Abstract:
The aim of this text is to present and analyse political–legislative actions of both the legislative and executive branches of government in the proposal of bills which signify retrogressions on the rights of rural men and women and on nature preservation, actions that have prompted us to propose the notion of ‘assault against the rural people’. We focus on the period 2016–2020, the period surrounding the coup d’etat in Brazil, the 2018 election and the first year of an extreme right-wing government rallied around Jair Bolsonaro. The survey results show that the proposal of new bills of law in Brazil constitutes a type of violence which tends to legitimate environmental and social crime.

When crime becomes law: Legislative attacks on rural people’s rights and on nature in Brazil

Marco Antonio Mitidiero Junior
Federal University of Paraíba
mitidierousp@yahoo.com.br

Brenna da Conceição Moizés
Federal University of Paraíba
brennaconceicao2@gmail.com

Lucas Araújo Martins
Paulista State University
lucas9506@gmail.com

Keywords: Laws, assaults, crimes, rural people, nature
Introduction

‘Laws are like sausage; it is better not to know how they are made’ (Otto Von Bismarck).
‘Taking advantage of the fact that the press only talks about Covid and go on passing the cattle by changing all the rules and simplifying standards.’ (Ricardo Salles, former Minister of the Environment in Mr Bolsonaro’s government).

A major social achievement reached after World War II was the proposal, enforcement and implementation of laws that guaranteed effective rights for the working class as well as the protection of nature and conservation. In different countries around the world – some further advanced than others – a set of rules and legal bases were created which restrict exploitation levels and guarantee workers’ rights and place limits on the use and exploitation of natural assets. These laws did not fall from heaven but resulted from societal conquests by civil organisations and social movements which have urged states to adopt legal ordinances in defence of democracy and civility, above all by means of constitutional texts. In Brazil, the Constitution of 1988 – currently in force – bears the name of Constituição Cidadã (Citizens’ Constitution) because it marked the regaining of fundamental rights after the Military Dictatorship (1964–1985).

The issue at stake in the current global context is that both social rights and environmental protection legislation are under attack, leading to the regression of the conquests or the erosion of the existing rights. This contradictory historic period of regression and backlash can be primarily explained by the crisis of capitalist production systems (such as the 2008 global financial crisis). Among other co-existing strategies, one of the ways to overcome such crises is through changes or the destruction of legislation that reduces if not eliminates working-class rights and paves the way to the exploitation of natural assets, ideally free of barriers and limits. The exploitation of labour and nature, previously swept away and even criminalised in legal norms and standards, is now being allowed and even ‘guaranteed’ under some laws. This amounts to the saying that crime is now protected by law.

While being virtually a worldwide conjuncture, this is nevertheless a more explicit and violent process in certain countries. Brazil, in particular, currently appears to be an important laboratory for such legislative setbacks. We focus on Brazil and base this article on data and insights on legislative attacks involving rural and natural areas. We take dialectics as our method of analysis; to be more precise, Historical and Dialectical Materialism as an intellectual pathway that helps us to understand contradictions expressed in the process of transforming crime into law, that is, to build a legal apparatus to ensure the undertaking of crimes against society and nature. From a data collection point of view, we have sought to follow the attitude of the federal legislative and executive branches in the proposal of laws. We have monitored the daily reports of the Brazilian parliament published on the Chamber and the Senate websites in the period between 2015 and 2021.

The article is divided into four parts. First, there will be a brief discussion about the notion of legislative attacks and the way that these relate to the concept of violence and, eventually, crime. Sec-1 The translation of this article had a contribution from the Federal University of Paraiba’s Research Support Programme, through the Internal Funding Research Productivity nº 03/2020 –PROPESQ/PRPG/ UFPB.

2 For over 30 years now, the Pastoral Land Commission (CPT) has registered and systematised the data on violence against men and women in the rural areas of Brazil. This is a concern of various types of action which materialise, by and large, in physical forms of violence against farmers, Quilombola and indigenous communities, leaders, activists of social movements, environmentalists, etc. CPT’s systematic data analysis has since 1985 shown the act of physical violence – or of the threat of it – to be constant, and it serves as a mediator between agribusiness capital advance in rural areas and the people who live there. In this way,
The article focuses on the role played by agrarian elites (agribusiness) in the legislative and executive branches in Brazil. Third, the article describes the presentation and analysis of proposals for laws which represent attacks and setbacks. Fourth, it provides a critical-theoretical reflection on the relationship between the State and the law, using as an example the link between large capitalistic enterprises and Brazilian law.

