

# The Traditional Law of the Maroon Community of Baú

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## Abstract

This scientific article exposes the traditional law of occupation and uses of the territory of the maroon community of Baú, located in the municipality of Serro, Minas Gerais, Brazil. The research was carried out based on the methodology of participant observation, with the immersion of researchers in the daily life of the community. The observation and analysis of social practices provided the material for the construction of traditional maroon law categories. Empirical research revealed that the maroon community of Baú regulates the appropriation and use of its territory through three legal categories: “house/yard”, “forests/fields” and “cake lands”. The social categories of “house/yard”, “forests/fields” and “cake lands” summarize the norms of appropriation and use of territory, which prevail in the lives of the maroons of Baú, disciplining who and in what way can use the different portions of the territory occupied by the community. This form of regulating the appropriation and use of territory conflicts with the official state law. It is argued that the normative conflict must be resolved with the prevalence of traditional normativity as a result of the right to the continuity of the maroon way of life.

## Keywords

Maroons Communities, Traditional Laws, Legal Pluralism

## 1. Introduction

The process of modernization/colonization, which began in 1492, has instituted a social order based on the racial classification of the population (Dussel, 1993; Quijano, 2005). The goal was to provide a permanent flow of commodities, especially tropical goods such as sugar, cotton and other agricultural productions, as well as precious metals. It enabled the capital accumulation in key countries of the capitalist world-economy.

The production of goods was based on the slave labor of Africans and their descendants. It is estimated that, between the 15th and 19th centuries, approximately 20 million Africans were kidnapped from Africa and brought to America.

The slave labor of Africans is, then, a central piece in the entire flow of goods that constitutes the origin of the Modern World System (Wallerstein, 1983).

The social construction of racial subjects is one the fundamental pillars of the modern/colonial society, through which is set the definition of social roles (political, economic and legal), of rights and duties and of the distribution of resources and opportunities, taking into consideration the features attributed to different races by the dominant philosophical and scientific discourse. The three races are sorted hierarchically, and this division justifies classifying races as superior or inferior, rational, or irrational, primitive or civilized.

According to the dominant imagination in the modern/colonial society, white individuals are the holders of psychological, moral, intellectual, and cultural features that characterize humanity itself. Among these features, rationality and sense of justice and honesty are emphasized and used as a basis for the exercise of political, economic and legal powers on these modern/colonial societies.

On the other hand, black individuals are reduced to highly instinctive bodies, irrational motives and hyper sexualization, being closer to animism than to humanity. Consequently, these individuals are expected to occupy a subordinate spot when it comes to political and economic plans on the modern/colonial societies (Mbembe, 2018).

For that matter, Aníbal Quijano states that the modern/colonial society is based on the racial Division of the population, regulating the distribution of social power according to race. The author (Quijano, 1993: pp. 758-759) affirms that,

[...] when America was formed, it was established a new mental category: the idea of “race”. From the beginning, the colonizers established a fundamental historical discussion for future relations between people in the world, especially “Europeans” and non-Europeans. The main topic was whether people in America had souls; that is, if they are considered people. The immediate conclusion, declared by the Papacy, was that they were humans. However, the intersubjective relations and social practices were contaminated by the idea that non-Europeans had a biological structure that was not only different from that of Europeans, but also that it was inferior. In addition, it established the idea that cultural differences are associated to biological inequalities and are not a byproduct of the history of relations between people and the universe. These ideas forged, in a profound and lasting manner, a cultural complex, a matrix of ideas, images, values, actions and social practices that affect the relations between people, even after the end of political and economic relations. This complex is what we call “racism”.

As the winners acquired the identity of “White” and “European”, other

identities were associated to skin colors, such as “indigenous”, “black” and “mixed race”. From these new identities, it was set the idea of inequality, as well as cultural and ethnical inferiority.

This is the idea that rules and operates, from the moment of colonization, the social roles of non-Europeans in America. It is also from this point on that this idea is reproduced as standard in the colonial relations between Europeans and non-Europeans, first in Africa and Asia, and later to all relations between these groups of people. (Free translation).

The dehumanizing discourse of black subjectivities has constituted one of the most important elements on the attempt of legitimation of the modern/colonial society, whose economic infrastructure are based on African slavery. The slaves worked on plantation and on mining precious metals to accumulate mercantile capital. From the notion of power coloniality, it is possible to affirm that the subordination of the black population did not end when colonialism ended. Rather, it persists on current days.

The slave trade has not enabled only the use enslaved workforce to serve the mercantilist exchange of tropical farming products and precious metals, intended for the European market. It has also enabled people to have their own system of representation regarding the world, constituted by religion, artistic expressions, ethical and technical knowledge, and economic practices, among others. It is safe to say that “in the basement of ships, besides muscles there were also ideas, feelings, traditions, mindsets, eating habits, rhythms, songs, words, beliefs, religions, ways to look at life and what is most impressive: the Africans held all of this in their souls [...]” (*Atlântico Negro: Na Rota dos Orixás*, 1998, free translation).

Enslaved Africans have rebuilt, in Brazil, their lifestyles, with their languages, technologies, religions, cosmologies, customs, among other diacritical elements of African cultures, adapting them to the reality of colonial life through the setting of black cultural territories, which have truly become African enclaves in the middle of the Brazilian modern/colonial society.

The presence of African cultures is a distinctive feature of Brazilian society, which can be perceived in many aspects of daily life, such as culinary, architecture, productive techniques, among other things. However, the racism from modern/colonial society actively works, through different ways, to make these African cultures invisible in the country. On this context, it is possible to affirm that

Brazil is the most important modern country with registers from African references outside of Africa. These references are seen especially in their territories (urban, rural, religious, farming, commercial, traditional, among other possible dimensions of territorialization) and, more visibly, in the population and language spoken. There are many structural components that explain the relevance of African-Brazilian culture, but three components seem worth highlighting. First, it was in the main colonial cities (Sal-

vador, Rio de Janeiro, São Luís, Belém, Recife, São Paulo, among others) and in many coastal points that the biggest contingencies of human beings from different ethnical groups, cultures, technologies and geographical locations arrived. The history of humanity does not know about any other event in the world that had such social massacre between the two margins (African and American) and in the Atlantic Ocean, from 15<sup>th</sup> to 19<sup>th</sup> centuries. Estimations state that around 13 million people were trafficked to occupy the “New World”, and Brazil holds the biggest statistics, receiving more than 4 million people.

