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**SOCIAL MOVEMENT, LAW AND THE POLITICS OF  
LAND REFORM: LESSONS FROM BRAZIL**

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This book offers a socio-legal account of Brazil's Movimento dos Trabalhadores Rurais Sem Terra, the Landless Workers' Movement (MST), a group once described by Noam Chomsky as "the most important and exciting popular movement in the world". For well over a quarter of a century now, the MST has openly challenged Brazil's highly inequitable pattern of rural land distribution. The movement's use of controversial direct action tactics, especially mass occupations of rural land by hundreds of poor families at a time, has seized the public imagination and propelled redistributive land reforms from relative obscurity towards the top of the political agenda. By 2009 (the 25th anniversary of the MST's foundation) a total of some 370,000 families had been settled on land acquired as a result of MST struggles and a further 130,000 families were in tented encampments struggling for land.<sup>1</sup>

In some respects the emergence of this movement is just as significant as the election of a former shoeshine boy, Luis Ignacio Lula da Silva (Lula), to the country's presidency in 2003. His was without doubt an extraordinary personal journey and achievement, one that defied the odds and even became the subject of a feature film. However, the MST's journey also occurred in the face of huge odds, most notably the organized violence and intransigence of powerful landed interests. Its journey entailed the remarkable task of transforming literally hundreds of thousands of the poorest and most repressed rural workers and their families into effective agents of political change. That is no mean feat. There are important differences too. Over a number of years Lula's power would increasingly derive from the occupation of high

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<sup>1</sup> This is according to the MST's communication section, as reported in "Ocupação de terra é a única forma de questionar o latifúndio", diz integrante do MST, *Folha de São Paulo*, 19 January 2009, <http://www1.folha.uol.com.br/folha/videocasts/ult10038u490004.shtml>.

office, the careful packaging of his personality, and the construction of broad electoral coalitions. The MST's power, on the other hand, was neither about coalition building, nor electoral success, nor about personalities. Instead its power derived from the mass mobilization of its grass roots members. Of course other factors came into the equation, but the continuing willingness and ability of workers to organize themselves as a social and political force is what made - and still makes - the MST one of the most formidable extra-parliamentary organisations of our time. During the National Day of Struggles for Agrarian Reform in April 2011, for instance, the MST simultaneously mobilised 30,000 families (120,000 individuals) across 19 of Brazil's 26 states in 70 land occupations.<sup>2</sup> It is hard to think of any rural social movement in the world that possesses this level of organisation. As if to underlie the point, the MST has also succeeded in projecting its power globally. It was central to the foundation in 1993 of La Via Campesina, an organization which describes itself as "the peasants voice" and "an international movement which brings together [200] millions of peasants, small and medium-size farmers, landless people, women farmers, indigenous people, migrants and agricultural workers from around the world".<sup>3</sup>

### Why a socio-legal study?

Much has already been written about the MST.<sup>4</sup> Studies have covered issues as diverse as the educational facilities (including primary schools and even a university)

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<sup>2</sup> Source: <http://www.mst.org.br/MST-mobiliza-19-estados-e-faz-70-ocupacoes-de-terras> This number includes other actions such as the occupation of 14 INCRA state headquarters and the closure of some major highways.

<sup>3</sup> Source: "What is La Via Campesina?"

[http://viacampesina.org/en/index.php?option=com\\_content&view=category&layout=blog&id=27&Itemid=44](http://viacampesina.org/en/index.php?option=com_content&view=category&layout=blog&id=27&Itemid=44)

<sup>4</sup> There is now a substantial and rapidly growing body of literature on the MST. For an informative collection, see Miguel Carter, ed., *Combatendo a desigualdade social – o MST e a reforma agrária no Brasil*, São Paulo: Editora Unesp, 2010. For

it provides members; the prominent role of women in all aspects of its organization<sup>5</sup>; and the economic viability of permanent MST land settlements. Surprisingly, though, by the end of the 1990's (almost 15 years into its existence) there was a marked absence of accounts dealing with the movement's engagement with legal issues and institutions, yet they were vitally important to movement fortunes.<sup>6</sup>

This absence of systematic accounts may have arisen because of the widespread perception across the political spectrum that the relationship was so obviously antagonistic that it required little by way of more detailed explanation. On the one hand, right wing opponents saw the movement's land occupations as fundamentally subversive, meriting condemnation rather than further research. On the other hand left wing supporters prioritized the politics of social justice and direct action over legal forms. This broad consensus about the antagonistic relationship between this movement and law meant that the interface between the two could be explained in relatively straight forward terms rather than constituting an important object for study.

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discussion of the MST in the context of neoliberal transformations, see James Petras and Henry Veltmeyer, *Social Movements in Latin America: Neoliberalism and Popular Resistance*, New York: Palgrave Macmillan, 2011.

<sup>5</sup> See, for example, Caroline Lamar Pihl, 'A caldron of militancy: construction of feminine consciousness in the Movimento Sem-Terra', School for International Training, Harvard University, 2007; and Renata Cristiane Valenciano and Antonio Thomaz Júnior, 'O papel da mulher na luta pela terra: uma questão de gênero e/ou classe?', *Scripta Nova, Revista Electrónica de Geografía y Ciencias Sociales*, Universidad de Barcelona, vol. VI, no. 119 (26), 1 August 2002, <http://www.ub.edu/geocrit/sn/sn119-26.htm>.

<sup>6</sup> A notable exception in this regard was John L. Hammond's, 'Law and disorder: the Brazilian Landless Farmworkers' Movement', *Bulletin of Latin American Research*, vol. 18, no. 4, 1999, 469–89. See also George Mészáros, 'Taking the land into their hands: the Landless Workers' Movement and the Brazilian state', *Journal of Law and Society*, vol. 27, no. 4, December 2000, 517–41.

During the course of the research for this book, however, it quickly became apparent that even if accounts of left and right contained important grains of truth (there were, for instance, major tensions between the MST and the legal system, and legal issues were not of foremost concern to the movement), those accounts nonetheless lacked real depth or perspective. In fact their mixture of uncritical deference to or exaggeration of a separation of social movement politics from law did a profound disservice. It engendered a climate in which the MST could be tarred with the brush of illegality and therefore illegitimacy. This book partly offers a corrective to those stereotypes.

The gap in understanding the MST's relationships with law is symptomatic of a broader tendency to portray law and politics as specialized realms that are not simply analytically distinct, but largely if not entirely separate. Paradoxically, the separation of powers doctrine is a political and legal theory that lends credence to such divisions by asserting the importance of a functional *and* institutional separation of state power as a means of precluding its unchecked concentration and abuse. On the face of it, most constitutions of the world appear to give real substance to these functional and institutional divisions, since they routinely task executives with proposing legislation, legislatures with debating and enacting it, and judiciaries with interpreting and enforcing it. The simplicity of these demarcations may help outside observers to grasp certain aspects of state power, and offer judges and politicians a straightforward narrative or justification of their actions, but it is both beguiling and, as an explanatory framework, extremely problematic. The tendency is to relegate other crucial and often quite complex constituents of power, like social, political and

economic structure, as well as culture and ideology, to the margins of consideration if not off the agenda altogether.