**Legislative attacks as political–legal violence**

The contemporary legislative history of Brazil shows a series of parliamentary actions which we shall interpret based on the concept of attacks on rural people (Mitidiero Jr., 2016), thereby acknowledging them as a form of violence that may be thought of as legislative, institutional or political violence. The notion of ‘attack’ as widely covered in the critical literature on the current Brazilian scenario aims to objectively qualify the orchestrated actions that are designed to destroy the conquests of social movements over the last 50 years, among them the rights and guarantees for the working class and for nature.

Capitalism’s most aggressive and perverse forms have been shaping the course of recent history. A look at what has been happening around the world from a social, political and economic point of view reveals that exceptions in civilisation’s advance are rare. Generally speaking, we have been witnessing an intensification of exploitation and expropriation both in the social capital–labour relationship and in the society–nature relationship. Surely the so-called ‘labour reforms’ and the ongoing economic measures of ‘austerity’ and ‘fiscal adjustment’ in different countries around the world has dilapidated both workers’ rights and social security as well as forms of management of natural wealth. It is not hard, for instance, to witness new ways of exploitation of labour that reactivate colonial slavery or to witness the devastation of natural environments that were once protected.

Since the economic meltdown of 2008, the term legal certainty has increasingly filled the news and economic analysis (that expression has turned into a mantra, particularly in economic journalism). The concept suggests that investors require legal certainty for their capital. To put it in another way, capitalists need laws to protect their investments in the ‘free market.’ On the one hand, this need leads to the creation of laws that favour capital above all else, and, on the other hand, it leads to the destruction of laws that somehow hinder augmented production and reproduction of capital that is – already or still to be – invested. Legal certainty thus refers to initiatives and strategies taken by economic sectors that wield notable political strength in parliament and can influence and determine the position of the federal legislative and executive branches in proposing and adopting a legal framework – laws, decrees, provisional measures – in their interest and for their own benefit or the relaxation and abolition of already existing laws that disrupt the economic dynamics of their enterprises. Within the Brazilian agrarian issue, the legal certainty of agribusiness capital bluntly stands for the social insecurity of rural peoples (Mitidiero Jr. et al., 2019). In monitoring this legislative machinery, we have found that the protection of nature and conservation is a victim of the same process because building legal certainty for agribusiness capital, which targets the people of the countryside, is a Siamese sister of the legislative proposals aimed at undermining and destroying nature protection laws.

Violence against individuals is an outdated and up-to-date strategy of the landowners to protect and ensure a regardful ‘unshakable’ private land tenure, amongst other things. Nevertheless, at the present juncture, we are facing the organisation of new strategies – without abandoning the former ones – which may be violent actions that harm a whole community of rural men and women. The assault on the rights of rural workers does not directly take place against an individual but against all of them, and that is what we will call legislative violence.
When crime becomes law: Legislative attacks on rural people’s rights and on nature in Brazil

For example, the attack on rural people occurs simultaneously with attacks on nature. Such attacks take back forms of primitive accumulation of capital and demand from our social thinkers the production of concepts which express the violent and criminal nature of this process. Science and social movements have been trying to explain the present and future of societies and territories. Very strong concepts are being used in the literature to understand and to define this juncture. We shall briefly highlight two concepts that provide a lens from which to understand the behaviour of the Brazilian executive and legislative branches and the drafting of laws, namely the concepts of necropolitics and terricide.

Mbembe (2011) outlined the meaning of sovereignty as the thing that defines the life or death of its people as ‘necropolitics’; that is, the concept creates the ‘hypothesis that the ultimate embodiment of sovereignty lies broadly in the power and in the ability to decide who may and may not live. To make die or to let live...’ Although Mbembe is musing on Africa and its own particularities, it is not difficult to project the concept to the entire capitalist world, dominated by a neo-liberal ideology hostile to the poor and, in Brazil’s case, with recent political history in the grip of an unprecedented social and environmental crisis. A range of social rights are now being written off, making the strategies and forms of social reproduction of the working class rather difficult. No wonder the social movements and trade unions have changed the motto of ‘fight for the land’ and ‘battle for rights’ to ‘fight for life’.

Quite related to this concept, the Mapuche natives (Argentina and Chile) have been elaborating through the voice of one of their leaders, Moira Millan (2019), the concept of ‘terricide’, understood as criminal acts and genocide against different levels of existence and life undertaken by nation-states and by business corporations. Terricide is the social and territorial expression of a predatory extractivist economic model, of looting, contamination and desecration of spaces where people develop their livelihoods and culture.

