate to the state as the governed and who interact with the public agencies in search of benefits and security (Chatterjee 1998: 61 ff). Although the population groups constitute, from the perspective of governmentality, groups created by the administrative rationality of the state, their designation leads them to develop a correspondent collective identity:

Although the crucial move here was for our squatters to seek and find recognition as a population group, which from the standpoint of governmentality is only a usable empirical category that defines the targets of policy, they themselves have had to find ways of investing their collective identity with a moral content. This is an equally crucial part of the politics of the governed: *to give to the empirical form of a population group the moral attributes of a community* (Chatterjee 2004: 72, original emphasis).

Chatterjee's reading of the relations between the state and the populations that are beneficiaries of its policies helps to understand the impact of measures intended to protect cultural and ethnic minorities, insofar as these minorities are only constituted in most cases as communities that bear a common identity after they become potential targets of entitlements (Canessa 2007; Costa 2012). Additionally, from a historical perspective, Chatterjee's findings apply to the important changes in the relation between state and society observed in Latin America in recent decades. The national-populist import-substitution model which, at least on its normative-discursive horizon, integrated the entire population into universalizing political categories of citizens and members of the nation, has disappeared in recent decades. In its place emerges a

heterogeneity of administrative categories that fragment citizenship into an endless set of groups of governed and beneficiaries of specific programs and policies.

Nevertheless, the rigid separation established by Chatterjee between government and governed, civil society and population, citizenship and governmentality, limits an understanding of the effective shifts in the power relations in the cases studied in this paper. That is, cultural and ethnic minorities can effectively make use of the instruments that the new minority rights offer them to influence the pattern of state interventions. These minorities come to relate not only to the agencies of the state as a target population for their benefits, but as citizens who demand rights, and in certain circumstances, who can initiate substantial changes in the quality of policies and of the state.

The less than rigid positions defined in distinct camps – on one hand state and citizens, on the other, government and target groups – are borne out in the cases we studied, where we observe more dynamism in power relations than a Foucauldian perspective would anticipate. Although new legal frameworks and policies do not in themselves immediately supersede brutal power asymmetries constructed throughout history, these new instruments contribute, in some cases, to a reconfiguration of the ways in which power is negotiated and exercised. Therefore, it is an imperative analytical task to understand the specific circumstances that lead to shifts in power relations and the role that new rights, such as minority rights, perform in these changes. Greenstein's tripartite distinction of powers is useful for the purposes of our analysis. Studying the political transition in South Africa, the author highlights three of the most relevant dimensions of power:

[...] *social power* (access by individuals and groups to resources and control over their allocation), *institutional power* (strategies employed by groups and institutions in exercising administrative and legal authority), and *discursive power* (shaping social, political and cultural agendas through contestations over meanings) [...] (Greenstein 2003: 1, original emphasis).

The struggles for land imply the exercise of - and disputes for - power on these three levels. However, the concrete results of the struggles always remain contingent. That is, the degree to which, for example, the exercise of discursive or institutional power can modify established forms of access to available resources, particularly land ownership, is something that cannot be pre-defined on a theoretical level. In addition, patterns of state intervention cannot be defined a priori. In some cases, the institutional power of the state is practically nonexistent. There are other actors, such as paramilitary

groups or local chiefs or guerrillas who may exercise the role of a political authority and to some extents an administrative authority. In other cases, the state effectively appears as the government of populations, or in other situations even as a promoter of citizenship.

The place that the law - and more specifically minority rights - occupies in these shifts of power relations is variable. In the case of socio-economic rights in South Africa, Greenstein identifies two distinct forms of mobilizing the discourses and instruments offered by the law: the legal route which “seeks to use the courts to enforce compliance by the state with its constitutional obligations”, and an activist route “that uses rights discourse as a mechanism to force the state to change its policies, but again without challenging the role of the state as such” (Greenstein 2003: 37). According to Greenstein, effective changes in the state intervention pattern and in power relations only occur when legal and activist strategies are combined. That is, the struggles to make the state comply with its obligation to guarantee access to certain resources are only successful when popular mobilizations are accompanied by initiatives that activate the instruments of the legal system itself to pressure the state (Greenstein 2004: *passim*).

For our case studies, it is crucial to maintain a high level of analytical openness in order to understand empirical situations that are quite different from each other. In compliance with this open-mindedness, we do not pre-establish a fixed correlation between the strategic uses of the new rights and their impact on power relations on the three levels mentioned above (that is: social, institutional, and discursive power). We understand that, as in electrical circuits, rights may function as “relays”³ in circuits of political power. As such, they can operate in three alternative ways:

- (1) Rights serve as relays to modulate power, expanding the power of actors who previously had little political influence.
- (2) In extreme cases, rights, like electrical relays, can also function to block flows of power above the absorption capacity of a given circuit. This would be found, for example, in cases in which rights are mobilized to contain processes of violent removal of populations or those that protect the survival of a threatened group.