Socio-legal studies, the approach adopted in this work, typically seek to overcome these limitations by stressing the contextual nature of legal institutions, practices and outcomes. Using a variety of methods such studies try to clarify interconnections considered essential to a more accurate understanding of these institutions, practices and processes. Some studies, for instance, focus attention upon the historically produced nature of law and institutions; others examine the role played by class forces in the administration of justice (and injustice); while others have look at the significance of gender relations in the production – and reproduction - of legal outcomes. Tripartite typologies of state power, on the other hand, tend to reduce complex issues to an assemblage of static components, suggest the possibility of an a-political division of labour (within the judicial branch), and obscure the presence of powerful structural dynamics and behavioral patterns that defy straightforward compartmentalization, or transcend it altogether.

The title of one work from the late 1970's, Griffith's *The Politics of the Judiciary* typifies one possible socio-legal approach. It cuts across a simplistic separation of powers, rejects the actuality of value neutral “technical” decision-making characteristic of legal positivism, and asserts the centrality of politics as a category within judicial decision making. According to Griffith, “*judges in the United Kingdom cannot be politically neutral because they are placed in positions where*

*they are required to make political choices which are sometimes presented to them, and often presented by them, as determinations of where the public interest lies”.*<sup>7</sup>

What is especially significant about Griffith’s work is his suggestion that what he termed “political cases” (defined as those “which arise out of controversial legislation or controversial action initiated by public authorities, or which touch upon important moral or social issues”<sup>8</sup>) were not simply decided on their individual merits, as theories suggested, but conformed to certain patterns. These patterns, he argued, were rooted in “*judicial attitudes such as tenderness towards private property and dislike of trade unions, strong adherence to the maintenance of order, distaste for minority opinions, demonstrations and protests, support of governmental secrecy, concern for the preservation of the moral and social behaviour to which it is accustomed, and the rest.*”<sup>9</sup> In other words, there were sociological and ideological dimensions present in judicial decision-making.

This book on Brazil’s Landless Workers Movement and its relationship to law similarly looks at socio-legal patterns. It could be argued that a socio-legal, or contextual approach as a means of both gathering evidence and generating insights is especially applicable to the Brazilian situation because the mismatch between the substantive application of law and its formal claims, most notably that of social justice, is so glaring and so consistent. The suffering induced by the failure of land

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<sup>7</sup> J.A.G. Griffith, *The Politics of the Judiciary*, Fontana Press, London, 1997, fifth Edition, p. 336.

<sup>8</sup> J.A.G. Griffith, *The Politics of the Judiciary*, Fontana Press, London, 1997, fifth Edition, p. 7.

<sup>9</sup> J.A.G. Griffith, *The Politics of the Judiciary*, Fontana Press, London, 1997, fifth Edition, p. 336. [Griffith’s italics]

reform to materialize surely constitutes a case in point that demands some form of explanation.

Land reform has been on the Brazilian statute books for decades, whether in the form of constitutional provisions, government legislation or administrative guidance. There were hopes that with the end of military rule and return to democracy (1985), and the advent of a civilian constitution (1988), the autonomy and efficacy of legal institutions would increase, and with them the prospects of land reform. But as in so many other parts of the globe where land reform is a major issue, this simply did not happen, certainly not to the desired extent. It is a remarkably consistent pattern. A major assumption of this book is that much of the explanation for this lies in the processes and linkages *between* politics, law and society rather than in the operation of any one “sphere”.

The main research subjects of this book are politicians, judges, prosecutors, lawyers, administrators, movement sympathisers and activists. This is not an anthropological study of how individual grass roots members see their relationship to law, processes of land occupation, direct action and so forth. There is no doubt in my mind that there are numerous interesting questions to be explored in this regard. What, for instance, transforms a group of individuals, who are frequently seen as politically ‘conservative’, ‘passive’ and ‘law abiding’, into one of the most radical, active and legally challenging of political forces of recent times? Do individuals undergo a personal transformation? Are notions of law and justice an important part of individuals’ worldview or not? Is the decision to take part in mobilisations influenced by that relationship? Is there a ‘disconnect’ between their worldview and that of



militant activists?<sup>10</sup> Important though these questions are, this book focuses instead upon discourses of MST activists and the organisation's sense of itself and its socio-legal struggles.

Although subsequent chapters document touch upon the myth of judicial neutrality, the focus of attention is in fact much broader than this. Judicial conservatism constitutes a key variable retarding the progress of land reform, and evidence is provided to this effect, but it is seen as only one part of the story. Examples of that conservatism include the reification of old fashioned absolutist liberal conceptions of private property relations to the virtual exclusion of modern constitutional dispositions that qualify property rights. This has a number of discernable impacts. Procedurally speaking it slows down government attempts at legalized expropriation of land; and in financial speaking it significantly multiplies the cost of compensation to landowners. Likewise, conservatism is evident in repressive judicial attitudes to social protest. The MST's direct action tactics are regarded by many (although by no means all) Brazilian judges, as an assault upon private property relations, and even as a challenge to the rule of law. The dominant attitude is one of containment, or

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<sup>10</sup> For an ethnographic study of the MST, see Wendy Wolford, *This Land is Ours Now: Social Mobilization and the Meanings of Land in Brazil*, Durham, NC: Duke University Press, 2010. Wolford examines the processes behind the continuous reconstruction of an identity of struggle. In passing (p. 122) she notes the views of Fransisco Julião, the leader of the Peasant Leagues, who 'believed that peasants were generally afraid to contravene the law, he situated the struggle for land within the legal system of rights, and argued that it was the plantation owners who were acting illegally, not the workers.' See also James C. Scott, *Weapons of the Weak: Everyday Forms of Peasant Resistance*, New Haven: Yale University Press, 1985. Scott makes a powerful case for exploring non-confrontational aspects of politics. Although he is right in suggesting that covert, informal and individual practises constitute an underrated aspect of politics, in contrast high profile forms of resistance (including, one might add, from social movements like the MST) his analysis leaves groups like peasants with little room for struggle except in essentially adaptive and defensive forms.

repression of social demand through the eviction and imprisonment of landless workers.

It is important to add, however, that no matter how hegemonic such attitudes are, or problematic their consequences, they have been challenged from within the judiciary itself and from without. Several chapters in this book discuss these parallel developments, suggesting a degree of interrelatedness between exogenous and endogenous factors. Alternatives occur in the context of social pressure rather than springing from the head of radically minded judges. It is precisely because social movements like the MST repeatedly and tenaciously challenge the status quo, that these issues find their way onto the courts' agenda and compel a response.

Unfortunately, for the most part that response is negative or wanting. Just how much of that is the stuff of autopoietic theory or judicial independence, rather than ideological and class linkages with landed interests, is debatable. Occasionally, though, the response is positive. As well as documenting the obstacles to change, therefore, this book examines a number of instances where legal progress under social pressure did occur. Cases include an instance where the Supreme Court responded favourably to the question of whether the MST had the right to take direct action. They also include an instance where a lower court accepted the legality of a land occupation of productive property on the grounds that that property was not fulfilling environmental and labour related constitutional obligations. And finally, there is a more indirect case, where the party to the action was not the MST, but a state government seeking to reassert control over illegally appropriated state lands (known as devolved lands, see below) by private landlords. Although the MST was not a

direct party to this legal action, interviews with both government officials and the judge involved make it abundantly clear that its social pressure was fundamental to the presentation, judgment and positive outcome of this case.