Employing the concepts of necropolitics and terricide to the universal reality of capitalism’s crisis and especially to a local/regional reality involving the current Brazilian political and economic situation is a reflection of the attempt to better understand and make sense of the tragedies of today.

Agrarian elites and their role in Brazil’s parliament

Producing legal certainty for capitalist investors mainly takes place in the proposal of laws within both legislative houses forming the Brazilian Congress/Parliament: The House of Representatives and Federal Senate. Since the last two Brazilian presidential elections were marked by a coup in 2016 and by the election of an extreme-right government with fascistic traits in 2018, the parliament’s actions are being marked by incalculable legislative rollbacks which constitute violence against the majority of the population and their land.

During the 2014 elections forming the 55th Legislature (2015‒2019), a more conservative Congress was sworn in than since the Military Dictatorship period (1964–1985), and it was indeed during that legislative period that an anti-democratic coup d’état took place, ousting President Dilma Rousseff from public office. As for the 2018 election, the formation of the Senate and the House of Deputies for the 56th Legislature (2019‒2023) meant the arrival of the far-right represented by Jair Bolsonaro to the Executive Power, which culminated in the election of the most conservative
Congress in national history. The deputies and senators linked to ruralist (agribusiness) political parties that are directly engaged with the Brazilian agrarian question have acquired great political power in huge numbers with authority to smoothly propose and approve legislative bills in favour of their own interests. As a result of this historic moment, a conservative and reactionary agenda is being built in Congress that over the last two parliamentary terms has developed actions ranging from the acceptance of a crime-free impeachment request to the relaxations and fragilisation of labour laws; and from proposals of decriminalisation of slave labour to the legalisation of land grabbing (robbery) from public land.

These are the strivings pursued by the agrarian elites, represented in the parliament by the Parliamentary Agribusiness Front (FPA), popularly known as ‘the Ruralist Bench’. Such an agenda is established in the legislative sphere by a set of proposals for laws and standardisations in favour of agribusiness and usually against rural inhabitants and nature. What we see today in Brazil is the architecting and planning of a legal toolbox that makes Brazilian democracy more vulnerable. One of its dimensions results in the assurance of legal certainty to capital investment in farming industry, meaning almost straightforwardly legal uncertainty for rural communities and nature.

The Brazilian Chamber of Deputies is composed of 513 Members and the Senate has 81 Senators. The Ruralist Bench in the ongoing Legislature (2019–2022), is made up of 243 MPs and 39 Senators, equivalent to 47.4% of the parliament protecting the immediate interests of big landowners and large agri-food businesses in a country that has an urban population which is 85% of the total population and a rural population of only 15%. In sum, in a predominantly urban country, the bulk of representation in Congress is rural. There are 282 MPs and a battalion of deputies and senators advocating for the same old rural oligarchy disguised as high-tech agribusiness, a real army of ties!

4 Out of the total number of members of the Rural Parliament, 251 (89%) are men and 31 (11%) are women. A noteworthy fact is that Congresswoman Tereza Cristina, a loyal representative of the Rural Caucus, is licenced because she is the current Minister for Agriculture and Livestock, that is, she has the power to determine the public policies and the future of the country’s agricultural sector umbilically linked to the future of nature conservation and protection.
When crime becomes law: Legislative attacks on rural people’s rights and on nature in Brazil

Chart 1

![Maps depicting the spatialisation of ruralists’ representation in the parliament with its roots and presence in all Brazilian states. The greatest number of Rural Caucus members are originally from the South-Central region of Brazil, especially in the states dominated by a large-scale monoculture of commodities for export, as in Mato Grosso (MT) and Mato Grosso do Sul (MS). This is a political force capable of determining new laws, smashing or downgrading legal norms that are of no concern to them and directing public policies in their favour; a force able to pick up the slack of the Brazilian State. Not surprisingly, in the previous Legislature (2015–2018) – tainted by a coup d’état as opposed to a centre-left government – 50% of the votes to dismiss the president Dilma Rousseff presidency of the republic in a fraudulent impeachment process came from the Rural Caucuses. Hence, the coup d’état might be called agrocoup (Castilho, 2018).]
The Rural Party in the current legislature denotes the main parliamentary support base of Jair Bolsonaro’s government. The President himself has publicly declared to the ruralists, ‘this government is yours’⁵. Thus, in this recent Brazilian history, the legislative and executive branches (presidency and the ministries) are the leading players in the worst attack on social rights and the legal principles of nature conservation⁶.

