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Baldios, communal land, and the Portuguese colonial legacy in Timor-Leste

Ribeiro de Almeida, B.; Barnes, S.; Meitzner Yoder, L.S.

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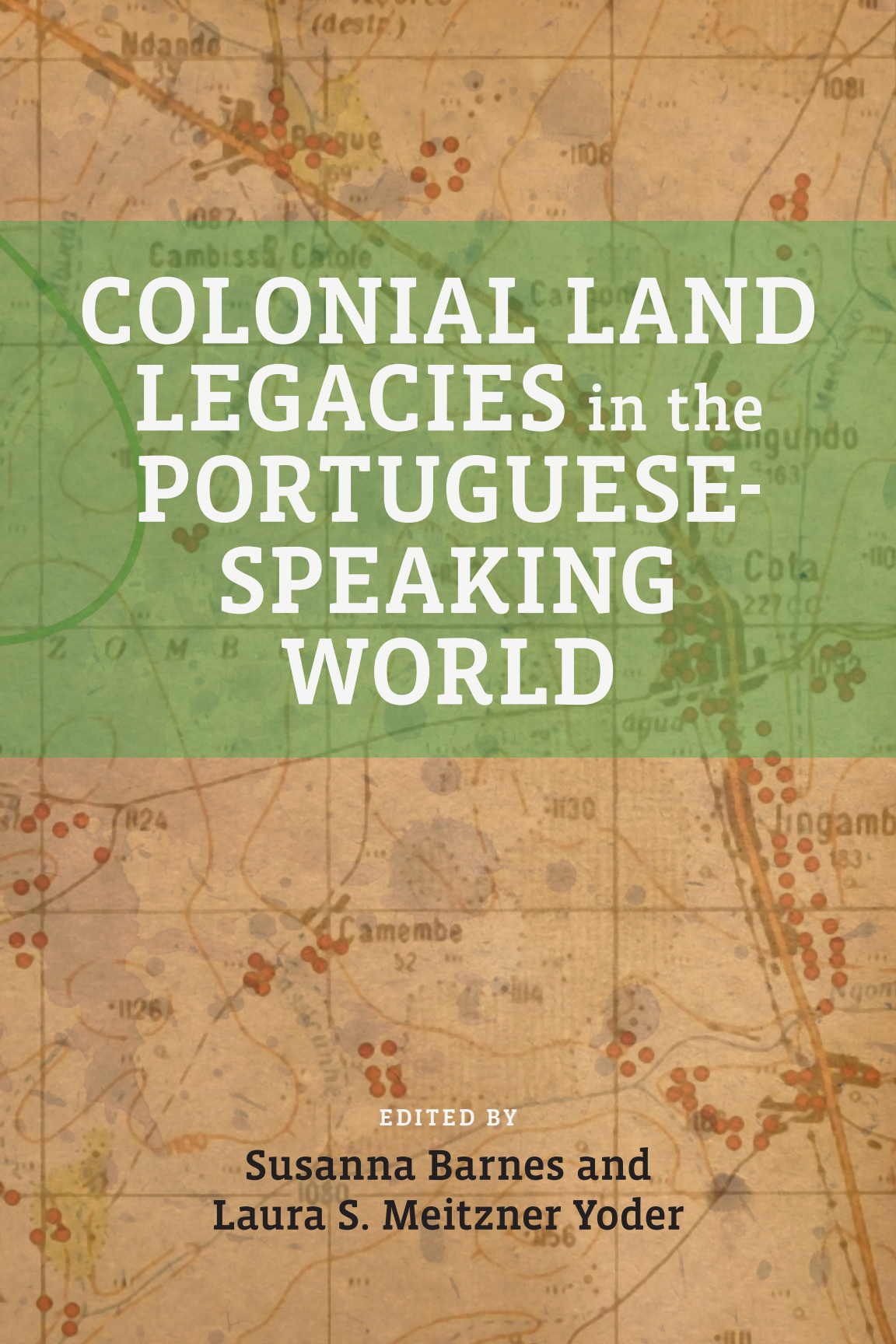
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COLONIAL LAND LEGACIES in the PORTUGUESE- SPEAKING WORLD

EDITED BY

**Susanna Barnes and
Laura S. Meitzner Yoder**

**COLONIAL LAND LEGACIES in the
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Baldios, Communal Land, and the Portuguese Colonial Legacy in Timor-Leste