The second component refers to the development of the large zones of colonial economic activities (coffee, latex, sugar, cotton, cacao, mining etc.), structured on African workforce and technologies, throughout four centuries (16<sup>th</sup> to 19<sup>th</sup>). This aspect reveals the economic dimension and the territorial expansion that were made possible by the ample presence of Africans in the formation of Brazil. These two components alone make it possible to understand why the Brazilian state, from a historical perspective, was the biggest enslaving territory in the “New World”, even with political conflicts and social-economical contradictions. Evidence is the dominant political system that imposed slavery, even after declaring independence from Portugal. Through this course of action, it was possible for Brazil to be the last country to abandon slavery in America. This is a basic premise to understand the extension to which racism and prejudice are set in the country’s complex, contradictory and multiple social structure.

The third component is associated to the large demographic contingency of African people in modern Brazil (97 million people—Censo IBGE, 2010). In other words, more than 50% of the “continental country”, and this is the largest statistical register of African descendants outside of Africa. These African Brazilians have been the main victims of prejudice and racism in the country, which is a reality due especially to the preservation of some practices from the slavery regime. We cannot lose sight of the way the national system deals with our African population, denying their humanity and their identities, revealing an image that does not correspond to reality. That way, Brazil does not have to assume racism as a strategy to maintain the historical and conservative power (dos Anjos, 2014: p. 18, free translation).

The maroon communities emerge, then, from the appropriation of a territory from an African ethnical group, whose use and control of the biophysical environment allows the appearance of a unique social organization, the physical and cultural reproduction of collectivity and the resistance to this subordinate position that is imposed by modern/colonial society<sup>1</sup>.

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<sup>1</sup>The legal definition of maroon communities is on the Brazilian constitution, article 2 from the Decree n° 4.887/03: “For the purposes of this Decree, the ethnical-racial groups are considered maroon communities from a criteria of self-attribution, considering the group’s black ancestry related to historical oppression” (free translation).

These processes of territorialization made possible the creation of multiple maroon communities, which are spread throughout the entire Brazilian territory, and which adopt different ways of appropriation, use and control of their territories. The permanent or temporary use of forest areas, water resources, fields, pastures, and other natural goods is regulated by many traditional and non-state laws, accepted and obeyed, even if inconsistently, by the members of the ethnical group (de Almeida, 2004).

Maroon communities are ethnical groups understood as a collectivity that includes individuals with the same cultural heritage, built from a collective recalling of their common origin (mythical history that is invoked or forgotten according to the circumstances) and from a dynamic and non-stop process of highlighting “distinguishing cultural features” (beliefs, values, symbols, rites, rules, garments, external appearance, culinary, singing, dancing etc.) (Arruti, 2006).

The highlighting of “distinguishing cultural features” produces an ethnical border, in which members of an ethnical group (us) differentiate between one another and from those who are not part of this ethnical group (them). From this, it is established a set of traditional laws that force members of this ethnical group to observe certain duties of loyalty, solidarity, hierarchy, social roles and division of social work, which are recognized (conscious or unconsciously) as mandatory to be part of this ethnical group.

The ethnicity is, then, a “[...] way or social organization based on the classification of people based on their supposed origin, which is validated on the social interaction through the activation of distinguishing cultural signs” (Poutignat & Streiff-Fenart, 2011: p. 141, free translation).

It is possible to say, then, that self-initiative is one of the elements that characterize ethnicity, expressed through the ways of thinking, feeling and doing adopted by the members of an ethnical group, and it is valeted by accepting, consciously or unconsciously, the initiative of setting the different practices of this ethnical group.

Ethnical groups establish their own jurisdiction, which lives in the regulation of social relations established between members of a group. Because of that, they feel bound to obey the typical regulations set in this kind of social relations.

These traditional laws come from the habits adopted by those who belong to the ethnical group and these habits are kept while the members are successful in orienting the actions necessary to problem-solving in their communities. Through this process of establishing life in the ethnic community, there is an ongoing process of adapting and transforming traditional laws, to adapt them to new challenges, demands, conflicts and vital problems that always appear. This way, the habits represent the embodiment of traditional laws, whose meaning can only be known through understanding the thinking process that leads the actions that guide the community life of ethnical groups.

The multiple ways of life, adopted by all the 3000+ maroon communities that exist in Brazil, are the origin of diverse traditional jurisdictions that lead life in

these communities, contrasting with the legal state order (*Fundação Cultural Palmares (Brasil)*, 2019).

In other words, there is a troubled coexistence of custom codes that regulate the ethnical existence of family, work and land in maroon communities. These customs are, sometimes, in direct conflict with state legislation.

On multiple dimensions, racism has hidden the traditional jurisdictions that takes place in maroon communities. On an institutional level, this jurisdiction has not been officially recognized by the state, which has forced a homogenizing jurisdiction that is unitary and European-centered to the detriment of the cultural and ethnical plurality in the Brazilian society. On an epistemic level, Law schools tend to adopt, hegemonically, a unitary perspective of the legal phenomenon. Through this perspective, the nation state is the only institution that is allowed to establish what Law is, being guided by decisions that are made by the institutions that are part of this nation state.

This article is based on a multiple and counter-hegemonic perspective, which intends to overcome the unitary theories of Law. That way, it intends to get to know and to make visible other non-state jurisdictions that are, most of the times, implicit in the ways of doing, feelings and living in Brazilian maroon communities. The cognitive interest of this article excludes any theoretical approach that reduces Law to what is proposed or recognized to the nation state, because the unitary view of Law makes invisible exactly what we want to know: the jurisdiction that leads the material and symbolic life of maroon communities.