3 The image of relays entered the field of sociology through the work of Crozier and Friedberg ([1977] 1996) who, upon studying organizations, identified relays as intermediary actors between organizations and their surroundings. As used here, the relays do not refer to concrete actors but to rights that can impact on power relations.

- (3) In other cases, neither the language nor the instruments associated with the new rights are mobilized, and therefore these remain innocuous, like electrical relays that are not activated if there is no electricity in the circuit.

3. Collective Territorial Rights in the Context of Governmental Agrofuels Initiatives – The Case of *Quilombos* in Pará/Brazil

The high concentration of land property in Brazil already began during Portuguese colonialism, and was also reinforced after Brazil's independence. For instance, according to Law No. 601 of September 18th 1850, known as the Law of Land (*Lei de Terras*), public land could no longer be appropriated for agricultural use as before, but rather had to be purchased. This was only possible for a privileged social class who was already in possession of vast areas of land. Hence, the high concentration of land was reinforced and a lasting supply of labor on the plantations ensured. When slavery was abolished in 1888, the former slaves or resisting *quilombolas* had no legal access to land. Today most of their rural descendants are considered land owners without title (*posseiros*, that means occupiers) (Treccani 2006).

In the course of redemocratization only 100 years later, the entitlement to land of rural Afro-descendant communities was recognized in Article 68 of the 1988 Constitution (cf. Arruti 2000: 101-107; Arruti 2006: 66ff). In the aftermath, Brazilian black movements started fighting for the implementation of this law and the social recognition of cultural and territorial rights of *quilombolas*. The new legal possibilities led to an ethnic re-identification of numerous communities of smallholder farmers, who now emphasize their common history of resistance against slavery in order to become legal owners of their land (Arruti 2006; French 2009; Costa 2010). The category *quilombo* implies a legal status: if their land is titled collectively, it cannot be commercialized and must be used in a “traditional manner” (INCRA 2012: 5). Therefore, titled *quilombo* territories have been effectively removed from the land market and are no longer available for agri-industrial uses.

After periods characterized by a noticeable grow of titles issued to communities recognized as *quilombo*, title proceedings have recently stagnated. The Brazilian government has 3,524 officially registered *quilombos* (SEPPIR 2013), but as of 2012 only 192 communities had actually received their land titles, and in 2011 and 2012 only one collective title was issued per annum (Pyl 2012; Comissão Pró-Índio de São Paulo 2012).

There is considerable disenchantment among black movements. Political recognition of ethnic difference has been a critical milestone for the *quilombos* in terms of the reconstruction of their missing history. But the legal enforcement of their territorial and political rights moves at a slow pace. The reasons are numerous: the inefficiency of the respective agencies, complicated property rights, lack of political commitment, as well as attempts to delegitimize *quilombo* communities with the allegation that rural black populations are falsifying their “real identities” as poor rural workers in order to profit from new rights (Arruti 2009: 87). In addition, agribusiness lobbying reaches into the parliament through the *Bancada Ruralista*,⁴ thereby influencing directly the national debate on collective territorial rights. This lobby challenges aggressively the alleged “privileges” of traditional communities which supposedly impeded the development of Brazil into a global agro-energy-power (Acseirad 2012; Arruti 2009: 90–91; Almeida and Acevedo 2010; Almeida 2010).

The Government Funded Palm Oil Program in the Amazon Basin and the *Quilombolas*⁵

For several years, the Brazilian state has been promoting large infrastructural, mining and agribusiness projects in Pará. This includes the state “Program for the sustainable production of oil palm” for the production of biodiesel (Acevedo 2010; Backhouse and Dietz 2012; Backhouse 2013). Like the controversial Belo Monte mega-dam project, this program resumes a large-scale project from the 1970s as well. The novelty here is the reframing of agro-industrial palm oil production as a green climate protection measure. A binding zoning plan is to ensure that the program involves only areas deforested before 2008 (EMBRAPA, MAPA 2010). The focus is supposed to be on the degraded grazing pastures in the north-east region of Pará and on capturing as much climate-harming carbon dioxide as possible in the growing oil palms. The program has selected for this propose around six million hectares in 44 municipalities. Since the launching of the program in 2010, the area of oil palm plantations has been tripled to 180,000 hectares. Corporation employees interviewed predict a further growth of the plantations to up to four million hectares in the coming decades. The reservations and territories of traditional communities within the plantations are not supposed to be affected by this.