Bernardo Almeida

Introduction

This chapter explores, from a socio-legal perspective, the Portuguese colonial land legacy in legal language and political thought in Timor-Leste through the concept of *baldio*. To do so, the chapter establishes a parallel between the uses of the word *baldio* in both Portugal and Timor-Leste and discusses the ideological views that surround the various uses of this multi-dimensional concept, with definitions ranging from communal to abandoned land. In other words, I consider whether the ideology of a colonial administration is passed on through legal language, whether legal language is passed on through ideology, or something else or in between. To this end, the chapter reflects on two interconnected questions: First, to what extent does (legal) language work as “imperial debris” and promote the perpetuation of colonial legacies regarding land-related policies?¹ Second, to what extent can a look at the national land-related laws and policies of colonial powers provide a complementary view of colonial practices related to the exploitation of resources, and therefore a better understanding of those colonial legacies?

Like other colonial powers, one of the main aims of the Portuguese colonial project was the exploitation of natural resources, in which state laws and institutions played a central role. Laws that racialized recognition and protection of some land rights, allowed for forced displacement and land occupation, and prioritized commercial exploitation of the land over local uses and practices

were central in this objective. However, such objectives were not limited to the colonized territories; with all due differences, at the domestic level the colonizing state also attempted, often to the detriment of local populations, to intensify the commercial exploitation of land. The creation of a Commission for Internal Colonization, highlighted below, established by the central government to “civilize” and better exploit rural areas, is an example of that.

The issues surrounding the *baldios*, both in Portugal and its colonies, provides an interesting field for exploring the above-mentioned questions and the overlaps between colonial and national land laws and policies during the colonial period. The word has had multiple contradictory meanings across space and time, and the realities those meanings represent have been at the centre of ideological disputes about land rights for centuries. Nowadays, in legal language the word is used to refer to legally protected, communally owned and used land, but in current usage the word can also refer to abandoned, unused, unfarmed, or underused land.² The idea of a sub-optimal use of the land—usually by the poor rural communities that depend on that land for sustaining their way of life—has long been an excuse in Portugal for many attempts to take land from rural communities, and has been a source of many grievances. This ideological focus on an economic exploitation of the land, with limited regard for other uses and users, was also a key characteristic of Portugal’s colonial land policies throughout its colonies, including Timor-Leste. But while the designation *baldio* was used to capture land in earlier colonial legislation, it disappeared from more recent Portuguese colonial laws. In Timor-Leste, in the years following independence in 2002 the word *baldio* appeared every now and then in debates about land rights but was not used in law. However, its sudden inclusion in Timor-Leste’s 2017 Land Law, with a very unclear meaning, raises questions about its application in practice, and the ideological agenda behind its inclusion. Given the various waves of contestation that communal land has been through in Portugal, one must ask if such inclusion of this Portuguese concept in Timorese legislation is an inconsequential imperial debris or an ideological colonial inheritance, capable of causing another “aftershock of the empire.”³

The next section describes the origins and meanings of the word *baldio* and briefly discusses regulations and disputes over the *baldios* in Portugal, with a special focus on the Commission for Internal Colonization. The following section then discusses the word *baldio* in the context of the Portuguese overseas colonies, followed by the inclusion of the concept in modern Timorese legislation. The final section concludes with several reflections on the topic.

Baldios in Portugal

For the average lawyer used to working on issues related to rural land in Portugal, the concept of *baldio*—now understood there as communally owned and used land—does not raise much complexity. However, the definition of this word, as well as the legal protection that it nowadays represents, has a complex history.

The etymological origin of the word *baldio* is disputed among Portuguese authors. Some claim that it derives from the Arabic *balda* or *batil*, meaning useless, empty, or without value, but also *baladi*, loosely meaning native or indigenous.⁴ Others argue that it might have a Roman origin, and link it with the Latin word *evalidus*, meaning unfarmed and unprotected land.⁵ It is also argued that the word *baldio* might be connected with the Germanic word *bald*, which referred to land without trees, used communally by a community.⁶