Critiques made to plural jurisdiction by authors such as Miguel Reale (*Reale*, 1984), Norberto Bobbio (*Bobbio*, 1980), Jean Carbonnier (*Carbonnier*, 1979), Carlos Cárcova (*Cárcova*, 1998), among others, are not ignored. These diverse critiques encompass the defending of unitary Law (the view of the State as the only tool for determining the stability of the social order, from the perspective of Miguel Reale). There is a concern that the pluralist jurisdiction can become a conservative project of predominance of non-state jurisdictions by big international economic conglomerates (*Bobbio*, 1980); also, a concern that there is a rejection of the theoretical confusion between law and moral, because plural jurisdiction does not recognize coercivity as an essential element of law, which should be in any theoretical conception about law (*Cárcova*, 1998).

However, this article does not intend to discuss and refute critiques to plural jurisdiction, no matter how relevant they are. This article's goal is to expose the traditional laws that are observed by the members of the maroon community of Baú, located in the municipality of Serro, in the state of Minas Gerais. It also intends to expose the regulation involved in the appropriation and use of different parts of this ethnical groups' traditional territory.

The theoretical framework adopted is the empirical research made in the maroon community of Baú; the plural community-participative jurisdiction that understands law as a set of social practices adopted, official or not, by a community to regulate social life, solve social problems and satisfy the needs of its members.

Pertaining to the topic, Antônio Carlos Wolkmer (2001: p. 82) states that

[...] a plural jurisdiction (considered community-participative), set in public open spaces and shared democratically, favoring the direct participation of subordinate and excluded social groups, able to establish new rights and allowing the historical struggle to be solved by the will and authentic expression of communities.

The maroon community of Baú is in the Serro municipality, state of Minas Gerais, about 10 km away from the municipality seat. It is composed of descendants of enslaved Africans from the southern portion of Angola. They were brought to Minas Gerais at the beginning of the 18<sup>th</sup> century to serve as workforce for the gold and diamond mining economic activity, next to the affluent of the Jequitinhonha River, especially in a stream called “Acaba Saco”<sup>2</sup> (PUC/MG, 2015).

The investigation about the implicit jurisdiction regarding the Baú community’s social practices was conducted using the methodology “participant observation”, in which the researchers were directly involved in the daily life of the community, engaging in social activities and promoting dialogues about the history, values, alliances and grudges of the people, as well as their ways of appropriating and living in the traditional territory.

The legal research was centered on the observation of habits adopted by the members of this community in living and using the many parts that constitute their territory. From the habits that were observed, it was possible to understand the implicit regulations in the social practices of the maroon community. Apart from the ideas of essential cultural aspects and the anthropologic evolutionism in the notion of “tribe”, Malinowski’s scientific methodology served as an inspiration and guided the empirical research about the jurisdiction in the maroon community of Baú. On the introduction of the book “Argonauts of the Western Pacific”, Malinowski (1978: p. 24) explains the work of an ethnographer as the following:

[...] the Ethnographer has in the field, according to what has just been said, the duty before him of drawing up all the rules and regularities of tribal life; all that is permanent and fixed; of giving an anatomy of their culture, of depicting the constitution of their society. But these things, though crystallized and set, are nowhere formulated. There is no written or explicitly expressed code of laws, and their whole tribal tradition, the whole structure of their society, are embodied in the most elusive of all materials, the human being. But not even in human mind or memory are these laws to be found

<sup>2</sup>The Anthropological Report of Historic, Economic, Environmental and Sociocultural Characterization of the maroon community of Baú, devised by the extension projects “Fighting for the recognition of the fundamental rights of remaining maroon communities” and “Lessons about the land-interdisciplinary project of ethnical rights”, from the Pontifícia Universidade Católica de Minas Gerais (PUC-Minas), has presented a series of historical documents that point to the stream Acaba-Saco as a place of gold and diamond extraction at the beginning of the 18<sup>th</sup> century. The two most important historical documents are the letter “Demarcation of the lands that produce diamonds” (1729) and “Small map of diamond demarcation” (1774).



formulated. The natives obey the forces and commands of the tribal code, but they do not comprehend them; exactly as they obey their instincts and their impulses but could not lay down a single law of psychology. The regularities in native institutions are an automatic result of the interaction of the mental forces of tradition, and of the material conditions of environment. Exactly as a humble member of any modern institution, whether it be the state, or the church, or the army, is of it and in it, but has no vision of the resulting integral action of the whole, still less could furnish any account of its organization, so it would be futile to attempt questioning a native in abstract, sociological terms. The difference is that, in our society, every institution has its intelligent members, its historians, and its archives and documents, whereas in a native society there are none of these. After this is realized an expedient must be found to overcome this difficulty. This expedient for an Ethnographer consists in collecting concrete data of evidence and drawing the general inferences for himself.

That way, from April 14<sup>th</sup> to 21<sup>st</sup>, 2019, the researchers went through their first time living with the maroon community of Baú, in order to get involved in their social lives and start a dialogue about their ways, to uncover their rules of appropriation and use of their traditional territory. Many interviews were made with the community's members, recorded with their authorization to register the history of the community, how they acquired their lands, the economic practices used in the lands and their principles of justice regarding the use of the land.

When they returned to the university, the researchers transcribed their recordings and started to create hypotheses about the jurisdiction that guides life in the maroon community, especially in what concerns the use of their traditional territory. The legal categories of “house/garden”, “woods/fields” and “cake lands” were created as hypotheses that explain the diverse rules and jurisdiction that lead the appropriation and use of the traditional territory (see **Figure 1**).



**Figure 1.** Picture of Jurandir and Vera's “house/garden”. The interview was made while walking around the territory to understand the rules of use and occupation.



From October 11<sup>th</sup> to 16<sup>th</sup>, 2019, the researchers lived in the maroon community of Baú for the second time. The goal was to talk to the members about the aforementioned legal categories, adjusting the conceptual elements of the categories to the information provided by the community's inhabitants, looking for a validation of the categories according to their ways of life.



**Figure 2.** Picture of the couple Jurandir and Vera, inhabitants of the maroon Community of Baú, after the interview conducted by the researcher.

The interview was made while walking around the inhabitants of the maroon Community of Baú, after territory to understand the rules of use and occupation (Figure 2). The interview conducted by the researcher.