There are now 400 bills of law in the course of the Brazilian Congress that constitute attacks on human rights. Two elements are important to consider. First, there are laws proposed since the 1980s and 1990s that are being discussed in the Parliament at the moment. This is due to a revival of long-standing propositions of interest to the Rural Caucus today. That is to say, old proposals which were filed away and even forgotten have been unsealed in the current legislature⁷. Second, as is clearly shown in Graph 1, the intensification of legislative attacks within the 2016 coup d’état and the election of Mr Bolsonaro’s government in 2018 is rather evident. Once the organisation of this coup began in 2015 lasting up to 2020 – the second year of Bolsonaro’s government – law projects that signify attacks and regresses have been proposed and voted on.

---


6 In Brazil’s Constitution, laws can be proposed by the legislature, by the executive power and on popular initiative. Laws by popular initiative requiring congressional approval are a rarity in the history of the country.

7 Draft Law 3729/2004 aimed at modifying environmental licencing rules is an example of such a proposition. It was unsealed in 2007, 2011, 2015 and 2019 at the request of ruralists. Today it remains at an advanced stage, as one of the biggest legislative attacks on the socioenvironmental rights of rural peoples.
By ranking the list of ruralists’ priorities, it can be observed that the agribusiness battle is establishing legal certainty to a range of capital investments (there are 84 draft laws in progress). Attacks on Indigenous and Quilombola lands come second, with 76 draft bills. They bills aim, on the one hand, to create laws to limit and prohibit land decrees and concessions towards Indigenous and Quilombola populations, and, on the other hand, to cut down on the amount of land already granted, engaging part of the Indigenous lands in agribusiness production. The same logic applies to the proposals of laws which have as a theme the protected natural areas and Legal Amazon, with 59 submissions. The main intention of The Rural Caucus is to economically exploit the preservation areas and to limit and reduce their size. The issue of agrarian reform is heavily attacked in parliament (37 submissions). The goal is to destroy any possibility of either realisation or effectiveness of a fairer and more equitable redistribution of land, thereby ensuring a massive land concentration that characterises the formation of Brazil’s territory. The environmental licencing issue is the most effective attack on nature protection in Brazil, with 27 law proposals. The motive behind these proposals, currently advanced in Congress, is to try to exclude the need for a study of environmental impacts in every business and infrastructural project. The mining issue is also ever more present in parliament. The aim here is to enact laws that enable mining everywhere at any cost. Aggregating the proposals for amendments to the mining laws and the bills to expand Indigenous land for that economic activity shows that there are a total of 51 draft laws. The legal proposals also direct their forces to create laws to ensure sales and pesticide application without any sanitary barriers. Two-
ty-two proposals aim to make the sale and use of agrochemicals in the country even easier, despite the fact that Brazil is already the largest consumer of such chemical inputs worldwide. The proposals concerning social movements (12 proposed laws) which are primarily aimed at the social organisations engaged in land reform causes have the stated objective of criminalising their social fights. There are proposals which even suggest the notion that social activism is equal to terrorism. The remaining themes shown in the chart pursue the same objectives, denoting a sequence of step backs.

These attempts at rollbacks, legislative in essence, may strike a whole range of women and men who live and produce in these rural areas, Indigenous and Quilombola communities and the conservation zones of Natural Assets. Agribusiness interest in these draft laws means violent actions versus the possibilities that social and environmental equity ensures. For example, many of these draft laws attempt to transform what are now crimes under Brazilian legislation, such as mining on Indigenous lands and in protected environmental units.

The Rural Caucus’ strategy is to submit a flood of proposals and to pass those of ‘urgent interest’ to the agribusiness economic sector. Graph 3 displays all of these strategies, split between ongoing bills, those converted into law and those already archived. As for Graph 4, it shows the total number of approved laws as per the theme, exposing agribusiness strategies in providing legal certainty to their economic activities.
When crime becomes law: Legislative attacks on rural people’s rights and on nature in Brazil

Albeit the largest number of draft laws are still in process or shelved, there’s a significant amount of bills already converted into law, as shown in Graph 4. Outstanding is the intensity of approvals between 2015 and 2020, years that featured the political and economic crisis in Brazil. In the first year of Michel Temer’s coup government, 65 proposals were adopted; in the first year within Bolsonaro’s government, a further 56 new laws were approved. Through the legislative process, many of these draft bills imply legal violence against people and territory, thereby ensuring the interests of only a fraction of the agribusiness-embodied class.