Beyond its etymological origin, the meaning of the word *baldio* in Portugal has varied over time and therefore must be understood in its historical context. Depending on the century and the region, the word was at times used, in legal as well as non-legal documents, interchangeably with the words *maninhos* and *bens do conselho*, while other times clear distinctions between these different concepts were established.⁷ The confusion regarding the different definitions is particularly complex because sometimes it refers to the legal status of the land, while at other times to the use given to it.⁸ Even nowadays the meaning of the word *baldio* in Portugal varies depending on the context. Legally speaking, it is used to refer to land that belongs to and is collectively managed by a local community, as currently regulated by Portuguese Law 75/2017. But the same word is also commonly used in everyday, vernacular speech to refer to other, very different realities, such as land without a known owner, uncultivated land, or land without buildings or a clear use.⁹ Importantly, the realities that these different definitions cover—communal land, uncultivated land, and unused land—have been regulated in many different legal formats throughout the centuries, but have also been a source of many political and legal disputes. Although far from complete, the rest of this section gives an overview of the most important historical moments of the *baldios* in Portugal.

Although communal property existed in Portugal since time immemorial, it was during the sixteenth and seventeenth centuries that Portuguese legislation started to, in a more consistent and generalized way, recognize a right to communal property, and its importance to local populations.¹⁰ However, the recognition of these rights remained limited, and conditional to the land necessary for the subsistence of local communities.¹¹ Moreover, during the eighteenth and nineteenth centuries, physiocracy emerged as a dominant economic theory in

Portuguese policy-making.¹² This theory highlighted the role of nature and agriculture as the starting point in the production of wealth, and as crucial even for industrial development.¹³ Such an economic view of the role of land, combined with steep population growth and a deficit of cereal grains, drove demand for available arable land and individualization of land rights.¹⁴ From this perspective, the idea of collective land represented by the *baldios* was seen as an archaic way of using the land, and became a target of legal reforms.¹⁵ However, the legislative initiatives aimed at dismantling and privatizing the *baldios*, and even the hostile occupation of these lands by state authorities and powerful individuals, were received with strong protests from local populations, with these struggles increasing social cohesion among some communities.¹⁶ The protests against the individualization of *baldios* led to a new recognition of communal property in 1822, preventing its disappearance from Portugal's legal framework.¹⁷ However, more subdued attempts at privatizing the *baldios* continued.¹⁸

Those *baldios* that had escaped the efforts at privatization conducted during the eighteenth, nineteenth, and early twentieth centuries again came under threat between the 1930s and the 1960s, at the height of Salazar's dictatorship, marked by its authoritarianism and economic interventionism.¹⁹ This time the state aimed to nationalize the *baldios* and to implement large-scale afforestation that excluded the users of *baldios* from accessing them and from earning any profit from the state's exploitation of these areas.²⁰ Decree-Law 27207 from 1936 and subsequent legislation created a Commission for Internal Colonization (Junta de Colonização Interna), and started a systematic identification of *baldios* for subsequent state-led afforestation, mostly with pine trees, and later some distribution of individual plots.²¹

A parenthesis is necessary here to elaborate further on the Commission for Internal Colonization. As described by Silva, the "colonization" of Portuguese territory had been debated by politicians, state officials, and academics as a crucial step for the modernization of agrarian structures and the country's economy.²² However, it was only during the Salazar dictatorship that the government took stronger measures in this direction. Internal colonization was defined as a "set of measures that aim to achieve . . . the most complete use of land and to settle there, in the most rational way, the greatest number of families."²³ While resettling the population was part of the concept, the central focus was on maximizing land productivity.²⁴ A significant emphasis on a more scientific approach to agriculture and forestry characterized this colonization movement.²⁵ Moreover, mirroring the practices in overseas colonies, this process aimed to instill order and to "civilize" rural Portugal, viewed by the central state as unproductive and

backward.²⁶ This commission became the bureaucratic and scientific epicentre of the political process of social engineering.

It was under this political and administrative scenario that the nationalization of the *baldios* was conducted. Some of the main arguments used to justify such a measure included addressing issues such as erosion, as well as a more profitable exploitation of rural areas, but the main beneficiaries of such policies were the cellulose, paper, and chemical fertilizer industries.²⁷ This policy disregarded the roles of the *baldios* for the rural populations, and had an especially negative impact on those who lived off of small-scale agriculture and relied on *baldios* to complement their livelihoods, in activities such as grazing and the collection of firewood.²⁸ The expectation of an easy intervention in the issue of the *baldios* by the Commission for Internal Colonization, under the assumption that it would not cause major disruptions in society, illustrates well the state's lack of knowledge about—or, alternatively, its lack of respect for—the importance of these lands for rural populations.²⁹ Moreover, the bureaucratic, formalistic, and modernistic view of land rights held by state officials responsible for implementing this process was at odds with the much more informal and customary-based practices of the rural populations.³⁰ For instance, the fact that many land parcels were never registered or were not correctly updated in the Property Registry resulted in accusations of illegal expropriation by the state.³¹