The present article exposes the results of a research about the traditional rights in the maroon community of Baú regarding the occupation and use of the many parts of the traditional territory by the members of this ethnical group. This research made possible a better understanding and visibility to the traditional law and legal practices adopted by the community. It also made possible to observe that the jurisdiction in the traditional community of Baú is based on production, on a cosmic view of the world and on the ethical values adopted by this ethnical group, regulating the access and the use of the territory in a way that is widely different from the official law of the Brazilian state.

## **2. The Legal Pluralism and the Traditional Law That Prevail in Maroon Communities**

The European colonization in American lands produced, unintentionally, a legal pluralism that is characterized by the coexistence, with no hierarchical relations whatsoever, of multiple varied legal systems, practices and normativeness in a same territory. These elements regulate social life through the definition of rights and duties and of the distribution of wealth and opportunities, from the concept of constitutive justice on the symbolic universe.

It is necessary to clarify that, even with attempts to preclude and invalidate these systems, practices and norms that do not come from the nation state, through the fundamental institutions of the modern/colonial society in Brazil (that is, state, marked, universities, mass media and so on), the legal pluralism is, above all, a matter of fact. In other words, there is a wide variety of legal systems, practices and norms, originated from the state and other social institutions that regulate human life and that are, most of the time, constant sources of conflict and precariousness.

For that matter, Boaventura de Sousa Santos (2014: pp. 55-56) explains that

The problem with legal pluralism was reinstated, in widely different terms, by legal anthropology, and it is, currently, on the most discussed problems in this field of study. The basic sociologic context that started the discussion of this problems was, as in many other fields, colonialism, that is, the coexistence in a space arbitrarily unified as a colony, from the colonizing state and traditional rights. This coexistence, a source of constant conflict and precariousness, had, in some cases, a cover from the legal constitution (for instance, in the indirect rule from British colonialism), while in other cases it was a political and sociological phenomenon that served the colonizing State's political and legal conceptions) (which, in parts, is what happened with the Portuguese colonization) (free translation).

The Brazilian society is formed by a variety of cultures from Europeans, Indigenous populations and Africans, and each culture constitutes a unique symbolic universe from which is possible to create and signify social practices, ethical and aesthetic values, concepts of justice and other aspects of social life, which prevail and make sense only as a part of this symbolic universe.

Symbolic universes enable a total structure of significance through which it is possible to assign meaning to social practices adopted in a certain community, such as religiosity, artistic expression, ethical and technical knowledge, economic practices, among others. In other words, social practices gain meaning when they are part of a symbolic universe, understood as a network of shared meanings to those who belong to the same culture. This network is used to assign meaning to the reality of a culture. On the other hand. New social practices that originate from the creativity of members of a given culture, who can reinvent the knowledge and customs provided by tradition, force the redefinition of the culture's symbolic universe.

The dialectic tension between symbolic universe and personal social practices is the driving force that transforms the symbolic universe (the collective) and the social practices (the personal).

For that matter, Law, understood as a social practice that regulates people's coexistence and the division of property, is a social construction carried out by a symbolic universe shared between those who belong to a certain community.

That way, the multiple cultures originated by European, Indigenous and Afri-

can lifestyles, constitute many possibilities of significance which allow experimentations, definition, interpretation, and assignment of meaning to varied human conditions. They also enable the existence of legal orders, each appropriate to the regulation of human coexistence in a particular context.

The cultural kind of legal pluralism can be seen in many maroon communities which, in fighting for recognition and preservation of their lifestyles, demand the acknowledgement of their uses and customs as material sources of traditional Law. At many times, it contrasts with the official state law.

Based on the “vertical comparison” of the official state law and the traditional legal system of the maroon community of Baú, in line with the methodology defended by Scarciglia (2015: p. 47), the aim is to highlight the particularity of the traditional legal rules of use and occupation of territory in the maroon community of Baú in opposition to the official rules contained in Brazilian state law.

In this context, the legal categories of the traditional law of the maroon community of Baú, related to the use and occupation of land, will be formulated, based on empirical observation of the habits and customs adopted by the members of community. Next, the categories of traditional law will be compared with the categories of official state law, pointing out the similarities and differences between the two legal systems. It will be concluded that the categories of the traditional law of the maroon community of Baú are incommensurable with the categories of the official law of the Brazilian State.

### 3. The Maroon Community of Baú and the Traditional Laws of Use and Occupation of Territory

The maroon community of Baú is in the Serro municipality, in the mesoregion of Alto Jequitinhonha, state of Minas Gerais. The historical origin of this community is related to the extraction of gold and diamond, held and regulated by the Portuguese Colonial State, in a region called “Distrito Diamantino”<sup>3</sup>.

The current territory of the maroon Community of Baú is divided by the stream “Acaba Saco”, which, in many documents from the beginning of the 18<sup>th</sup> century, is appointed as a region of gold and diamond extraction. For that matter, the Anthropological Report of Historic, Economic, Environmental and Sociocultural Characterization of the maroon community of Baú—Serro/MG

<sup>3</sup>The “Distrito Diamantino” (Diamond district) is a land demarcation done by the Portuguese Crown as a means to control the extraction and commercialization of diamonds. Joaquim Felício dos Santos (1976: p. 50) explains that: “As soon as the Portuguese Crown received the news of diamonds appearing in the Serro region, through a letter from February 9<sup>th</sup>, 1730, at the same time finding it strange that this letter was received so late by the king, he got ample and unlimited power to regulate and lead this important new source of income, which was to enrich even further the Royal Farm. [...] D. Lourenço de Almeida, using his unlimited powers, immediately established capital taxes of \$5000 per slave that worked on this economic activity, as well as 1/5<sup>th</sup> of the value of the extraction, as stated by the ordinance from June 24<sup>th</sup>, 1730 [...]. Up until the year of 1734, the Diamond district’s borders were not completely evident. Every document emitted about the mining activity mentioned these streams where diamonds were extracted in Serro. Martinho de Mendonça de Pina e Proença, by order of the king, was the one responsible for demarcating the diamond lands” (free translation).