### Graph 4

*The total number of approved laws as per the theme*

<table>
<thead>
<tr>
<th>Year</th>
<th>Pesticides - legislation and procedures</th>
<th>Mining - law and procedures</th>
<th>Natural Areas and Legal Amazon</th>
<th>Social movements in the field</th>
<th>Land reform</th>
<th>Seeds and GMOs</th>
<th>Indigenous Lands and Quilombolas</th>
</tr>
</thead>
<tbody>
<tr>
<td>1996</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>1997</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>1998</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>1999</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>2000</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>2001</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>2002</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>2003</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>2004</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>2005</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>2006</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>2007</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>2008</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>2009</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>2010</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>2011</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>2012</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>2013</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>2014</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>2015</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>2016</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>2017</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>2018</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>2019</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>2020</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
</tbody>
</table>

### Cases of bills of law in the Brazilian Congress that constitute attacks

The research we have conducted reveals that there are 400 draft laws in progress in the Brazilian Federal Congress that constitute an attack on the rights of rural peoples and on nature. Rural people and nature are two directly connected dimensions, as the assurance of the rights of rural peoples are tightly linked to the protection of nature. A very different ratio is seen between huge agribusiness enterprises for commodity production and the use of natural assets. In this article, we look at the legislative proposals designed to cut the rights of the many and guarantee the rights of just a few. To introduce and address these issues, we have picked only four bills that serve as examples in terms of profiling the historical moment in which we currently live, permeated with violent propositions and mediaeval steps back.

The draft law (PL) 6442/2016 proposed by MP Nilson Leitão, then chairman of the Rural Caucus, sought to relax workers’ norms, specifically those of rural workers by enabling an unimaginable regression on hard-won social rights. This bill is an enlightening example of what may be considered a political action for death, helping us to understand the newly emerging concept of necropolitics. His proposal was intended to assure that farmers could pay their employees’ salaries with food and housing in a legal manner. Thus, part of the worker’s wages, if not all of the wages, would be...
carried out through employer-provided food and as a kind of rent if the workers were residents in the rural housing units owned by the employer. Furthermore, the same draft Act sought to grant a 12-hour working day and constant work, not giving days off for up to 18 consecutive days. This is very much like the rural slavery of the colonial period in which the life expectancy of a worker was 45 years of age.

Figure 1 shows the publicity created by the Rural Caucus to render this proposition legitimate. The image contrasts urban and rural workers, passing on the idea that in the cities, housing and food are to be provided by workers themselves while in the fields, the workers would receive them as benefits (perks) granted by their employers.

![Figure 1](https://www.facebook.com/fpagropecuaria/photos/a.220566654734389/507399456051106/?type=3&theater). Accessed on 23/07/2021. [Image translated by the author]

This legislative bill with such slave-like features was filed away after several social demonstrations. Project PL 2633/2020, whose author is Mr. Zé Silva, a Federal Congressman, and which is at an advanced stage of progress in Congress, is widely known as ‘PL da Grilagem’ (Bill of Land Grabbing) and has as its objective to make appropriation illegal and grabbing of public lands legal. To put it another way, they are trying to pass a law that legally guarantees land ownership to public land invaders by converting the crime of land grabbing to private legal title of ownership. As Brazil is a country marked by misappropriation of public land, the approval of this bill would mean an award to land grabbers covering a large number of Brazilian territorial hectares. In the example of the PL of Grilagem, the rewarding of the crime of stealing public land overshadows the processes that go far beyond the simple acquisition of a legal title of private ownership of the land by thieves, for land grabbing is the final stage of an eviction process (and even murders) of local people and deforestation and other forms of environmental devastation. The legal title of the land to be conquered


9  Grilagem is a popular term denoting illegal land invasion.
When crime becomes law: Legislative attacks on rural people’s rights and on nature in Brazil

The list of laws instituted in the Brazilian State and the construction and implementation of major undertakings, such as hydroelectric power stations, reservoirs, roads, railways, mining projects, large monocultures, etc., is deeply contradictory, especially when populations/communitys and natural environments are directly affected. It is common knowledge and irrefutable in Brazilian history that when it comes to large infrastructure projects and major economic development investments the target audience is the same as emphatically described in this text: Indigenous people, traditional communities and peasants are the main victims.

It is nothing new to say that between the accomplishment of a great enterprise and securing the communities’ rights and the protection of nature what has historically prevailed was the guarantee...
of entrepreneurship at any cost. In other words, in general, the State adopts a position of utmost selectivity: either proposing or making use of existing laws to ensure the implementation of undertakings with adverse social and environmental impacts — working as a guarantor for huge allocations of capital invested in works with a major impact on the territory — or blatantly taking an illegal stance and disregarding the minimum guarantees of earned rights because it somehow considers them an obstacle to the realisation of a project.