### *Federalism and case selection*

The foregoing case, which occurred in the state of São Paulo under the governorship of Mario Covas (1995-2001), is illustrative of this book's methodological approach. The legal dynamics of land reform are examined in conjunction with political developments and institutional structures located at both federal and state levels. In order to understand this some explanation of Brazil's federal political structure and its implications for land reform is necessary. For reasons of brevity and clarity, this discussion simultaneously includes consideration of how and why the cases that form the empirical core of this work, were chosen. They are drawn from three states of the federation: São Paulo , Rio Grande do Sul, and Paraná . It will also include discussion of two other institutions not mentioned so far, the Ministério Público, or public prosecution service, and the Instituto Nacional de Colonizacao e Reforma Agraria (INCRA), or land reform agency. Both of these institutions operate at federal and state levels and to varying degrees have significant implications for the MST as well as the progress of land reform.

No book that deals with issues as complex as land reform, and the relations between Brazil's legal system and a movement as large as the MST, can ever hope to do full justice to their diversity or complexity. As the fifth largest country in the world Brazil assumes continental proportions (more than eight and a half million square kilometers). It borders 10 other Latin American nations. Its economy now ranks as the

sixth largest in the world. Behind these figures lie populations and cultures of remarkable diversity. Over a period of five hundred years waves of colonization, European migration, and in the case of African slaves forced migration, have left a rich racial and cultural legacy. Following waves of migration at the beginning of the twentieth century, Brazil even became home to the largest Japanese population outside Japan. Not even the genocide of Brazil's indigenous peoples over the course of several centuries could eradicate their linguistic heritage. Several states have indigenous names (Pernambuco, Piauí, Ceará, Pará, and Paraná).

Detailed discussion of the historical origins of federalism lies beyond the scope of this book. For present purposes it can be summarised as the attempt to forge a degree of national unity through constitutional mechanisms that both assert a degree of social, cultural, political and economic unity through the central state and a degree of autonomy with nth local states. This division of state power between the federal and local, with the latter formally accorded many of the functional divisions of their federal counterpart (a tripartite division of power between executive, legislature and judiciary) can cause confusion to readers who are expected to shift their attention between the two. The short hand name given to both federal *and* state prosecution services – the Ministério Público - is a case in point. As will become evident in the course of this book, the two are functionally and territorially quite distinct. That is especially relevant when it comes to an issue like land reform, which is constitutionally defined as an exclusively federal matter. An awareness of these distinctions is important because in theory it means that only the Federal Ministério Público has formal jurisdiction over issues related to land reform. At the same time,

however, the reality transcends these formal distinctions. It seeps into other areas, for instance the criminal law, where the Ministério Público within each of the states of the federation carries a great deal of influence, for example in the prosecution of landless workers. Where possible, then, this book draws a distinction by referring to the Federal Public Ministry as opposed to the state Public Ministry, or federal as opposed to state judiciary.

With regard to INCRA, the agency charged with the implementation of land reform, this is a quintessentially federal body, as one might expect given the aforementioned exclusivity rule. Again, though, appearances can be rather deceptive. It was none other than Raul Jungmann, the Minister in charge of INCRA during the Presidency of Fernando Henrique Cardoso (1995–98, 1999–2002) who acknowledged in an interview with the author, that: “No superintendent [from INCRA] can survive in a state, and oversee the agrarian conflict, who does not, in some measure, receive support from within the states. It simply does not happen any other way. You always have to operate within these parameters”.<sup>11</sup> His comment, made in the context of his own removal of one of the heads of INCRA in the state of Paraná, draws attention to the distinction between formal demarcations of state power; and its substantive or operational dynamics. In effect Jungmann was saying ‘I have full formal authority, but the reality is that it is contingent – sometimes highly so’. Part this book’s argument is that these externalities of power make themselves felt not simply within the realm of politics, in this instance at the level of the executive; or in an administrative instance like INCRA; but also in the judicial and prosecutorial fields, albeit in more subtle ways given their greater degree of formal autonomy. Judges and

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<sup>11</sup> Author interview with Raul Jungmann, 5 April 2000.

prosecutors, for instance, enjoy a much greater degree of employment protection than their political or administrative colleagues. Nonetheless, they are not immune from external pressure or other often politically motivated pressures, such as job promotion.

As regards the sorts of operational parameters Jungmann had in mind, these certainly included the power of landed interests at federal and state levels (interests that partly propped up the Cardoso government, as, ironically, they would do in differing ways with the two subsequent Lula administrations). Crucially, though, those parameters will also have included consideration of the political weight of the MST in the different states. The latter is difficult to quantify. The MST's power will have varied considerably from one state to the next. Rather than being seen as an independent variable, therefore, it should be seen as part of a complex correlation of forces. Although this fact introduces a greater degree of uncertainty into the analytical proceedings, these dynamics are nonetheless quite intelligible.

This brief excursion into the federal nature of Brazil's political system and complex power dynamics brings us back to the matter of case selection and composition amidst such diversity. As indicated at the beginning of the introduction, this book offers a socio-legal account of Brazil's Movimento dos Trabalhadores Rurais Sem Terra; but it does so not merely in terms of the MST's encounters with law, critical though this is, but also from the perspective of institutional encounters with the MST. It should come as no surprise to readers that the fate of land reform does not lie in the hands of the MST. More surprising, perhaps, is the view that it does not lie in the hands of INCRA either, or the judges, or even the government. Rather, its fate lies in the interactions of *all* these elements combined, including, the negative power of landed

classes. This book therefore examines the dynamics of land reform law in relation to the interplay of all these instances at federal level and within particular state conjunctures.

Quite a broad range of institutions is therefore considered, foremost of which are the Federal and state governments; the federal land agency, INCRA; the federal and state judiciaries; and the federal and state prosecutors' offices. A much narrower study could legitimately have been undertaken, but it was felt that concentrating upon a wider range of institutions did greater justice, or more faithfully corresponded, to the reality of land reform in Brazil, thereby contributing to a better understanding.

Brief reference to one of the subsequent case studies, which deals with the state of São Paulo, may help to explain this point. Although INCRA had federal competence over land reform, to be effective it had to work through partnerships on the ground with what was the far more powerful (i.e., better resourced and staffed) state agency known as ITESP, the Instituto de Terras do Estado de São Paulo (the Land Institute of the State of São Paulo). Legal means were found to do this. In effect law became an expression of this reality. Only through the emergence of a joined up approach between ITESP, the state government, and INCRA did it become possible to make progress on land reform in the courts and beyond, i.e., in terms of actual land settlements. Similarly in another of the case studies, which deals with the state of Paraná, its state land institute was closely involved in the mediation of land conflicts and thereby regulated significant aspects of the legal proceedings. Rather than being seen as sources of confusion, the blurring of institutional lines of demarcation, and the marked distinctions between formal legality and its operation, should be understood

as expressions of the broadly constituted nature of the land problem which demands a multi-agency approach.

Regarding the selection of cases themselves, the overall aim has been to carefully tease out and present some core dynamics at work through detailed empirical accounts. Given the aforementioned diversity of Brazil, this has inevitably necessitated making some strategic choices. Arguably the most important of these was geographic. The study could quite legitimately have focused on Brazil's Northeast, a region of major land conflict, where the MST is active, where land reform is a major issue, and where the justice system plays a critical (and highly problematic) role. Doubtless this would have raised valuable issues. What was more crucial for this study, however, was the possibility of exploring states and legal systems widely regarded as amongst the most robust that the country has to offer. For this reason the book is structured around five 'best case' scenarios drawn from three states: two from Brazil's South, Rio Grande do Sul and Paraná; and one from its Southeast, São Paulo. These states account for a substantial proportion of Brazil's industrial and agricultural output, as well as constituting its major centres of population. In 2008, São Paulo, Rio Grande do Sul and Paraná ranked first (33.1%), fourth (6.6%) and fifth (5.9%) respectively in terms of Brazil's gross domestic product (GDP).<sup>12</sup> That makes them politically and economically significant, but legal considerations were important.