4 This is a fraction of parliamentarians of various parties identified with the interests of the agro-elites and agribusiness.

5 The section outlines the results of a qualitative survey on the impact of increasing palm oil plantations in two *quilombo* communities – one with and one without collective land title – in the municipalities of Moju and São Domingos do Capim in the north-east region of Pará.

However, these expansions have had a massive impact on the access to land and on the land use conditions of the *quilombo* communities. This accounts for the following:

- (1) The issues of property rights remain mostly unresolved in the region.⁶ The palm oil corporation project has fueled aggressive land speculation. Frequent land sales and purchases through front men cause rises in prices. Interviewed agro-experts speak of a decoupling of prices on the informal land market. This increases the pressure on *quilombo* communities that have not yet obtained a land title to sell their land properties. For example, the Taperinha community in the *quilombo* territory Povos do Aproaga in the municipality of São Domingos do Capim has been waiting for years for the claimed collective land title, while they see themselves increasingly surrounded by the oil palm plantations of the Brazilian mining corporation Vale and the dominant transnational American agricultural company ADM (Archer Daniels Midland Company). Without this title and in the light of continuously growing land prices, it will be difficult for the 120 families to withstand the pressure from the growing oil palm plantations. Five families have already sold their parcels of land to a larger land owner. The *quilombo* representative is concerned that the titling will be delayed until so many parcels of land have been sold so that a collective title can no longer be issued due to the lack of connected territories. Even titled *quilombo* territories do not warrant a stop: the *quilombolas* of the São Bernadinho community in the *quilombo* territory Jambuaçu⁷ in the Moju municipality report attempts to purchase land belonging to single families. The promises of the corporations to only use degraded grazing pastures of large land owners thus hardly seem all too reliable.
- (2) The expanding plantations affect the heterogeneous “traditional” systems of land use in the region. The region designated for oil palm plantations consists by no means merely of degraded grazing pastures. Since colonial times this has been namely one of the most populated and oldest settling regions in the Amazonian basin. In addition to various small farms and traditional communities, some untitled and 34 collectively titled⁸ *quilombo* communities live there. The territories of the *quilombo* communities in São Bernadinho and Taperinha are located within the expansion areas of the oil palm plantations. The *quilombolas* report deforesting

6 In all of Pará there are four times as many land claims as real existing land, which is why the state is referred to colloquially as “the state with four floors” (Treccani 2006).

7 Jambuaçu is an interconnected *quilombo* territory of 14 communities, of which 10 hold a collective land title. (Trindade 2012; Projeto Nova Cartografia Social da Amazônia 2007).

8 There are no reliable numbers regarding untitled *quilombos* in the region. The number of titled communities is based on an index by municipalities compiled by the NGO Pró-Índio (Comissão Pró-Índio de São Paulo 2012).

initiatives in their neighbourhood for the conversion of these areas to homogeneous oil palm plantations. They also report the socio-ecological⁹ impact of the plantations on their land and resources: The use of pesticides contaminates rivers: this causes the fish to die, as well as skin irritation for those living near and from the rivers. The decrease in harvestable fruit is also attributed to the contamination of the ground soil and the groundwater with pesticides. Monocropping cultivation changes flora and fauna: local game is crowded out and the cultivation of bees impeded. The oil palm fruit lures in rats and snakes. Interfering with natural stream courses, for example to construct roads or to irrigate plantations, impedes the access to water and irrigation.

State officials, in interviews, admit to the negative effects of the palm oil program. Nevertheless, they consider the palm oil program to be a necessary development project for the region. They point to the jobs created by the oil palm plantations, which offer the *quilombolas* a way to escape poverty. The *quilombolas* interviewed disagree. In their experience, the work in palm plantations is poorly paid and precarious. Most of the workers' monthly salaries yielded less than minimum wage (about 250 euros) – too little to sustain a family. Particularly young people whose land does not produce enough often have no choice. The Taperinha representative is quite clear on this point: "This is no development for us, this is semi-slavery". According to him, instead of turning people back into "semi-slaves", the government should protect and promote their land-use system: "We did not fight slavery only to return to plantations to work as slaves".¹⁰

- (3) The *quilombolas* hardly have a voice in the public debate on the palm oil program. No studies have been commissioned to investigate their complaints. The reasons for this are complex. Socially, the *quilombolas* are marginalized in all of Brazil. They have low monetary incomes, and they only have precarious access to education, health and agricultural credits (Arruti 2009). In the case of Pará, numerous municipal offices and single trade unionists directly cooperate with the palm oil corporations. Unlike the situation in the 1980s, there are hardly any NGOs in the region today. The state palm oil program has exacerbated their marginalization. Not only the *quilombolas* but the entire rural population of the region has been circumvented by the program implementation. As of today, the mandatory public hearings and environmental impact assessments for large-scale projects still have not been

⁹ This term stems from political ecology, maintaining that the relations between society and nature are mutual, and that ecological experiences of crisis are always socially articulated and therefore embedded in power relations (Robbins 2010; Bryant and Bailey 2005; Peet and Watts 2010).