In the case of large enterprises, we perhaps have the most complete expression of this contradictory character, as these are regarded as projects and works ‘crucial to the development’, allowing new legislation to be created and formulated to facilitate the construction/implementation of these so-called megadevelopments or the infringement of the laid-down rules by subjecting those works to a typically exceptional regime. This is the reason that, according to Agamben, there is no contradiction in capitalism between rule of law and state of exception, but rather an intentionally produced relationship: ‘the state of exception presents itself as the opening of a fictitious gap in the order, with the aim of safeguarding the existence of the norm and its applicability to the normal situation’ (Agamben, 2004, p. 48).

The contradictions of this process take shape when the Brazilian State itself passes laws to secure the power of capital on community life and nature or when it violates existing laws in the legal system for the completion of an enterprise. This contradiction is sharpened when the venture uses the discourse of supremacy of public interests or of the social and collective interest — as always happens, for example, in hydropower construction — or for private undertakings under the cover of the discourse of advancement, followed by a promise to boost jobs and income — as often happens in large mining and agribusiness areas.

In summary, when it comes to major territorial intervention works in Brazil, which evidently have a negative impact on society and protected environmental areas, the State plays a two-fold and contradictory role: either it creates laws in its favour or oversteps and disregards laws that would somehow impede carrying out such major works. In both approaches, the destruction of the communities’ rights and those of nature on the front line of the so-called ‘development projects’ is a tragic and dramatic reality.

How, then, should the contradictory role of the state be interpreted? A basic approach to understand the matter is to question the traditional perspective of the law in which the state is responsible for drafting/administering the laws; therefore, the State and laws could be seen to confuse. From this perspective, the state and the law would always be ‘above’ any social conflicts and relations and would always be responsible for settling such conflicts — including the social class conflict — justified by the idea of a state ‘common good’ which prevails over the rights of the communities and nature.

Thus, in general, the guarantee that major enterprises will cause socioenvironmental injustices only comes to be fulfilled and perpetuated because of the existence of law and the state, and thereby, the false and illusory premise that law’s existence is brought about by the interests of everybody perhaps has its best performance in the realisation of major ‘common interests’.

It would be even more delusional to conceive of the Justice System independent of the political and economic powers or of the capitalist system of accumulation respecting the barriers imposed by the legal sphere. According to Mascaro (2013), law is not peripheral to capitalist reproduction as a whole, but plays a role in safeguarding the functionality of the exploitation system. That is the reason ‘the State is not the domain of capitalists, it is less and more than that; the state is the political
form of capitalism’ (Mascaro, 2013, p. 63).
For instance, let’s take the case of dams. According to the report of the Special Commission for People Affected by Dams drafted by the Human Rights Defence Council (2010), here lies the concreteness of these aforementioned processes:

Firstly, it is possible to state that, broadly speaking, the Brazilian legal and normative framework provides a range of provisions for protecting the human rights of populations and individuals affected by the construction of dams on national territory. However, it is possible to identify limitations, omissions or inadequacies in the existing legal system, which in practice has prevented or hindered the full realization of the above-mentioned rights. (p. 21)

In the most tangible and concrete dimension of the State and law relationship, the report itself points out the role of the judiciary in legal claims arising from an existing dam:

Not even the Judiciary, which should ultimately ensure respect for the law and preserve human rights has been operating effectively. The appeal to the Judiciary to enforce these rights, in contrast and paradoxically, very often ends in frustration. While companies engaged in the construction and operation of dams can count on well-paid lawyers, whilst the state can deploy its own legal structures and has privileged judicial treatment, those most affected can rarely get adequate support or legal advice. As if this were not enough, they are faced with the usual detachment of judges and tribunals from the tangible situations of social reality. The speed at which injunctions favourable to affected parties are revoked and in granting prohibitory injunctions in favor of companies has as its counter face the slowness and delaying tactics when companies’ actions are being questioned - of which the proceedings are repeated evidence contesting compensation amounts (p. 22).

We have thus far seen the rule of law being fulfilled ‘within the rules of the game’, using its own judicial and legal apparatus ‘in its favour’, even if it means selective interpretations and human rights violations in specific cases or in the disproportionality of the timing of law enforcement, a faster speed for some and slowness for others. In these cases, the dispute is for a sense of ‘law and rights’ prioritising the major project, generally justifiable in the national interest and development, enabling the use of existing legislation – environmental, territorial, agrarian, indigenous, etc. – to unblock the implementation of the work. The use of expropriation rules for public use (Decree Law 3.365/41) in a summary form and the ‘prohibitory interdict’ as a threat to those populations who have their lives unravelled are examples of how – ‘within the rules of the game’ – the interests of the businesses are asserted.