São Paulo's Public Ministry is one instance of legal sufficiency. It is comparatively

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<sup>12</sup> Source: Instituto Brasileiro de Geografia e Estatística (IBGE), Contas Regionais do Brasil 2004-2008, *Contas Nacionais*, No. 32., Rio de Janeiro, 2010.



very well funded and staffed (by far and away the best in the country), and has been at the intellectual forefront of a radically reformed and more autonomous Federal Public Ministry (as enshrined in the 1988 constitutional settlement). One question, therefore, was how effectively that greater autonomy and vision would translate into practice, especially in an area as contentious as land reform. Likewise Rio Grande do Sul was nationally renowned for the progressive stance of its judiciary. As for Paraná state, it also possessed a comparatively well organised legal infrastructure, in addition to which it was home to the most active network of pro-land reform lawyers anywhere in the country. To what extent would these combinations of factors have a discernable impact?

The presence of these different characteristics was especially significant when taken in conjunction with others exhibited by the MST, which had originated in Rio Grande do Sul; assumed national notoriety was achieved on the back of occupations conducted in the state of São Paulo in the early 1990s; and which was – and remains – active in Paraná. According to statistics compiled by DATALUTA, between 1988 and 2009 São Paulo, Paraná and Rio Grande do Sul accounted for well over a quarter (16.14 per cent, 8.29 per cent and 2.63 per cent respectively) of the total number of occupations (8,128) in Brazil and of the total number of families (1,156,408) involved (16.73 per cent, 7.50 per cent and 5.20 per cent respectively).<sup>13</sup>

Given the desire to explore the relationship between the MST on the one hand, and

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<sup>13</sup> Banco de Dados da Luta Pela Terra (DATALUTA) supplied to the author by Bernardo Mançano Fernandes. Only Pernambuco came close to São Paulo with a figure of 14.76 per cent and 13.57 per cent for the number of occupations and families involved (all other states were in single figures). Its state and legal infrastructure were extremely precarious by comparison.

legal institutions *at their most functional* on the other, these seemed ideal locations. By implication, if land reform activists encountered substantial difficulties here, or if the legal system was found wanting, then the likelihood was that these difficulties would be magnified elsewhere.

Another key variable to consider was the policy and impact of individual states. To what extent, for example, they would enforce judicially mandated eviction orders of landless workers as, *prima facie*, law required? The presence of reforming governments in all three states represented an opportunity to explore a series of more positive political conjunctures (often not present in many other states), albeit against the background of sometimes favourable and at other times difficult legal situations. Ironically, the most positive political situation and acutest legal conflict arose not where one might expect it, in Rio Grande do Sul, under the more radical governorship of Olivio Dutra, a leading member of Lula's left leaning Workers Party (PT), nor even in São Paulo, under the social democratic leadership of Mario Covas, a member of Fernando Henrique Cardoso's social democratic party, but in Paraná, under the governorship of Roberto Requiao. Nominally speaking he was to the right of both governors, because of his affiliation to the centre-right PMDB, yet as a trained lawyer he was reluctant to rubber stamp what he understood as socially irresponsible eviction orders. A constitutional crisis ensued. His was without doubt a unique, i.e., personalist brand of politics; but the presence of marked regional variations is not. On the contrary, variations constitute the vital backdrop against which the broader theme of land reform is played out and through which it can and must be understood.

*A brief overview of land reform*

With the possibility of such variations in mind, some brief comments regarding the generality of Brazilian land reform can now be made. For the sake of simplicity this book follows the practise of many authors who use the terms land reform and agrarian reform interchangeably.<sup>14</sup> M. Cox, P. Munro-Faure, P. Mathieu, A. Herrera, D. Palmer and P. Groppo<sup>15</sup>, have suggested that: “Agrarian reform constitutes a major change in the ownership structure of agricultural land”. Factors they cite as having justified reforms historically include the “presence of highly unequal distribution of land assets; large tracts of land with low farming intensity; exploitative labour relations on large estates; extensive landlessness and/or very small uneconomic units; extensive land conflicts (squatting, land invasions, etc.)”.<sup>16</sup>

There is little doubt that Brazil has conformed very closely to this pattern until comparatively recently, and in certain key respects still does. The distribution of land remains highly unequal; exploitative labour relations persist; indices of poverty are more closely correlated with rural livelihoods than their urban counterpart; there is extensive landlessness and the presence of very small uneconomic units; and land conflicts and occupations are prevalent. With regard to inequality and poverty, for instance, between 1970 and 1980, the number of rural poor rose from an estimated

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<sup>14</sup> As Henry Bernstein and others point out, however, the relationship between the agrarian question (as constituted in different countries over different historical periods) and land reform is complex. See H. Bernstein, ‘Land reform: taking a long(er) view’, *Journal of Agrarian Change*, 2000, 2 (4): 433-434, my emphasis). See also, H. Bernstein, “’Changing before our very eyes’: agrarian questions and the politics of land in capitalism today’, *Journal of Agrarian Change*, Vol. 4 1-2, January-April 2004, pp. 190– 225.

<sup>15</sup> M. Cox, P. Munro-Faure, P. Mathieu, A. Herrera, D. Palmer and P. Groppo, ‘FAO in agrarian reform’, in *Land Reform: Land Settlement and Cooperatives*, Rome, Food and Agricultural Organisation, 2003, vol 2., pp. 12-30.

<sup>16</sup> M. Cox, P. Munro-Faure, P. Mathieu, A. Herrera, D. Palmer and P. Groppo, ‘FAO in agrarian reform’, in *Land Reform: Land Settlement and Cooperatives*, Rome, Food and Agricultural Organisation, 2003, vol 2, p.13.

27.6 to 28.8 million, while the Gini coefficient for land concentration (a key measurement of the equality of land distribution<sup>17</sup>) went from 0.85 in 1960 to 0.86 in 1980.<sup>18</sup> Brazilian government statistics also showed that properties of more than 1,000 hectares increased their share of the cultivated land from 47 per cent in 1967 to 58 per cent in 1984, while small properties of less than 100 hectares had their share of land decrease from 19 per cent to 14 per cent over the same period.<sup>19</sup> Far more troubling, though, is the fact that by 2005/6, some 20 years into the redemocratisation process, the Gini index for land had barely changed from its 1985 level of 0.857. By 1995/96 it was 0.856 and in 2006 (when the last reported census was carried out), was 0.854.<sup>20</sup> As the table from Sauer and Pereira Leite below shows<sup>21</sup>, 2006 census data revealed that farms of less than 10 hectares still accounted for almost 48 per cent of all rural establishments but only occupy a tiny fraction, 2.36 per cent (7,798,607 hectares) by area. This contrasts with properties over 1000 hectares which account for a fraction, 0.91 per cent, of all rural establishments but which occupy more than 44 per cent of land (146,553,218 hectares) by area.