¹⁰ Interview conducted by Maria Backhouse in 2011. All interview and text excerpts from Portuguese and Spanish were translated by the authors of this paper into English.

carried out.¹¹ Instead, (state) agro-experts as well as the palm oil corporations have expanded the discourse of degraded grazing pastures by absorbing the old discourse of degrading traditional cultivation culture (shifting cultivation).¹² Accordingly, the agro-industrial palm oil production is a climate-friendly alternative to the traditional cultivation of manioc – an important crop for the *quilombolas* and other smallholder farming cultures and main staple in the region. Thus, the *quilombolas* are not only being spatially encapsulated or marginalized by the rapidly growing plantations, even their so-called traditional practices of land use are being questioned because of their ecological impact. The ambiguity of the term “traditional practice” is now being used against them; they are accused of promoting a system dating from the Stone Age that supposedly leads to land degradation.

Even the international environment politics close spaces of articulation for so-called traditional communities, whose important impact on forest conservation is being emphasized in other contexts.¹³ The widely endorsed strategy of conserving valuable primary forests and the climate by intensified monocropping of so-called degraded areas (cf. World Bank 2011; Butler 2011) proves, in the case of the *quilombos*, that what seems a climate protection strategy may further undermine the access to resources of already marginalized groups. Through the technocratic narrowing down of climate change policies into the estimation of carbon capture and storage, monocropping cultivation is reframed as green in a region that at the same time is made out to be degraded. Through the naturalizing definition of an entire region as degraded, the existing land-use systems are delegitimized and destroyed.

4. Colombia's Lower Atrato Region: Territorial Rights, Power Asymmetries, Law and Resistance Strategies

Concentration of land is one of the dimensions of historical inequalities in Colombia, which also has consequences for other issues, including violence and social unrest. In this country, lands lend social prestige and regional political power. Historically, a specific group of landowners have hoarded the best lands and maintained them in their possession, in several cases even leaving them unproductive, unused or employed for livestock. They have also refused to introduce agrarian reforms and resisted efforts towards them by political or violent means (Baquero Melo 2006). In 2009, the Gini

11 Resolutions CONAMA 01/86 and 009/87 mandate public hearings to enforce public participation in the process of environmental impact assessments. These were ratified in the state Constitution of Pará in 1989.

12 Regarding the deconstruction of the agro-economical homogenizing discourse and the supposedly degrading shifting cultivation in the Amazonas areas (Costa 1989; Hurtienne 2005).

13 For instance, cf. Article 8 (j) of the United Nations Convention on Biological Diversity (CBD).

coefficient of land concentration in Colombia reached 0.86, one of the highest in the region (UNDP 2011: 197). Land re-distribution has been demanded generally on the basis of a class conflict between landowners and peasants without land. However, since the 1990s racial and ethnic ties to land and territories were made visible with the introduction of minority rights and policies. Indigenous people and Afro-descendants inhabited mainly marginalized areas. Besides the struggles for land re-distribution carried out by different social groups and peasants within the borders of the agrarian frontier, new territorial conflicts emerged as a consequence in the areas inhabited mainly by indigenous and Afro-descendants. New sources of pressure have emerged from landowners and governmental “neo-extractivist” development policies, both of which aimed at grabbing land to expand agriculture frontiers and to exploit their resources. This has been the case of the Lower Atrato region in Northwestern Colombia, near to the border with Panama. This region, inhabited mainly by Afro-descendants and mestizos, was included within the collective territories of black communities, recognizing also the importance of the region for its biodiversity. Its strategic location at the Darien Region has also attracted interest; the Americas Transversal Highway is planned to cross this area. Since 1996, paramilitary and military groups have displaced thousands of people, grabbing lands to introduce monocultures of palm oil.

However, several resistance strategies have been adopted by the communities, which now demand the recognition of their territorial rights and restitution. They have availed themselves of the new language and instruments supplied by Law 70 of 1993, demanding their minority rights to be respected, including their belief in the nexus between culture and nature.