However, it is not always ‘within the rules’ that the State and private initiatives involved in the realisation of major undertakings ‘win’ the game. The recent history of the Belo Monte Hydroelectric Plant in Pará state serves as a telling example of how development is warranted by breaking the laws and trivialising illegality. As per Glass (2016, p. 417), ‘the government’s first major offence in relation to the population threatened by the power plant in which repeated the authoritarian practices of the dictatorship was the wilful ignorance of the right to prior, freely given and informed consultation, provided for by the Federal Constitution (article 231, paragraph 3) under these terms’.

The determinant of ‘prior consultation’ with the affected population (which was never consulted, but was, at most, informed) and the fallacious speech of ‘community involvement’ (which never participates) was the kick off of a string of illegalities carried out by the State and/or private initiative on behalf of entrepreneurship. At such moments, the State applies the laws in order to circumvent them.
Building Project Licensing is a privileged place to witness how laws are broken in defence by any means. The history of large project licencing often brings together a long string of illegalities. In Glass’s (2016, p. 416) study on Belo Monte, the author presents a series of objections in public civil actions on non-compliance. Among them are irregularities as to the absence of an integrated environmental evaluation on the river; annulment of the river’s hydroelectric inventory; nullity of the Environmental Impact Study and Report approval (owing to the incompleteness of the study and the report); violation of the principles of popular participation, publicity, reasonability, purpose, motivation and legality; violation of the population’s right to information and participation in decision-making processes about the project; faulty methodology of public hearings; and insufficient hearings for those affected to attend.

Another important laboratory on the subject is the story of the construction of the Jirau and Santo Antônio hydroelectric plants on the Madeira River in Rondônia state. Both plants which were concluded in 2016 constitute an initial part of the Madeira River Complex Project, which also involves the construction of two other hydroelectric plants, namely the Guajará-Mirim and Cachuela Esperanza dams, in addition to highways and transmission lines. Hence, Jirau and Santo Antônio are large projects within a megadevelopment. The history of their construction is no different from so many others: manoeuvring and circumventing laws begins with the licencing process. According to Alves (2014), a series of irregularities in the construction of the plants was pinpointed and reported by the Brazilian Institute for the Environment and Renewable Natural Resources (IBAMA) itself and by experts, academics, social movements and nongovernmental organisations. At the root of these great works, environmental licences (Prior Licence, Installation Licence and Operating Licence) were issued after a tangle of irregularities and the announced social tragedy that would strike the populations affected. In conclusion, the researcher sums up:

In view of the foregoing, despite the many examples of disrespect for the environmental constraints of the Jirau HPP project, we can consider that both the licensing process for the Jirau and Santo Antônio HPPs, as to how the LP and the LIs for the Jirau HPP were issued, testify to the fact that large-scale mega-projects for energy production implemented by the federal government in the PAC context, regarded as fundamental to the ‘New Developmentalism’, will not have as limits issues related to environmental, social and territorial impacts. (Alves, 2014, p. 232)

What stems from these stories and so many others marking capitalist development driven by major works? They mark an inventory of social and environmental tragedies, many of them irreversible and routinely present. Protected natural areas and entire territories of communities will never return to their previous situations, causing deep changes in the structure of social relations in these populations and in the landscape of the affected regions. In many cases, there are communities that five, ten or twenty years after the conclusion of the works continue to feel the devastating effects of the execution of the major undertaking, with compulsory displacement as a prime example of these stories.

In general, the affected communities are fractions of a society already marked by socioeconomic injustice – as many Indigenous groups, peasants and traditional communities such as Quilombolas, Ribeirinhos, etc. are currently characterised – and in arm wrestling with the state as ‘administrator’ of the laws, they have a losing record. On the ground of history, these defeats mean worsened living conditions, families ripped apart and the loss of identities and territorial representation. This is why the concepts of terricide and necropolitics are not allegorical expressions or simple semantic analogies produced on academic benches but are, at the same time, expressions of reality and how it is interpreted.
Another theme related to the historical weight of large undertakings is the relationship between state and private capital. Even though this relationship currently operates with a more institutional and legal character with the so-called public–private partnerships, it is historically permeated by corruption and illegalities, as the current Brazilian political moment has brought to the fore. Bribery, theft and embezzlement are conditions *sine qua non* so that the great work ‘gets off the ground’. Again, private capital comes to dominate the ‘territories’. As Gaviria (2015) pointed out, in major works, the private capital seems to operate as an agent of an internal colonialism contradictorily within democratic political regimes. Companies take over and dominate territories, bringing typically colonial situations to the populations of these areas, such as violence, expulsion, expropriation, exploitation and inequality.