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<sup>17</sup> The Gini coefficient is a widely used and accepted method for calculating general inequality. In the case of land a zero reading represents perfect distribution while a reading of one would represent absolute concentration in the hands of a single individual.

<sup>18</sup> This is according to the United Nations Food and Agricultural Organisation cited in Anthony W. Pereira, 'Agrarian reform and the rural workers' unions of the Pernambuco sugar zone, Brazil 1985–1988', *The Journal of Developing Areas* 26 (January 1992), 189.

<sup>19</sup> Pereira, 'Agrarian reform and the rural workers' unions of the Pernambuco sugar zone, Brazil 1985–1988', p. 189.

<sup>20</sup> Source: Brazilian Institute of Geography and Statistics (Instituto Brasileiro de Geografia e Estatística, IBGE), November 5 2009, available at [http://www.ibge.gov.br/home/presidencia/noticias/indice\\_de\\_gini.shtm](http://www.ibge.gov.br/home/presidencia/noticias/indice_de_gini.shtm)

<sup>21</sup> Sergio Sauer & Sergio Pereira Leite, "Agrarian Structure, foreign investment in land, and land prices in Brazil", *Journal of Peasant Studies*, Vol. 39, Nos. 3-4 July to October 2012, pp. 873-898, (page. 877)

Table 1. Number and area of agricultural and livestock estates by groups of total area: Brazil, 2006.

Groups of total area	Number of estates (units)	%	Area of the estates (ha)	%
Less than 10 hectares (ha)	2,477,071	47.86	7,798,607	2.36
10 to less than 100 ha	1,971,577	38.09	62,893,091	19.06
100 to less than 1000 ha	424,906	8.21	112,696,478	34.16
1000 ha and beyond	46,911	0.91	146,553,218	44.42
Total	5,175,489	100.00	329,941,393	100.00

Even the government statistical service itself notes that: ‘The continuation of unevenness in the distribution of land is seen in the comparison of data in the three last editions [1985, 1995 and 2006]’.<sup>22</sup>

Although the deconcentration of land has been extremely limited, in no way does this imply that nothing has changed over the decades, or that Brazil can be characterised in terms of large unproductive landed estates – *latifúdios* – that historically dominated the country and much of Latin America since colonial times. To be sure, such formations still exist, but anyone familiar with the term BRICS will also be aware that over the last few years Brazil has achieved agricultural superpower status. Its model has delivered spectacular results, with agricultural exports reaching US\$80 billion in 2010–11 alone.<sup>23</sup> Several factors have contributed to this, not least of which are the so-called green revolution of the 1960’s; intensive mechanisation; the pro agro-industrial policies of successive governments (including large subsidies and tax breaks); and the seemingly inexhaustible supply of land permitting the absolute

<sup>22</sup> Source: *Census of Agriculture 1995–1996: IBGE: Census of Agriculture 2006 makes a portrait of Brazil*, available at [http://www.ibge.gov.br/english/presidencia/noticias/noticia\\_impressao.php?id\\_noticia=1464](http://www.ibge.gov.br/english/presidencia/noticias/noticia_impressao.php?id_noticia=1464)

<sup>23</sup> Figures for March 2010 to February 2011. Brazilian Ministry of Agriculture, *País alcança valor recorde de exportações do agronegócio*, 21 March 2011. <http://www.agricultura.gov.br/porta1/page/porta1/Internet-MAPA/pagina-inicial/internacional/noticias/noticia-aberta?noticiaId=31601>

expansion of agricultural frontiers into new regions of the country. That may mean the destruction of biodiversity in regions such as the Amazon, the Pantanal and the Cerrado, but it also means that Brazil is now the world leader in coffee, orange and sugar production; the second largest grower of soya beans; and third largest exporter of maize. The accelerating investment in, and expansion of, highly intensive agro-industrial complexes has led the MST to describe these forms of production and control as ‘the new face of landlordism’.<sup>24</sup> As will become evident in chapter five, that gives rise to new sources of conflict, and raises important political and legal questions in the process, most notably over the issue of whether these ‘productive’ lands can be legally occupied or expropriated.

According to the 1988 Constitution, no such doubts should exist in relation to so called ‘unproductive’ or ‘underutilised’ land, estimated by INCRA at 120.4 million hectares (out of 436.6 million hectares) registered with the organisation.<sup>25</sup> Although this source should provide a vast pool from which the state can legally expropriate land for the purposes of redistribution this does not happen - certainly not on the requisite scale or speed. This leads to the paradoxical situation of land scarcity amidst plenty, and hence landless workers camped on roadsides. Sauer and Pereira Leite note that the second National Plan of Agrarian Reform “estimated that in 2005 there was ‘a total of 3.1 million families,’ so-called ‘landless people,’ who are ‘rural workers

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<sup>24</sup> Comments made by the MST’s National Secretariat March 2011. Source *MST Informa No. 189*, ‘Women in the Fight Against Agrochemicals’, <http://www.mstbrazil.org/news/mst-informa-no-189-women-fight-against-agrochemicals-3-4-11>

<sup>25</sup> Sergio Sauer & Sergio Pereira Leite, “Agrarian Structure, foreign investment in land, and land prices in Brazil”, *Journal of Peasant Studies*, 2012 vol. 39, Nos. 3-4, pp. 873-898, (page. 877)

without access to land, including small-scale agricultural producers – proprietors, partners or leaseholders’.”<sup>26</sup>

This paradox is all the more remarkable when one takes into account another highly significant legal category, that of public or vacant land, known as ‘*terras devolutas*’, or devolved land, which cannot be privately appropriated except under the strictest of legal conditions. These conditions were originally established under the 1850 *Lei de Terras*, or Land Law, which asserted that devolved lands – tracts of land that did not as yet belong to private parties, of which there were literally hundreds of millions of hectares – could no longer be appropriated except through means of purchases made directly from the government. Article One asserts: ‘[t]he acquisition of devolved lands by title other than purchase is hereby prohibited.’ The sociologist José de Souza Martins notes this would have profound social consequences for it “would transform devolved lands into a monopoly of the state and a state controlled by a strong class of large landowners. The non-propertied peasants, those that arrived after the *Lei de Terras* or those that had not had their occupations legalised in 1850, were therefore compelled...to work for the large estates.”<sup>27</sup> Yet again we find a situation of shortage amidst plenty. In this instance the law was designed to manage the transition from a slave economy to a capitalist one by deliberately locking millions of people (including freed slaves, smallholders and future immigrants) out of landownership and into waged employment on large estates.

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<sup>26</sup> Sergio Sauer & Sergio Pereira Leite, “Agrarian Structure, foreign investment in land, and land prices in Brazil”, *Journal of Peasant Studies*, 2012 vol 39 issue No. 3-4, pp. 873-898, (page. 877)

<sup>27</sup> José de Souza Martins, *Os camponeses e a política no Brasil*, Petrópolis: Vozes, 1995, p. 42.

Theoretically, as Miguel Pressburger explains, from a technical perspective

The *Lei de Terras* [Land Law] of 1850 and its regulations determined how, under what conditions, and for how much devolved lands could be sold to private individuals. . . . . if the privatisation of the public asset was not realised in accordance with the legislation then in legal terms the asset remained inalienable and, as established in the Civil Code, beyond commercialisation.<sup>28</sup>

But that is not what happened. Not for the first time would the law bite off far more than it could possibly chew, in this instance by asserting an untenable monopoly.