4.1. Afro-Descendants’ Territorial Rights (Law 70 of 1993), Violence and Land Grabbing

The most important recent developments in the situation of the inhabitants of the Pacific region of Colombia, and specifically in the Lower Atrato, were the legal advances since the 1990s which defined collective territories of black communities and protected conservation areas. Within the frame of the expansion of multiculturalism in Latin America, the Colombian government adopted institutional changes to grant rights to black populations. In 1989, Colombia ratified ILO Convention No. 169, which extended rights for indigenous people. The Constitution of 1991 proclaimed Colombia as a multicultural and pluri-ethnic nation (Country Government of Colombia 1991). Social pressure and the support of several social sectors as well as of the indigenous representative at the Constitutional Assembly favored the inclusion of Transitory Article No.55 (AT-55).

The AT-55 forced Colombian Congress to enact Law 70 of 1993, which defined territorial rights for black communities – whose ancestors lived in territories among the river basins of the rural Pacific region – and included among other aspects their cultural protection as an ethnic group and the promotion of their social and economic development (Country Government of Colombia 1993). In turn, Decree 1745 of October 12th, 1995 brought into effect Chapter 3 of Law 70 of 1993, which defined the process of recognition of their collective property rights as well as the role of community councils (*consejos comunitarios*) as the local authorities in charge of the management of the collective territories (Country Government of Colombia 1995).

These community councils are composed of a General Assembly and a Junta. In 2001 the Constitutional Court ruled that the black communities in Colombia have the same international ILO status as indigenous populations (Constitutional Court of Colombia 2001). Under this status, black communities would be consulted before the realization of any projects that would affect territories inhabited by Afro-descendants.

One important characteristic of the Colombian case is the establishment of a nexus between the recognition of collective territorial rights and the environmental preservation of these territories.¹⁴ The black communities have lived mainly in areas with rich biodiversity, including conservation forests, rainforest and wetlands. The legislation aimed to include the participation of communities in processes of evaluation of projects planned for the exploitation of natural resources in the region.¹⁵ Historically, the Pacific region's use of its resources includes small-scale mining, logging, fishing and gathering economies. Usually, megaprojects such as large-scale mining have been rejected by the respective communities, who garnered support from church representatives such as the Verbitas del Verbo Divino (Restrepo 2011). The legislation provided clear definitions of the collective property rights for these communities – mainly afro-descendants and mestizos – which had been settled there for decades and centuries. If external actors

14 Law 70 of 1993 includes as one of its principles “the recognition and protection of ethnic and cultural diversity and environmental protection, taking into account the relations established by black communities with nature” (Country Government of Colombia 1993, Article 3).

15 For example, Article 35 of Decree 1745 of 1995 established that a technical commission must evaluate proposals of projects for environmental licenses, concepts, permissions and contracts, for the exploitation of natural resources, in cases of places located in lands capable of being collectively titled. Article 44 of Law 70 of 1993 established that black communities must participate in the design, elaboration and evaluation of the environmental impact studies of the planned projects for those areas. Article 76 of Law 99 of 1993 claimed that the exploitation of natural resources should be carried out without affecting the cultural, social and economic integrity of indigenous and black communities, in accordance with Law 70 of 1993 and Article 330 of the Constitution, and with previous consultation from those communities. In addition, Decree 1320 of 1998 enforced the process of previous consultation with indigenous and afro-descendent communities to accomplish the mandate in the contents of Article 76 of Law 99 of 1993.

are interested in introducing economic projects, the legislation established that they have to respect the prior-consultation system.

Despite the recognition of territorial rights of the local communities, these populations still have been affected by dispossession, mainly caused by to the introduction of monocultures. Paramilitary and military attacks were carried out in Lower Atrato because the area was a hiding place for guerrillas. Counterinsurgency actions integrated Lower Atrato into armed conflict, with severe consequences for local communities. The “Genesis Operation”, carried out in February 1997, marked a breaking point in the levels of violence. This “alleged” counterinsurgency operation against the 57th Front of the guerrilla fraction FARC was carried out by the 17th Brigade of the national army. Attacks by land and air were supported by paramilitaries of the Peasants’ Self-defense Armies of Cordoba and Uraba (ACCU). Aerial bombings forced the displacement of thousands of people from the basins of the rivers Cacarica and Salaquí into the basins of the Truandó, Jiguamiandó, Curbaradó and Domingodó rivers.