In the face of these tragic stories and in the current political conjuncture post-political/parliamentary/legal/media coup which has undermined the foundations of Brazil’s already fragile democracy, the relationship between laws and large enterprises is taking on new and even more dramatic proportions. The parliamentary and legal nature of the coup has opened up space for the government through the legislature to establish laws directly in favour of capital, and it falls to the judiciary to safeguard them. Many are the new laws already in force that favour large enterprises: the new labour legislation (Law 13.467/2017), the outsourcing law (Law 13,429/2017) and the so-called ‘Grilagem MP’, transformed into Law 13.465/2017 and which may have more damaging implications with the eventual approval of PL 2633/2020, as already discussed in this text.

And other laws are yet to come. In parliament, deputies and senators work tirelessly to pass laws in favour of big business. There are many draft laws proposed in this direction, as is the case of PL 2159/2021, known as the ‘General Licensing Law’ – which replaces PL 3729/2004, combined with 20 other PLs added to this one and with the same goal – which is under urgent review. This law, if passed, would weaken and relativise the principles of protection of communities and nature secured by the licencing requirement and its prerogatives. With no debate in parliament, let alone with society, legislators linked to the Rural Caucus attempt to approve a law that would represent the biggest step backwards in the country’s history as regards the protection of communities and nature stricken by major works. What they have been calling a process of ‘modernisation’, flexibility and speed – it is no coincidence that the proposal is being called ‘flex licencing’ – means the end of rules such as prevention, mitigation, compensation and even the possibility of no licencing at all for certain works and economic activities. The same has been happening with the new legal mining framework, a proposal gathered in PL 37/2011.

Faced with today’s situation marked by economic and environmental crises, the strategy of producing laws or the circumvention and destruction of laws is becoming increasingly frequent because of new violent forms of administration of the system. The legislative side of this process has become an important strategy in the expansion and/or creation of a kind of ‘legal security for capital’, whether by building rules of law or by normalising illegality.

**Final thoughts**

Marx (2013) once wrote that ‘violence is the midwife of every old society pregnant with a new one’ (p. 821) to spotlight two crucial historical moments: the transition from feudalism to capitalism and the rise of capital. Therefore, violence has marked a historical moment in the transition and the emergence of an economic production and social reproduction system developed to exploit labour and nature. As reflected upon by Marx and in subsequent studies stemming from his work have made clear, violence was not crystallised in a long distant past but kept pace across the entire development of capitalism on the basis of the capital accumulation process. The strategies of violence
were not and are not just anomalous moments in the system but rather a historic constant; or, as Álvarez and Rubio envisaged (2008, p. 17), lawfulness and illegality in the capitalist accumulation process historically form two faces of the same process. Nevertheless, there have been periods of social and civilisational achievements in the course of an unequal and contradictory system, above all in the context in which law and legal guarantees are set up. Yet a new age is dawning and there seems to be no room for working class rights, Indigenous peoples and nature. We are living under a scenario of expansion and intense expulsions, social and territorial exploitation and expropriation in which both violence and crime are given legal legitimacy; the crime becomes law writing a kind of legalised criminal capitalism.

The range of legislative proposals in Brazil today and a series of recently approved laws must be read in the light of violence and crime legitimisation. This is why the consideration of a set of legal actions as criminal does not depend on a legal distinction alone, but on political, economic and social as well (Álvarez & Rubio, 2008). This is reflected in the immense number of proposals for retrograde and destructive laws presented and analysed in this text. In our view, this historical moment can be read as necropolitics promoting terricide. It is precisely on this ground of history that civil society must organise itself, right now!

References

Marco Antonio Mitidiero Junior, is professor at the Department of Geography and the Graduate Program in Geography at the Federal University of Paraíba. As well as professor of the Graduate Program in Geography at the Federal University of Sergipe (UFS) and the Graduate Program in Territorial Development in Latin America and the Caribbean (TerritoriAL).

Brenna da Conceição Moizés, is Master’s degree researcher of the Graduate Program in Geography at the Federal University of Paraíba (UFPB).

Lucas Araújo Martins, is Master’s researcher of the Graduate Program in Geography at the Universidade Estadual Paulista (UNESP- Presidente Prudente).