Dominion over devolved lands was divided between the federal state (especially in areas of strategic concern, like international frontiers and military installations) and local states, which were legally entitled to those areas not destined to federal control.

Due to corrupt networks of influence, however, many local states, were either uninterested in enforcing the law, or enforced it in a highly selective fashion that benefited their friends. This was not simply a recipe for social conflict, as small holders sought to eke out an existence, and as putative landowners staked their claim to vast areas through corrupt notaries and officials who produced chains of false documents ‘proving’ their ownership prior to 1850. It was also a recipe for seemingly interminable legal conflicts, as lawyers waded through mountains of documentation (much of it false) trying to establish the real provenance of land. Market forces further compounded these difficulties, for arguably one of the best ways of realizing a gain from land is not by owning or working it, but by selling it to unsuspecting buyers, or to buyers who know perfectly well its provenance but are nonetheless prepared to take the relatively low risks of potential state enforcement. That is a process that persists to this day.

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<sup>28</sup> Pressburger, ‘Terras devolutas. O que fazer com elas?’, p. 12.



Although this is the legal background to the first two chapters in this book, which deal with struggles over devolved land in the state of São Paulo; it is also the background to vast tracts of devolved land throughout Brazil, perhaps as many as 309 million hectares.<sup>29</sup> The significance of these devolved lands is underlined by the Constitution's assertion, in Article 188, that they must be made compatible with national agrarian reform plans, in other words they should be actively considered for purposes of agrarian reform. When added to the 120 million hectares of unproductive land referred to earlier, the extent of up social demand seems hard to explain. Chapters One and Two go some way towards providing that explanation.

### *The trajectory of land reform*

Numerous studies have made clear the depth of rural poverty and the significant contribution which unequal access to land and income make. According to the demographic census of 2000, five million rural families lived on less than two minimum salaries (a total of \$166) per month. Rural areas are where the highest rates of infant mortality, disease, and illiteracy occur.

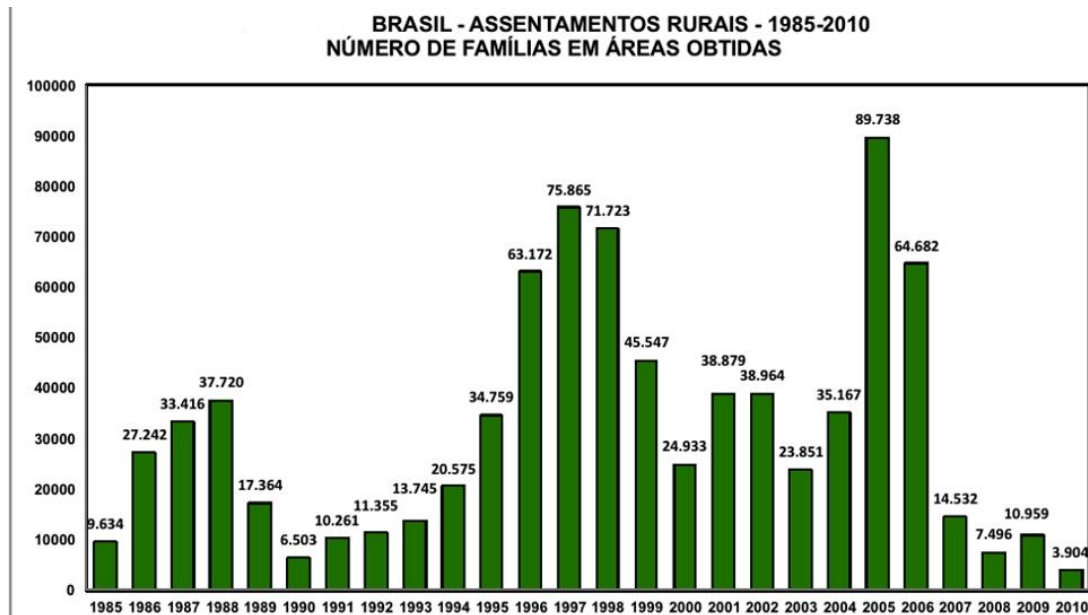
There seems to be little doubt that the two Lula administrations (2003-2006, 2007-2010) made some headway through a variety of social assistance programmes, most notably Fome Zero (Zero Hunger, a programme designed to eradicate hunger), and Bolsa Família (Family Grant, a conditional cash transfer programme to extremely poor families linked to indicators like school attendance and health visits). Even the minimum wage increased substantially in both nominal and real terms over the period

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<sup>29</sup> This figure is based on calculations by the geographer Ariovaldo Umbelino de Oliveria.

(the latter by more than 60% once inflation is taken into account). But significant though these gains are, especially to the beneficiaries themselves, they do not address structural problems associated with land ownership and use. For that one must look to land redistribution.

The statistical record of successive governments on this question has been hotly debated. Table 2 gives some sense of the progress made in permanently settling families over the last 25 years. The picture is one of progress but with substantial variations. Structural reform of the kind regarded by many as essential to qualify as a genuine land reform, i.e., one that delivers change on a massive scale and in a relatively short time frame, thereby providing a political and social shock to the system, has not come about. To the extent that land reform is a function of the political process rather than more predictable legal or administrative ones, this absence of consistency is to be expected. Thus, for instance, the repressive and anti-land reform government of president Fernando Collor (1990-1992) heavily influenced the low settlement rates of the early 1990's (see Table 2). His repressive policies also saw the successful containment of land occupations, as Table 3 indicates.

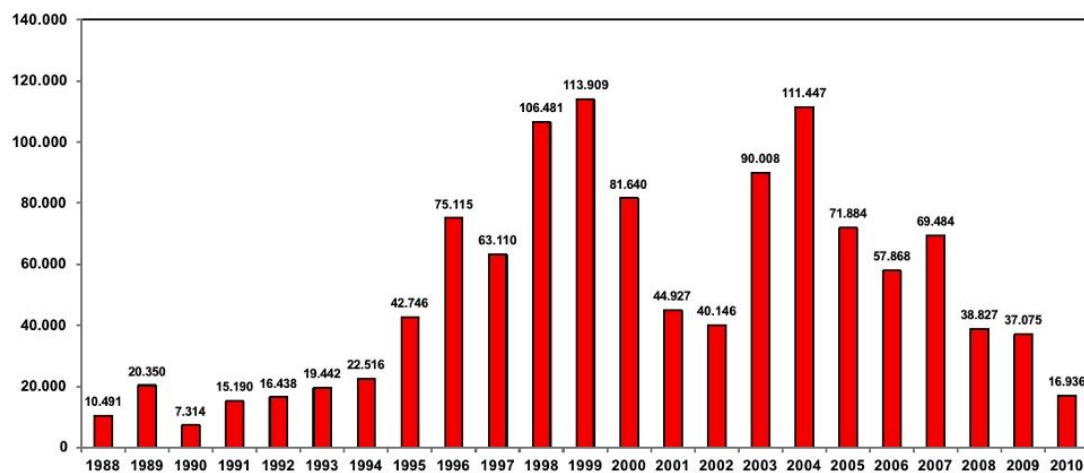


SOURCE: DATALUTA

But the same cannot be said for the second Lula administration (2007-2010), which was rhetorically speaking remained pro-reform, but enjoyed extremely limited success even by historical standards.