(PUC/MG, 2015: Volume 2, p. 15), states that the historical origin of the community is described as follows:

The first historical references to the Maroon Territory of Baú reminds us not of the community's name, but of this stream (Acaba-Saco). These references are due to the exploration of diamonds on this water body, which dates from the beginning of the 18<sup>th</sup> century and holds until the end of the 20<sup>th</sup> century. The first document to cite this area is the letter "Demarcation of lands that produce diamonds" (Costa, 2015: pp. 214-215), a yellowed manuscript that belongs to the Overseas Historical Archive. The author and date are unknown. [...] It is considered the first cartographic record pertaining the demarcation of the "Distrito Diamantino"—which led specialists to date the letter to before the year 1739, when the mining of diamonds, after a period of stagnation, started to work under a contract system that explored diamonds only in the demarcated area (Rodrigues, 2015). There, besides the origins of Arraial do Milho Verde, [...] many locations are identified, such as "C. três barras" (Três Barras stream), "C. das Lages" (Lages stream), "C. Simão Vra" (Simão Vieira stream), "C. S. B." (São Bartolomeu stream), "Rio das P" (Pedras River) e "M.º Verde" (Milho Verde). The Acaba Saco stream is named "C. Cavasaco" (Cavassaco stream), but the reason for this name is unknown.

The "Acaba Saco" stream was used for gold and diamond mining, whose gathering on the stream's bed has enabled the extraction of an immeasurable wealth from the beginning of the 18<sup>th</sup> century to the last decades of the 20<sup>th</sup> century. The extraction of gold and diamonds used to take place mainly from April to September, as it is the period of dry weather in the region of Serro.

The stream was also used to collect water which was destined to maintain farming operations during the rainy season, from October to March. It was used especially for the livelihood of maroon families.

Countless historical documents reveal that, from the beginning of the 18<sup>th</sup> century, diamonds were extracted from the "Acaba Saco" stream. In such context, the stream is stated as a place for diamond exploration, taking place in the heart of the "Distrito Diamantino", via the letter named "Demarcation of lands that produce diamonds", which is a yellowed manuscript that belongs to the Overseas Historical Archive. This document can be seen below **Figure 3**.

The "Small map of diamond demarcation", dated from 1774, belongs to the Overseas Historical Archive. It was submitted by the Diamond Intendant (João da Rocha Dantas de Mendonça) and it has a list of water bodies where diamonds were extracted. The first name on the list is "Cabasaco", which is short for "Acaba-Saco", the stream pointed in the article as a place of diamond extraction.

The maroon community of Baú was formed, then, from the establishment of the first gold and diamond extraction enterprises throughout the "Acaba-Saco"

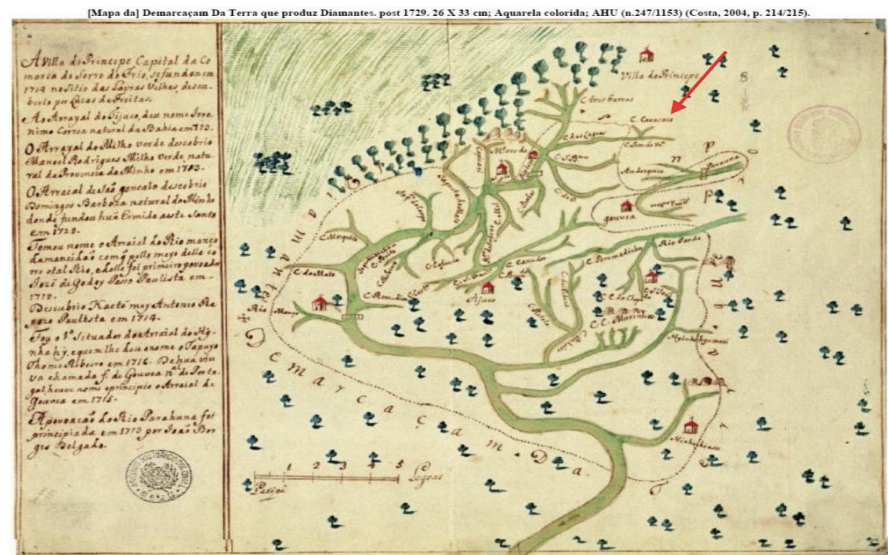


Figure 3. Map.

stream and its affluents. The maroon families, who served as enslaved workforce to extract metals and precious stones in the Serro district, moved to the margins of “Acaba Saco” in order to be live closer to their workplace.

Slavery is ever-present in the memories of Baú’s current inhabitants. They remember the power relations and the oppression that were part of their lives, as well as value their ancestors for their efforts in preserving the culture and acquiring the lands in which they reside. The Anthropological Report of Historic, Economic, Environmental and Sociocultural Characterization of the maroon community of Baú—Serro/MG (PUC/MG, 2015: Volume 2, p. 15) states that “the community of Baú has strong references in their recent and remote ancestors, dating even from times of slavery”.

On Sub-Saharan African culture, it is possible to notice the importance that ancestors have in their living relatives’ lives, especially in ceremonies such as the initiation of children, weddings, healing rituals, hunts, among other activities. The general thought in African culture about ancestors can be summarized as follows:

Ancestors are teemed with mystical power and authority. They keep a functional role in the world of the living, more specifically in the lives of their living relatives; as a matter of fact, groups of African relatives are often described as both communities of living and dead. The relation between ancestors and living relatives has been described as ambivalent, being both punitive and benevolent, often whimsical. In general, the ancestral benevolence is ensured through sacrifice and appeasement; it is believed that neglect can become punishment. Ancestors are closely involved in the well-being of their families, but they are not equally connected to each member of the group. This connection is secured through the eldest people in the family, and the authority given to the elderly is related to their strong



connection to the ancestors. (Kopytoff, 2012: p. 233) (free translation).

The reverence to ancestors in African culture is noticeable in many social practices in the maroon community of Baú, especially in the regulation to the access and use of their traditional territory. This reverence has become a fundamental criterion to regulate the use of maroon lands, to the point that some parts of the territory can only be used by the descendants of certain ancestors.

In such context, through the interviews made in the community, it was possible to see that the dead ancestors of current maroons, from the slavery period or after that, were able to acquire parts of the land because of their services on diamond extraction, on general services for the landowner or through payments made via diamonds.