As such, the policy was met with strong opposition.³² While some local populations managed to force the state to share some of the profits of the forest or to maintain some communal areas,³³ this policy considerably affected the way of life and the livelihoods of many, and caused higher social and economic inequality in these areas.³⁴ This policy also contributed in part to a rural exodus during this period, with a considerable part of the rural population moving to urban areas within Portugal or migrating abroad.³⁵ The impact suffered by rural populations due to the nationalization of *baldios* and the resulting protests is probably best represented in the 1958 book *When Wolves Howl (Quando os lobos uivam)*, by the Portuguese writer Aquilino Ribeiro, based on a reality that the author himself had experienced. Through a fictionalized story, he describes how the rural populations—already those most ignored by the central government—with very limited access to public infrastructure and social services, were deprived of these lands essential to their livelihoods. The book was so controversial that Ribeiro was sued by the state.³⁶

During the 1960s the project of internal colonization started to lose strength inside the government, with the last law on the topic approved in 1962.³⁷ However, it was with the Carnation Revolution of 1974, which ended forty-eight years of dictatorship, that the nationalization of *baldios* was stopped and reversed.

Decree-Laws 39/76, 40/76, and subsequent legislation established the process for returning to the local communities the *baldios* that had previously been nationalized for forestry purposes and regulated the procedures for their administration by local commissions of residents in the area.³⁸

Nowadays, and after the various attempts to eradicate the *baldios*, they are no longer a common reality throughout the country, and exist only in the northern and central regions of Portugal.³⁹ Under current legislation (Law 75/2017), the *baldios* are property of, and managed by, a community, through a locally elected commission of residents (*compartes*). With some exceptions, the *baldios* cannot be sold, appropriated, acquired through adverse possession (i.e., long-term possession), nor seized, and even the scope for their expropriation is limited.⁴⁰ However, and despite the legal recognition and protection given since 1976 to the *baldios*, the topic remains a source of political contestation. For instance, a regime that allows a stronger financialization of the *baldios* has been pushed by some, but opposed by others that see this as another way of, yet again, taking benefits away from local populations and exacerbating local inequalities.⁴¹ The several legal changes made since 1976 illustrate well how the *baldios* and the idea they represent—land owned and managed by a local community—remain a contested topic in Portuguese society.⁴² Finally, there is now a National Association of Baldios (BALADI—Federação Nacional dos Baldios), which brings together the representatives of the different *baldios* and works as a platform for discussion and collaboration among the different communities that own *baldios* in Portugal.

This section illustrates how the legal protection of communal land in Portugal—the *baldios*—has varied over time and, despite various attempts to privatize and nationalize them, communal lands persist there. The “productivity of the land,” in one way or another, was always the core argument for attacks on the *baldios*, often with little consideration for the users of the land and its role in their livelihoods. Moreover, this section shows that the word *baldio* is politically loaded, its meaning has changed throughout history, and it still has various contradictory meanings which, as the next section shows, can cause problems.

Baldios in the Portuguese Overseas Colonies

As happened in Portugal, the use of the word *baldios* in Portuguese colonies varied significantly and was intrinsically connected with ideological views on land rights and exploitation of land. Like other colonial powers, Portugal implemented its formal land tenure system in its colonies as a way of affirming sovereignty over the territory and exploiting its natural resources.⁴³ One issue common to all colonial powers was the need to deal with the land rights of the local populations, who used and claimed large tracts of land the colonial powers wanted for their

economic exploitation. Conceiving of land as “empty” or being “unproductively used” allowed colonial powers to justify land tenure systems that gave limited recognition to local populations’ land rights.⁴⁴ This also happened in Portuguese colonies; while throughout the years Portuguese law recognized some land rights of local populations, this recognition was always limited in scope (predominantly land use rights and not ownership) and area (mostly residential areas and cultivated land), and was marked by complex administrative processes that only a few ever followed.⁴⁵ The much more diverse uses of land by local people, and the complexity of rights and obligations of the local land administration systems, were seen as primitive by the colonial administration and not represented in these laws.⁴⁶ Conversely, all land to which local populations were deemed to have no rights was considered state land, and therefore legally available to be distributed by the state to others through concessions, primarily for economic exploitation.⁴⁷ In sum, the Portuguese colonial land tenure system was geared toward attracting investment for economic exploitation of land,⁴⁸ not to protecting local populations’ rights and ways of life.