TABLE 3

BRASIL - NÚMERO DE FAMÍLIAS EM OCUPAÇÕES - 1988-2010



Fonte: DATALUTA - Banco de Dados da Luta pela Terra, 2011. [www.fct.unesp.br/nera](http://www.fct.unesp.br/nera)

The Lula government has attributed these differences in part to the increased priority given to the quality of settlements rather than their numbers. It has argued, not entirely without reasons, that the amount of land taken is one variable and that

attention must also be paid to qualitative factors, such as the economic viability of settlements; the availability of capital; the educational training of workers; the proximity of settlements to infrastructure and markets, etc. But while there is an important grain of truth in these assertions, and funds related to land reform projects have increased substantially, many observers, including this author, would question whether the diminution in numbers in fact reflects a policy line of least resistance. In other words, the political costs of improving existing settlements are much lower than those associated with the acquisition of new land. For an administration that finds itself presiding over an agro-industrial export boom, the political costs of alienating allies may be too high to contemplate.

President Lula's failure to update land productivity indices - despite repeated promises made prior to his 2006 election victory - exemplifies the problem. These indices (unchanged since the 1970's) are a key variable in assessing whether land is productive or not, and therefore whether it is legally subject to expropriation for the purposes of land reform. The 120 million hectares of unproductive land referred to earlier is, if anything, a massive underestimate since it is based upon a test where the bar has been set artificially low, i.e., back in the 1970s. A recalibration of the test to reflect 21<sup>st</sup> century productivity levels would surely lead to an increase in the amount of land currently defined as unproductive and therefore. Landowners do not want the uncertainty this engenders. Despite, therefore, the compelling technical and political case for revision; or the support of INCRA and the Ministry for Agrarian Development; or the electoral promises made by Lula; powerful interests within the Ministry of Agriculture continue to exercise a veto over this aspect of policy. Chapter 3 sheds valuable light on this problem in the context of Fernando Henrique Cardoso's

government. Ultimately one finds that the favourable legal and administrative climate that developed was subordinated to a series of insurmountable social and political obstacles.

*The MST's place in the wider spectrum of rural struggle*

Part of the contention of this book is that the MST administered a much needed external shock to the system, calling the status quo into question and forcing the issue of land reform to the top of the political agenda. Opponents of the movement contend that in so doing it would act in an anti-democratic and illegal fashion (not a view shared by this author). Others have sought to classify the MST as a counter-hegemonic movement, i.e., one that challenges the dominant model and campaigns to change the status quo.<sup>30</sup> Houtzager notes that ‘The MST’s strategy is the kind of counter-hegemonic use of law and rights that Santos [<sup>31</sup>...] argues is most likely to succeed: it integrates juridical action into broader political mobilisation, politicising struggles before they become juridified, and mobilising sophisticated legal skills from diverse actors. This strategy enabled the MST to engage in the type of sustained and broad litigation – both geographically and across issues – that [...] is central to redefining legal terrain.’<sup>32</sup> There is considerable truth in this assertion; but in making it one should not lose sight of the wider historical picture. As João Pedro Stédile, the leading spokesperson for the MST himself acknowledges: “The Ligas Camponesas

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<sup>30</sup> See for example Abdurazack Karriem, ‘The rise and transformation of the Brazilian landless movement into a counter-hegemonic political actor: a Gramscian analysis’, *Geoforum*, vol. 40, Issue 3, May 2009, pp. 316–25

<sup>31</sup> See Boaventura de Sousa Santos, *Toward a New Legal Common Sense: Law, Globalization, and Emancipation*, 2nd edition, London: Butterworths, 2002; and Boaventura de Sousa Santos, *Toward a New Common Sense: Law, Science and Politics in the Paradigmatic Transition*, New York: Routledge, 1995.

<sup>32</sup> Peter Houtzager, ‘The Movement of the Landless (MST) and the juridical field in Brazil’, *IDS Working Paper 248*, August 2005, p. 2.

[the Peasant Leagues] were the principal mass peasant movement of the 1960's, and they placed their slogan, 'by law or by whatever means' on the agenda."<sup>33</sup>

The fact is that the MST is firmly rooted within a long and rich tradition of rural social struggle.<sup>34</sup> That includes a vibrant and large rural trade union movement which numerically speaking dwarfs the MST. The National Confederation of Agricultural Workers (Confederação Nacional dos Trabalhadores na Agricultura, CONTAG) is Brazil's largest rural union organisation, congregates 27 federations and 4000 unions with a total membership of approximately 20 million rural workers.<sup>35</sup> Trade unions also have a much longer pedigree too. CONTAG was founded more than 20 years before the MST in 1963. As for the key policy with which the MST has come to be most closely associated – agrarian reform – this was a cause espoused by rural trade union activists even during the most turbulent days of the military dictatorship, an activity for which some paid with their lives.

The novelty or distinctiveness of the MST surely lies its coupling of political radicalism, including a trenchant critique of more reformist union strategies, with a high degree of organisational (and therefore political) success. The rural sociologist,

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<sup>33</sup> João Pedro Stédile, ed., *A questão agrária no Brasil; vol. 4: História e natureza das Ligas Camponesas – 1954-1964*, São Paulo: Editora Expressão Popular, 2006.

<sup>34</sup> For two excellent studies on this subject see Leonilde Sérvolo de Medeiros, *História dos Movimentos Sociais no Campo*, Rio de Janeiro: FASE, 1989; and José de Souza Martins, *Os camponeses e a política no Brasil: as lutas sociais no campo e seu lugar no processo político*, Petrópolis: Editora Vozes, 1981. See also see Leonilde Sérvolo de Medeiros, "Movimentos sociais no campo, lutas por direitos e reforma agrária na segunda metade do século XX" in Miguel Carter, ed., *Combatendo a desigualdade social – o MST e a reforma agrária no Brasil*, São Paulo: Editora Unesp, 2010.

<sup>35</sup> Source: 'Contag representa 20 milhões de trabalhadores e trabalhadoras rurais' available at <http://www.contag.org.br/indexdet.php?modulo=portal&acao=interna&codpag=1>

Leonilde Sérvolo de Medeiros, notes that for CONTAG “the struggle for “rights”, *within legal parameters*, came to constitute the *basic* directive to action”.<sup>36</sup> Similarly Rudá Ricci, notes CONTAG’s ‘struggle for agrarian reform was confined...within the limits that could guarantee dialogue with the state, avoiding any kind of mass movement that could signal a possible rupture.’<sup>37</sup> For the MST, which it must be acknowledged emerged under different historical conditions, most notably the gradual return to democracy, the exact opposite was the case: some form of rupture was essential because to all intents and purposes the process of land reform was seen as dead.

Occupations were part of peasant struggles long before the advent of the MST. The novelty of the MST was to reassert this tactic through a process of *mass* mobilisation. That would enable hitherto geographically isolated struggles and individuals to turn the tables on landowners locally, as well as develop regional and national struggles. Combined with the movement’s ability to sustain occupations over long periods it would prove a powerful combination. In this way the MST became a pace setter, spawning other occupation movements (including some dissident groups). Although members of CONTAG would also engage in occupations (it was the second largest such force), their number was dwarfed by those undertaken by the MST. Throughout, the MST remained the principal point of reference. By no means could the MST claim a monopoly on occupations, but there is little doubt that mass occupation became a basic part of the grammar of rural contestation in Brazil primarily because of its

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<sup>36</sup> Leonilde Sérvolo de Medeiros, *História dos Movimentos Sociais no Campo*, Rio de Janeiro: FASE, 1989, p. 92, my emphasis.