Those who stayed in the territory were advised by paramilitaries to leave their lands because the war would continue and their lives would be at risk. However, those who returned found their lands cropped with oil palm monocultures.¹⁶ After the people were forcibly displaced, paramilitaries and entrepreneurs began to occupy these territories.¹⁷

Dispossession and de-territorialization have been introduced thanks to asymmetries of power between external (military, paramilitary and economic) actors and local communities. Governments, entrepreneurs and paramilitaries have used violence to terrorize and displace communities, forcing them to accept the introduction of agro-industries. The government has also promoted the policy of “Productive Alliances” to forge the association between entrepreneurs and peasants to work for agribusinesses, though the peasants could lose their property rights by being integrated as laborers in the plantations. In turn, entrepreneurs have used their economic power to take advantage of the poverty of local communities, and “buy” or co-opt community leaders to enable the introduction of megaprojects.¹⁸

16 The oil palm arrived to Lower Atrato due in part to the Uribe government efforts to boost this sector in the country, responding to the rise of global demands of raw materials for biofuels. (UNCTAD 2006: 3, 25)

17 There was a coalition of actors led by paramilitaries, which included public functionaries of the INCODER, banana entrepreneurs, cattle ranchers, high range militias and strongmen, as well as unemployed peasants, drug traffickers, ex-guerrilla fighters and retired soldiers (Franco and Restrepo 2011: 283).

18 Interview conducted by J. Baquero with a member of of the Institute for Environmental Research of the Pacific in Quibdó, October, 2011 (This and all names of persons interviewed in Colombia are not mentioned in this paper to protect their anonymity). Translations of interview responses from Spanish were made by J. Baquero.

4.2. Law and Resistance Strategies Against Dispossession and De-Territorialization

There have been various social resistance movements in Lower Atrato. Historically, organizations mainly demanded more adequate state attention and social policies, and responded against the incursion of logging companies in the 1980s (Restrepo 2011). Recently, the resistance has addressed essentially land grabbing and the introduction of monocultures.

Firstly, Law 70 produced a change in the character and language of social organizations. Before Law 70, there were organizations such as the OCABA (Peasant Organization of Lower Atrato), which emerged from the Community Action Boards, and the ACAMURI (Peasant Association of Riosucio Municipality). Law 70 created a shift in the identification and discourse of local populations, such that struggles over the defense of forests were now subsumed under the notion of “territory”. Law 70 also transformed previous organizational processes and their language. The peasant identity was incorporated into that of “black communities”. Despite the partial victory that Law 70 symbolized for the Afro-descendant rural populations, uncovering issues of discrimination and exclusion in urban populations (Rosero 2005), one of its outcomes was the proliferation of social organizations in the rural Pacific, creating for first time in history legal opportunities for national social movements to sustain their claims (Agudelo 2005: 133). It also made social organizations established in the 1980s more visible.

Second, Law 70 gave the communities the possibility to achieve collective titling of the territories inhabited by them for decades and centuries. In Lower Atrato, populations were forcibly displaced before the achievement of collective titling between 1996 and 1997.¹⁹ Even amid violence, and as defense strategy to preserve their rights, the communities applied for collective titling.²⁰ In Lower Atrato and in the Darien Region, more 720 thousand hectares have been collectively titled for approximately 24 communities or community councils between 1999 and 2001.²¹ Communities that applied for titling are mainly those of Afro-descendants that have been living in the region for several decades, and mestizo peasants that arrived in the 1970s, having been displaced from the Sinú region by cattle ranchers. Although mestizos are not “black” as stated by Law 70, they have lived in harmony with black communities. Thus,

¹⁹ It is relevant to remark that since these first episodes there have been several cases of forced displacement.

²⁰ Interview conducted by J. Baquero with an inhabitant of the Curbaradó Municipality, May 2012

²¹ Calculations made by J. Baquero (2012).

their collective rights have been also recognized, thanks to their productive practices and methods of land-use. In accordance with Law 70, they are “good faith occupants”.

Third, many people returned to their lands and have been resisting the actions of paramilitaries and entrepreneurs. Populations created refugee areas such as the Humanitarian Zones (HZ), which are “fenced estates” that aim to provide security for the populations, upholding international humanitarian law. After international protest by communities and NGOs, in 2003 the Inter-American Court of Human Rights granted the use of precautionary measures to protect several threatened leaders of the HZ. Biodiversity Zones were also created to procure environmental protection and stable food supplies. They have been physically accompanied by several NGOs, such as the Inter-Ecclesial Commission of Peace and Justice and Peace Brigades International (PBI). The communities have claimed their rights given by Law 70, carrying out actions, such as cutting down oil palm trees, to implement their rights *de facto*. Various fields formerly cropped with oil palm now look like a sort of “palm cemetery”.²² Additionally, several hectares of oil palm plantations in Lower Atrato were affected by Butt Rot Disease (BRD). Even so, the entrepreneurs continue their own “resistance” by cropping new products such as the cassava and plantains, and new proposals for cropping oil palm continue arriving into the area.