**Figure 4.** Picture of Inácia Eraldo Reis—First generation of maroons from Baú born after the end of slavery.

In the interview made with the maroon Doralice do Socorro Paulino, it was possible to understand the relevance of ancestors to the community's daily life. The interviewee is the great granddaughter of Norberto Batista dos Reis (b.

1823) and Inácia Pinto Ribeiro—both worked as slaves in the Baú Farm (**Figure 4**); she is also granddaughter of João Norberto Batista (1853-1933—son of Norberto Batista Reis and Inácia Pinto Ribeiro) and Mariana Miquelina dos Santos (1878-1948—daughter of Francisco África da Costa and Maria Miquelina Costa); she is daughter of Francelino da Silva Paulino and Inácia Eraldo Reis (daughter of João Norberto Batista and Mariana Miquelina dos Santos).

On the statements transcribed above, the interviewee says that “Zezé Antônio” was the owner of the Baú farm. According to the documental research, it is believed that “Zezé Antônio” is Francisco Antônio da Silva Pereira<sup>4</sup>, who, on April 9<sup>th</sup>, 1856, registered “a land in the Milho Verde district, called Baú, to be divided between the heirs of Anna Ramos, Sebastião Antonio and Francisca Maria” (APM/TP-1-217) (free translation).

On the inventory of Francisco Antônio da Silva Pereira, who died on July 28<sup>th</sup>, 1876, there are several real estate assets and slaves left to the deceased. Among the many real estate assets, there is not any rural land, but there is the description “one small house covered in roofing tiles, in the land of Baú, Cortume, estimated to be worth one conto and a hundred thousand reis” (free translation). In other words, on the day of his death, Francisco Antônio da Silva Pereira was no longer the owner of the Baú farm, but only of “a small house”. It evidences the acquisition made by João Norberto Batista, who bought the Baú lands from Francisco Antônio da Silva Pereira.

On a table with the names of Francisco Antônio da Silva Pereira’s slaves (**Table 1**), there are the names Francisco África da Costa and Maria Miquelina Costa (maternal great grandparents of Doralice do Socorro Paulino) and João Norberto Batista (grandparent Doralice do Socorro Paulino). As it shows:

The part of Baú lands that was acquired by João Norberto Batista and sold by “Zezé Antônio”, is currently the territory of the maroon community of Baú. According to the traditional community laws, which regulate the use and occupation

<sup>4</sup>On the Anthropological Report of Historic, Economic, Environmental and Sociocultural Characterization (PUC/MG, 2015: Volume 2, pp. 33-34), there are several information about Francisco Antônio da Silva Pereira and his activities extracting diamonds “Francisco Antonio da Silva Pereira, judge of peace and captain of the Milho Verde National Guard, was the son of de Luis Antonio da Silva Pereira—replacement judge in Milho Verde and Bernardina Carlota de Souza (APM/PP1 10 CX 49 DOC. 06). Luis Antonio da Silva Pereira was a descendant of the captain Vicente Antonio da Silva Pereira, from Leira in Portugal, who moved to Milho Verde in the 18<sup>th</sup> century. ‘He moved by orders of the Portuguese king to provide food to thousands of slaves who worked in the extraction. (...) The captain Vicente Antônio brought three enormous grinding wheels made in the Madeira islands. The biggest wheel, with 3 meters of diameter, stopped working because of the wide deforestation in the region, which made the stream stop running. A different wheel was located in Moimho dos Macacos. The family’s farm was built in the Piolho stream, next to Milho Verde, and went on in the property until the Massangano river (Jequitinhonha) (Santiago, 2006: pp. 108-109). Luis Antonio da Silva Pereira was born in 1781 and his wife in the previous year, they had ten children and, in 1831, they were the owners of 11 slaves of various ages (PP1 CX 49 DOC.06). No information about the couple’s death was found, but, in 1865, both had already passed away and three of their kids, Francisco Antonio da Silva Pereira, Joaquim Antonio da Silva Pereira and Luis Antonio da Silva Pereira signed a petition with the deputy of the Diamond Territory of Serro, in which it was evident that parts of the land were given to the deceased Bernardina Carlota de Souza, to which they were successors and heirs. The land, located in the Acaba Saco (Curtume), consisting also of a small bridge across the stream, which leads water to the windmill (APM/TD 08, p. 4v)”. (free translation).



**Table 1.** Source: Francisco Antônio da Silva Pereira's inventory (1876).

NAME	AGE	ORIGIN	PRICE	ADDITIONAL INFO
Calisto	20		1,650,000	
Rita	44	African	600,000	
Elias	15	Creole	1,650,000	
Francisco	46	African	1,300,000	Married to Maria
Maria	30	Creole	800,000	Married to Francisco
Ricardo	9	Creole	1,000,000	Son of Francisco e Maria
Norberto	4	Creole	200,000	Son of Francisco e Maria
Gabriel	2	Creole	150,000	Son of Francisco e Maria
Sebastião	3	Creole	150,000	Son of Francisco e Maria
Catharina	55	African	200,000	Widow
Sebastiana	30	Creole	900,000	
Serafim	28	Creole	1,650,000	
?	24	Creole	1,650,000	
João	16	Creole	1,650,000	
Jorge	21	Creole	1,650,000	
Adão	43	African	1,350,000	
Luiza	18	Creole	1,000,000	
Dionizia	14	Creole	1,000,000	
Antonio	17	Creole	1,650,000	
Candida	12	Creole	1,000,000	
Miguel	12	Creole	1,400,000	
Antonio	48	African	900,000	

of this territory and which are implicit in the community's social practices, the lands left by João Norberto Batista are considered "cake lands", that is, they can be used by all of his descendants.

Other maroons also acquired lands in da Baú, such as Zé Malaquias, Firmiano Pedro da Costa, João Veríssimo dos Santos, Maria Fernandes (Maria Preta), João Novato, among other maroon families. And, according to the logics of the legal category of traditional law "cake lands", all descendants left by the aforementioned maroons and allowed, collectively, to use the lands that belonged to their common ancestors.