<sup>37</sup> Rudá Ricci, ‘A Contag no governo de transição: um ator à procura de um texto’, *Caderno CEDEC No. 15*, São Paulo, 1990, p. 10.

actions.

Any appreciation of the undoubted successes and importance of the MST must be tempered by the acknowledgement of the major and potentially increasing difficulties it faces. More than 25 years on and the movement has been unable to achieve its primary objective, land reform. That two Workers Party administrations were unable to deliver that prize indicates the scale of the challenge it faces and extent to which the movement finds itself politically constrained. The diminution in militancy, partly as a result of economic growth and government policies aimed at poverty alleviation, also constitutes a significant constraint. The adoption of a more conservative stance on land expropriation by President Dilma Rouseff's government (which assumed office in 2011) also leaves the MST with more limited room for manoeuvre. These are sobering trends, but like the MST's past successes, they are not secular. Many observers have come to regard Brazil's economic boom, with its increasing reliance upon commodities, exports to China, and its process of accelerated deindustrialization, as extremely problematic. The main concern of this book, however, is the narrower but nonetheless vital area of the MST's relationship with legal institutions and processes. Here too there are many sobering trends, but there is also scope for real progress.

Turning to the organisation of this volume, Chapter One, entitled 'Legal paralysis and mass mobilisation' opens with a brief account of the highly precarious nature of land tenure arrangements in the Pontal do Paranapanema, in São Paulo. Quite simply land here had been illegally privatised – literally stolen from the state. This status quo was underpinned by a seemingly impregnable political structure. Our interest in the matter



initially derives from two factors: first, in the manifest inability – and unwillingness – of the legal system to deal with the problem; and second, in the decision of the MST during the early 1990s to challenge the legal system, landowners and the state through a series of mass land occupations. This shock to the system would provoke a range of responses – many hostile, but it also forced that system to begin to address the problem. As well as discussing these issues, the chapter explores the role of the state as an instigator of change. There is no doubt that it would play a pivotal role in some of the progressive transformations, legal as well as social and political, that subsequently took place. These include providing the judiciary with an opportunity to make a positive contribution to change. That sense of dialectic of law, politics and social action is one of the clear findings to emerge from this research.

Chapter Two, ‘Criminalising a mass movement’, also discusses events in the Pontal do Paranapanema, but in terms of the dynamics of occupation itself, and the legal challenges which this threw up for the MST. Put simply, some sections within the legal establishment (police, prosecutors and judges) attempted to criminalise movement members for their actions. A complex game of cat and mouse ensued. The chapter not only gives an insight into the highly problematic and ideologically driven nature of the Brazilian justice system, but also its deeply divided nature. This is significant, for as well as pursuing the MST relentlessly, that system, through a ruling of the Superior Tribunal of Justice, was able to provide the movement with one of its most notable political and legal victories. A closer look at São Paulo’s Public Ministry also reveals how its most senior members refused to buckle under explicit pressure by the federal government of Fernando Henrique Cardoso to take a tougher line on the MST. As São Paulo’s attorney general explained, ‘a straightforward and

formal application of the law will not resolve the extra-legal situation. It is a social problem that will not be resolved by repression.<sup>38</sup> Once again, this case study underlines the importance of looking at social, political and legal institutions in terms of their dynamic interaction, whether that is between federal government and local prosecutors or local prosecutors and the MST. Whether the legal establishment chose to admit it or not, it was deeply rooted in the ideological conflicts of the day, conflicts that persist to this day.

Chapter Three, ‘The power of land and the contingency of law: the case of Bagé’, arguably offers some of the most worrying evidence in this book concerning the obstacles to land reform. Although based on events that occurred in the state of Rio Grande do Sul in the late 1990s, the issue discussed – namely the fate of rural productivity indices – is of strategic significance and goes to the very heart of the land reform issue in both the Fernando Henrique Cardoso and Lula da Silva administrations. Given the poor track record of the legal system on other aspects of the land question it is perhaps surprising that its actions on this occasion were not found wanting. Nor, indeed, were those of the land agency INCRA. Both were keen to enforce the law on land audits designed to measure productivity. Both, however, would be met with sustained and, ultimately, successful resistance from landed interests. Unusually, that resistance took the form of civil disobedience by landowners, as well as more traditional political pressure exerted upon (and from within) the federal government of Fernando Henrique Cardoso himself. The case is significant not so much because it deals with the failure of the justice system, but rather because it points to some of its fundamental limitations, and underlines the enormous

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<sup>38</sup> Luiz Antônio Marrey, cited in ‘Promotores criam comissão’, *Oeste Notícias*, 5 February 1997.

magnitude of the obstacles facing those sectors within the state who want to give practical effect to constitutional injunctions on land reform.

Chapter Four, 'The limits of progressive state action', is primarily centred on the diametrically opposed policies of successive governments in the state of Paraná on criminalization of land occupations. One governor, Roberto Requião, sought the creation of spaces of mediation with the MST. On one occasion this led to the MST's spokesman, João Pedro Stédile, to give an invited lecture on land evictions to the military police. Requião's policy, which included exploring crucial issues such as whether the land actually legally belonged to landowners, ultimately culminated in a constitutional crisis between the himself and a judiciary keen that he should enforce what he regarded as socially irresponsible eviction orders. The chapter explores some of the contradictions in the policy itself, notably the difficulty of 'managing' landless worker expectations. In sharp contrast to Requião's approach, governor Jaime Lerner was happy to evict and, as part of an electoral deal, effectively handed over his security apparatus to paramilitary interests keen to crush the movement. What is interesting about the case of Requião in particular, is just how difficult it was for the state – even with the active support of some of the most brilliant and progressive legal minds in the country – to establish a policy in the face of landed interests and judicial hostility. The case of Judge Elizabeth Khater, also discussed in this chapter, is symptomatic of that hostility. the chapter also looks at those of the head of INCRA, Maria de Oliveira, who failed to settle 1,500 landless families, despite her best attempts and the support of the minister of agrarian reform. Her failure, together with that of Governor Requião, are presented as symptomatic of the huge challenges facing land reform.

Finally, Chapter Five, ‘Offensive legality: raising the stakes’, examines the following issue raised by João Pedro Stédile: ‘In the case of some specific regions there aren’t large unproductive ranches. [...] So the workers are obliged to choose areas which, although they are productive, can lead on to the debate over their social function.’<sup>39</sup>

The chapter deals with one of these occupation near the town of Matão, in São Paulo state. Like the events discussed in other chapters, Matão’s go back to the early 2000s, but as with the Pontal do Paranapanema and Bagé, the issues are as current as ever.

The fact that all these issues remain so current not only points to their deeply engrained nature, but also underlies the value of exploring them in an historical context. With regard to the issue of productive property and the case of Matão, I suggest that actions by the MST represent a form of offensive legality – in other words, the movement has extended its legal discourse. This is partly, it must be acknowledged, because in regions like the Southeast it cannot so easily opt for unproductive properties and therefore has less choice. Nonetheless, the willingness of the MST to do so in these specific terms illustrates just how far the movement has come and, as the chapter makes clear, just how willing a surprisingly wide legal constituency is to take on board, develop and support its arguments. That is simultaneously an exciting and daunting prospect. In the conclusion I try and I set out some of the implications of all these developments.

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<sup>39</sup> Author interview with João Pedro Stédile, 18 March 2000.