Fourth, the NGOs that have accompanied the communities also have begun criminal cases against the companies that cropped oil palm in the area. An attorney from an NGO who represented the civilian parties in processes against the agro-entrepreneurs pointed out the fact that investigations initially were focused on environmental harm.²³ Article 19 of Law 70 stated that productive practices developed in those territories must guarantee the subsistence of populations instead of giving priority to agro-industrial practices.²⁴ Furthermore, the introduction of agro-industrial projects in Lower Atrato

22 Interview conducted by J. Baquero with an NGO volunteer who recently has accompanied the communities. Bogotá, November, 2012.

23 “In the criminal proceedings in Curbaradó and Jiguamiandó, there are people on trial and convicted, and that process began simply with environmental harm. Due to the complexity of the cases, the timid way to start is by environmental damage associated with the impacts on water supplies and diverted rivers. Thus, the cases progressively have advanced to uncover the criminal structure behind agribusiness” (Interview conducted by J. Baquero) with a member of the NGO “Inter-Ecclesial Commission of Justice and Peace”, Bogotá, 2012.

24 Article 19 states that “traditional practices exercised over the waters, beaches or river banks, secondary fruits from forests, fauna and flora on land and water for nutritional purposes, or the use of renewable natural resources for construction or repair of houses, fences, canoes and other household items to be used by members of the respective black community, will be considered uses by operation of law and therefore does not require a permit”; “These uses must be exercised in a manner that ensures the persistence of resources, both in quantity and quality”. And “the practice of hunting, fishing or harvesting of products for subsistence has priority over any commercial, semi-industrial, industrial or sports use” (Country Government of Colombia 1993, Article 19).

is also illegal, because Article 15 of Law 70 prohibits the purchase of land owned by the collective territories by external parties.²⁵ The Colombian Institute for Rural Development (INCODER),²⁶ the State agency responsible for lands and agriculture policies in Colombia, visited the region in 2004 and identified an area planted with oil palm of 3.834 hectares in topographic surveys and plans, recognizing the illegality of the plantations (INCODER 2005: 17). They stated that 93% of areas with oil palm belonged to the collective territories of black communities in Curbaradó and Jiguamiandó. Some enterprises showed purchasing contracts that they apparently signed with local people. Even so, INCODER stated that those contracts were illegal because they infringed Article 15 of Law 70. The companies tried to legalize their land-grabbing through several mechanisms. One of them was the enactment of false property titles, obtained from corrupted notaries; another was the enlargement of some estates that they bought from people that had legal titles before Law 70.²⁷ Oil palm companies and cattle ranchers also bought private properties that were issued by the system of titling uncultivated land (*adjudicación de baldíos*) before the introduction of Law 70. Even so, those properties were excluded from the collective titling.

The courts have sided with the communities, showing that even part of the Colombian state, the judicial system, considers the entrepreneurs to have taken their lands illegally and by force. These legal processes started after the accusations made by local communities and NGOs against oil palm companies. Currently, several hectares are in the process of being returned to the communities. The government has used the cases of Curbaradó and Jiguamiandó as a model for restitution policies in Colombia. However, the government has been more focused on the “legal restitution” than in the real “material restitution”. This involves the recovery and re-adaptation (*saneamiento*) of territories and the guarantee of security for peasants who return. The government initially planned to reconstitute the lands in May 2010 by giving the territory to a false legal representative who supported the interests of agro-entrepreneurs. The Constitutional Court stopped the restitution by publishing the Decision of May 18th 2010, which forced

25 Article 15 states that “the occupation by parties external to the black communities of land issued as collective territories would not give these external parties the right to obtain titles or the recognition of improvements applied to the lands, and thus, they would be considered as ‘bad faith occupants’” INCODER (2005: 20). The Law also states that areas could be sold, as a consequence of family dissolution, or depending on the procedures established by the communitarian councils. Privileges to sell the lands would be given to members of the same community or ethnic group.