The interview, made with the maroon, is informative when it comes to the legal rules applied to the use of "cake lands", which were formed by the acquisi-

tion made by maroons through the 19<sup>th</sup> and 20<sup>th</sup> centuries. It shows as follows:

Luiz Gonzaga Costa: [...] a cake land is just like the one beyond the gate there. From there, it is cake land, which is from Lucimara's family, Clemilde's family, Odilon's family. This is what we call cake land, just like Firmiano's. It is all family.

Researcher: People from these families can use the lands, right?

Luiz Gonzaga Costa: Right.

Researcher: Can a person from another family use?

Luiz Gonzaga Costa: I mean, if they found a way to plant there.

Researcher: A person from Baú that is not from these families?

Luiz Gonzaga Costa: Well, they can plant, sure.

Researcher: In that case, do they have to pay a tax?

Luiz Gonzaga Costa: Yes, they do.

Researcher: So, people from the family do not have to pay for anything, but people who are not from the family, do.

Luiz Gonzaga Costa: Yes, people who are not part of the family have to pay.

Researcher: So, in reality, there are many cake lands divided by family.

Luiz Gonzaga Costa: By family.

[...]

Researcher: So, in reality, the cake lands were used by each familu. For example, regarding Firmiano's family, there was a cake land there. So all of his descendants could occupy this common area.

Luiz Gonzaga Costa: Right.

Researcher: Then, for example, if he needed more land that is not part of this area, he would have to pay taxes to someone else?

Luiz Gonzaga Costa: Yes.

Researcher: What are the greatest families in the Baú?

Luiz Gonzaga Costa: João Norberto's, de Zé Malaquias', Firmiano's, João Verissimo dos Santos' and also Maria Fernandes' families.

Researcher: Who is Maria Preta, married to Juca Rosa?

Luiz Gonzaga Costa: She is married to Juca Rosa, who was also from a big family, and there was also João Novato's big family.

Researcher: So all cake lands were based on family ties?

Luiz Gonzaga Costa: Yes.

As of the social practices related to the use of the land, it is possible to confirm the existence of the legal category "cake land" as of the traditional jurisdiction in the maroon community of Baú. This jurisdiction allows the use of "cake lands" by all descendants of the maroon individual responsible for acquiring these lands in the past. In other words, ancestry plays a fundamental role in the regulation of access and use of lands in maroon territories, and descent is the criterion used for allowing/prohibiting the use of these lands.

The regulation of access and use of "cake lands" from ancestry is clearly a legal

category pertaining African cultures, whose identity, duties and rights are closely related to a member's ancestors and territories. The rights and duties of a person depend on their belonging to the founding clan. In that sense, the anthropologist Norbert Roulands reconstruct the cosmology of various African peoples. As for understanding the being, he states that:

The individual, as understood by the modern Western, does not exist. It would be better to use the concept of "person" to understand African concepts. The person is determined by the relations that go beyond the domain of individual. A person can also be their family, friends, some of its goods or even certain places. It also pertains to the idea of time: the African man is comprised of his ancestors and so is your descendancy. Therefore, ancestry is important in the sense that it pertains to the clan's founder (which is not necessarily a human, but also an animal or, rarely, a plant). All individuals are part of this scheme and it ensures them a collective immortality. Belonging to a lineage is one of the main pillars of African jurisdiction: the relation between man and land (which can be used only by members of the same lineage), man and herd and also the different types of matrimonial alliance. (Rouland, 2008: pp. 78-79—our bold—free translation).

In the maroon community of Baú, the right to access and use "cake lands" depends on belonging to the lineage of the individual who acquired the land. It is forbidden to sell the land to people who do not belong to the same lineage. That way, it is possible to guarantee the continuity of a common ownership over the "cake lands". In other words, "cake lands" cannot be sold to people who are not part of the maroon who acquired the land in the past.

The legal institute "cake land" plays an important role in the perpetuity of the maroon lifestyle and social structure, to the point that ensures that young maroon have economic opportunities in different regions, since it is guaranteed that they can return to their ancestor's lands. The migratory and economic flow of maroon is related to the legal institute "cake land", which works as a tool to ensure people's return to their territory at any given moment. In other words, if it is necessary for a maroon person to leave the territory for any reason, their ownership will be guaranteed by the principle of the "cake land".

Besides the "cake lands", the maroons from Baú also occupy their territory through two additional legal categories: "house/garden" and "woods/fields". The "house/garden" refers to the space that a family uses as a space to build a house and to facilitate the agricultural production of food, often for the family's own consumption. This space is used exclusively by one specific family and it enables its economic autarchy in relation to other maroon families. The "woods/fields" are spaces for the collective occupation of the entire maroon community, no matter the lineage. These spaces are used for vegetal extraction, through which it is possible to produce honey and handicraft.

The legal categories "house/garden", "woods/fields" and "cake lands" com-

pose the norms for using and appropriating land in the maroon community of Baú. These norms govern the life of all its inhabitants and determine how and by whom these lands can be used.

The traditional law of the maroon community of Baú can be understood as unwritten norms, intertwined with the way of life of an ethnic group, which are transmitted by tradition through generations. These same characteristics are present in Zambian customary law in contrast to the statutory law of the English tradition, whose tense coexistence is explained by Muzambalika *Simwatachela* (2024: p. 287).

The official law of the Brazilian state does not mention anything like the legal category “cake land”. On the contrary, since it is based on the possessive individualism by the liberal bourgeois society (a European way of life that has become hegemonic through the economic supremacy and the nation state), the official law of the Brazilian considers as an abnormality the circumstance in which two or more people are co-owners and/or co-possessor of a same thing (land). As a result, the Brazilian state privileges the extinction of this abnormal situation to favor the possessive individualism, ensuring the right, to the co-owners/co-possessors, to extinguish this co-ownership at any given moment.

If the official law of the Brazilian state were applicable to the regulation of access and use of maroon lands, the “cake lands” would be under the legal institute “condominium”, that refers to a situation in which the same thing belongs to more than one person, ensuring to each one of them, ideally, equal rights over the thing. Since they are a transgression to the bourgeois idea of regulation and appropriation of things<sup>5</sup>, condominiums can be extinguished at any given moment by a mere demonstration of willingness by any of the owners, as it is stated on the article 1.320 of the Brazilian Civil Code (official law of the Brazilian state)<sup>6</sup>.