26 The INCODER replaced the Colombian Institute for Agrarian Reform (INCORA).

27 Various entrepreneurs bought lands from individuals who had legal titles obtained before Law 70. After buying the estates, they used the figure of “accession” (a figure that was declared in disuse in the 1980s by the Council of State) to enlarge the properties, arguing for the introduction of “improvements”. In one case, a person who died in 1995 supposedly “sold” his property of 40 hectares in 2,000 to a company that enlarged his estate to 5,000 hectares. Using this mechanism, the companies planned to legalize almost 18.000 hectares (Interview conducted by J. Baquero with a member of the NGO “Inter-Ecclesial Commission of Justice and Peace”, Bogotá, November, 2012).

the state to refine the process by conducting a population census within and outside the region, which would define the General Assembly that elects the Legal Representative of the community council. Currently, the process is still at a halt while the Constitutional Court defines the constitutional character of the census concluded in 2012. Additionally, conflicts concerning the rights of the mestizos within the territories have arisen, such as the right to vote and to be elected as members of the Assembly. Even so, the division has been created “from above” by entrepreneurs that “support” a sector of the Afro-descendants in the defense of their interests in the region.²⁸ Today the enterprises still remain in the area, controlling big extensions of territories by bringing foreign workers in to occupy these lands, or by putting up enclosures and introducing livestock.

5. Conclusions

The struggles for land discussed in this paper have been developed in a context characterized by some improvement of laws and policies designed to protect ethnic and cultural minorities in Brazil and Colombia, following the “multicultural turn” (Bocarejo 2011) in international law. The paper discussed to a greater extent the cases of Afro-descendent communities located in areas disputed by agribusiness companies interested in expanding palm plantations for biodiesel production. In Brazil, the Constitution of 1988 as well as further legislation have created the possibility to assign legal titles for the lands occupied by these communities. In the case of Colombia, the most important legal instrument has been Law 70 of 1993, which also prescribes the regularization of lands occupied by Afro-descendent communities.

The expansion of minority rights in the cases presented here does not have the impact described by liberal multiculturalism, namely the preservation of the pre-existing cultural identities of minorities, such that individual members of these minorities could develop a sense of personal autonomy within a culturally intact and coherent context. What we observe in north-east region of Pará, Brazil and in Colombian Lower Atrato, is a process of ethnic re-identification following the legal and political possibilities offered by new minority rights: groups previously engaged in struggles for land as poor rural workers have rearticulated their interests as Afro-descendants. By doing so, they often differentiate themselves from other peasants who actually share similar life-forms and strategic interests with them, as in the case of the mestizo communities of Lower Atrato. Classificatory categories introduced by law and by policies have generated new loyalties and identifications, as suggested by Chatterjee (2004) in the passage highlighted in the first section of this paper.

²⁸ Interview conducted by J. Baquero with a public functionary of the Lands Restitution Program, Bogotá, May, 2012.

Nevertheless, what the studied cases show is that the situation of communities covered by the legal shift is more complex than the mere domestication and governmentalization of differences as claimed by subaltern studies such as Chatterjee's. In Colombia as well as in Brazil, new minority rights have broadly reconfigured local struggles for land. It is obvious that the adoption of new rights does not abolish existing power asymmetries. However, these rights reframe the conditions under which struggles for land are conducted and negotiated. We can schematically confirm that the cases studies provided examples for all three types of impacts produced by rights over power relations, as highlighted in first section of this paper. These are:

- (1) Minority rights serve to expand the discursive and institutional power of Afro-descendent communities and of their political allies, to the extent that claims for land, or better, cultural territories in both countries are now supported by the law and by specific policies. However, the impact of new rights over social power – i.e. access to land - of Afro-descendants varies according to country and political circumstances. In Brazil, after a more favorable period during the 90s, when a considerable number of titles for the *quilombo* communities were issued, we have observed a recent discursive and political counteroffensive of agri-industrial groups interested in using lands occupied by *quilombos*. These actors try to reduce the discursive power of Afro-descendant communities, accusing them of falsifying their ancestry and of applying environmentally hazardous production techniques. These opponents also dispute the institutional power of the *quilombolas* by working at the parliamentary and governmental level to change legislations and policies that protect minorities. In Colombia, titling processes have been carried out since the middle of the 1990s, and in Lower Atrato, it took place amid violence. However, representatives of agribusiness have not yet disputed the discursive and institutional power of Afro-descendent communities, as observed in the Brazilian case. Their preferred methods are violence and the co-optation of local leaders.
- (2) Minority rights functioned as a relay in the Colombian case when oil palm farmers falsified titles to illegally expropriate Afro-descendant communities. As shown above, the abuse of power lead to a blockade in the power circuit: the courts condemned the farmers and confirmed the rights of Afro-descendant to their territories.
- (3) In the case of extremely asymmetric power relations, minority rights cannot be implemented even if they exist formally. This was observed in Lower Atrato, during the military and paramilitary offensives between 1996 and 2004. Despite the legal protection guaranteed by Law 70, the local population was forced to leave their territories.

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Contact

desiguALdades.net

Freie Universität Berlin
Boltzmannstr. 1
D-14195 Berlin, Germany

Tel: +49 30 838 53069
www.desiguALdades.net
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