The “civilists” Cristiano Chaves *de Farias* and Nelson *Rosenvald* (2015: p. 592) explain the reasons why the official law of the Brazilian state considers desirable to extinguish the condominium. They state that

The condominium is not considered permanent. On the contrary, treating this notion as abnormal, its essence is considered everchanging, because the legal order aims at its extinction. Orlando Gomes explains that indivision is “an inorganic state, an exceptional situation which is not supposed to last, because it is contrastive to the usual way of dominance”.

The division is a way to extinguish the common thing, whose desideratum

<sup>5</sup>The “civilists” Cristiano Chaves *de Farias* & Nelson *Rosenvald* (2015: p. 581) explain the abnormal situation as follows (free translation): Fundamentally, the same thing cannot be owned exclusively and simultaneously by two or more people at the same time, preventing third parties from exerting any kind of influence over this thing. Usually, two people cannot occupy the same legal space. Therefore, the owner can exclude third parties from acting over the thing by adopting the “revindicating”. Only one person can use and possess a given object, and this ownership is unitary and indivisible.

<sup>6</sup>Art. 1.320. At any given time, it is possible for the co-owner to demand the division of the common good.

is to concede to each ex-owner a concrete and individualized area. In other words, it comes true in an ideal fraction, abstractly belonging to each owner.

Additionally, the division is an emanation of the right to property, not being submitted to limitation periods. As much as the owner may have stayed quiet for many years, it is possible to share the thing at any given moment. From that it is based the article 1.320 of the Civil Code to the right of dividing something whenever this is the will of the owner.

It is advised that the indivision be provisory. Commonly, the condominium becomes an uncountable number of disagreements, being socially adequate to avoid the conflicts generated by it. Therefore, legislators privilege its extinction, conceding to owners the right to divide the common thing through judicial processes, in case of resistance by any of the owners. The existence of a clause restricting the sale over a fraction of the thing does not stop the condominium from being extinguished. In this case, there is the subrogation of the clause, which falls into the proceeds of disposal, in the percentual that corresponds to the recorded fraction. (free translation)

The official law of the Brazilian state is structured on the normative premise that a thing must be appropriate by only one person, considering undesirable the circumstance in which this thing belongs to a collective. The Brazilian national legislation is an expression of the normative way of life of the modern/colonial society which, in turn, is structured on an individualist and egotistical idea of humanity. By this idea, each individual lives independently from their community and their main goal is to satisfy their needs through the acquisition of goods.

Consequently, within the scope of the Brazilian official law, it is permitted to ask for the extinction of the condominium, returning to what is considered normal in the modern/colonial way of life, in which an individual appropriates exclusively of something (land) to satisfy their needs or desires.

On the other hand, on the scope of the traditional law of the maroon community of Baú, the “cake lands”, which belong to the collectivity formed by all descendants of the maroon ancestor who acquired the land, express the collective identity of the ethnical group, which is maintained whenever its historical origin is remembered, as well as its founding myths, values, etc. The traditional law in the maroon community of Baú is structured in a communitarian conception of humanity in which each individual creates their identities as a part of an ethnical group that shares a community life.

The legal recognition and protection of the non-European peoples’ ways of life, with their rationalities, values, social practices, institutions, ethics, and own aesthetics implicates the legal validation of the traditional normativeness of non-European peoples. Consequently, it implicates a distance from the colonizing, homogenizing, and excluding dynamics of the state, who does not recognize other legal practices that do not come from the nation state.

In this context, the Convention n° 169, from the International Labour Organisation (ILO), states that the integrity of values, practices and institutions from traditional communities must be respected.

The respect to values, practices and institutions from maroon communities implies the recognition that the traditional normativeness repels the incidence of the state normativeness in the regulation of social relations kept in maroon communities. In other words, the respect to values, practices and institutions from maroon communities requires the validation of its traditional law and the scolding of any attempt to replace this law for the official law of the Brazilian state. That way, the coloniality is rejected in its legal sphere.

#### 4. Conclusion

The practice of law in Brazil is characterized by colonial relations that encompass society in its entirety, precluding, relegating and denying recognition and respective to the ways of life of African ethnical groups. Within the scope of legal epistemology, legal monism is the dominant theory, whose conceptual framework prevents the observation of the multitude of non-state legal practices that exist side by side with the Brazilian state legal normativeness. Regarding the production of law, legislative as well as jurisdictional, the state law is still used as a tool for homogenizing cultures and preventing different ways of living which are incompatible with the possessive individualism and the market economy. These ways of life must be recognized, protected, respected, and lived by non-European peoples.

Therefore, the construction of a multiethnic and multicultural society demands that the legal monism is overcome, as well as its homogenizing character, recognizing the existence of non-state legal practices, which integrate the way of living and existing of traditional communities. These legal practices regulate interpersonal relations among all those who share a cultural tradition.

In this context, the goal was to highlight the traditional laws that rule life in the traditional community of Baú, within the scope of appropriating and using the constitutive parts of their territory. It was discovered that the legal practice in this community divide the territory in “house/garden”, “woods/fields” and “cake lands”, which are legal categories that synthesize the rules of territory use that prevail in the lives of maroons from Baú and determine who and how these shares of territory can be used.

Traditional laws, which regulate the appropriation and use of lands in the maroon community of Baú, are structured in a communitarian perspective of subjectiveness, whose ancestry plays a fundamental role in the definition of rights/duties and in the division of goods/opportunities. The premises of the traditional law in the maroon community of Baú are, overall, incompatible with the individualistic and egotistical premises of the state law in the modern/colonial Brazilian society. That way, the state law is not appropriated for regulation the relations of use of territory in the maroon community of Baú, since it is also in-

compatible with the integrity of values, practice and institutions of the community, which are protected by the Convention no. 169 of the ILO.

It is defended, then, that the traditional legal normativeness repels the incidence of the state normativeness in the relation of the appropriation and use of the territory of the maroon community of Baú. In other words, the traditional laws in the maroon community of Baú are the ones applicable to the regulation and use of their territory. That way, respect, protection, and continuity of African ethnical groups' distinctive ways of life are ensured.

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## Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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