As described above, the variable use of the word *baldio*, alongside the push to nationalize and privatize communal land, marked the lives of rural populations in Portugal. Similar trends can also be found in the legislation that regulated land in the Portuguese colonies. For instance, the law of 21 of August 1856 regulated the sale of state-owned *baldios* in the Portuguese colonies, establishing that the *baldios* that *belong to the state* and are not used collectively by the local population of a *concelho* (an administrative area) could be sold by the state.⁴⁹ The law did not define *baldios*, leaving its interpretation open.⁵⁰ Other laws also raised similar confusion regarding the legal concept of *baldio*, and the push for the nationalization and privatization of communal land. The Carta de Lei (Law) of 1901 that regulated the awarding of land rights in the colonies, without using the word *baldio*, classified the common-use areas around the villages of local populations as state land, although it established that these areas could not be given to private parties.⁵¹ Also without referring to *baldios*, this law established that the state could award rights over *uncultivated* and *unexplored* land to private parties.⁵² From these provisions only, and considering the possible definitions of *baldios*, one would think that the word had been abandoned. However, the same law, on a section specific to Cape Verde, explicitly mentioned the awarding of land rights over *baldios*,⁵³ although it is not clear why the word was used specifically regarding Cape Verde.

The Portuguese colonial land-related legislation approved specifically for Portuguese Timor did not use the word *baldio*.⁵⁴ Even legislation where the issue of state versus communal land was central did not make any mention of *baldios*;

it was notably absent from key legislation for the region, including the Decreto (Decree) of 5 December 1910, which regulated the awarding of land rights in the province of Timor,⁵⁵ Portaria (Ordinance) No. 193 of 27 July 1914, which approved what became known as the *alvará indígena* (native title),⁵⁶ and Diploma Legislativo (Legislative Decree) No. 865 of 25 September 1971, which further regulated the Regulation on the Occupation and Concession of Land at the Province of Timor.⁵⁷ The Decreto from 1910 makes reference to “free and uncultivated land” (*terrenos livres e incultos*)⁵⁸ and, as happened with other colonial legislation, the Diploma Legislativo from 1971 uses the expression “vacant land” (*terrenos vagos*) to refer to land on which there is no other formal land right,⁵⁹ but never *baldio*.⁶⁰

However, this does not mean that the *baldio* concept was not used in practice by the Portuguese colonial authorities in Portuguese Timor. For instance, in the same edition of the *Official Gazette* where the native title legislation from 1914 was published, the term *baldio* is used in a public announcement of the awarding of a land right. This announcement mentions that the land to be granted borders a *baldio*. It does not define *baldio*, leaving unclear the meaning ascribed to the term, but my experience with Portuguese land registry suggests that it was referring to land with neither a visible use nor a clear owner.

In conclusion, the Portuguese law for the colonies (and later, for overseas provinces) used the word *baldio* to refer to land that was seen as “underused” or “unproductive” by the colonial authorities, although the expression was never clearly defined. However, while in Portugal the word’s use in a legal context was increasingly associated with communal land, in the colonial legislation the word was progressively abandoned, replaced by expressions such as “vacant land” (*terrenos vagos*), often to affirm the rights of the state over these lands. In the colonial legislation specifically drafted to regulate land rights in Portuguese Timor, I cannot find a single use of *baldio*, although the word is used in other legal documents.

Baldios in Independent Timor-Leste

With the Indonesian occupation of Timor-Leste in 1975, the word *baldio* disappeared from the Timorese legal lexicon and, even after full independence in 2002, remained absent from Timorese legislation until the approval of the Land Law in 2017.⁶¹ This law was first drafted in 2009 with the intention of establishing mechanisms that could address the various layers of land disputes from the past and clarify who has which land rights. One especially important feature of this law is the legal recognition of individual and communal customary land rights that, despite their prevalence throughout the country, received very limited legal recognition from both the Portuguese and Indonesian administrations. From

2009, the draft law went through various discussions and iterations, finally being approved by Parliament and promulgated by the president in 2017. Throughout the various drafts of the law—in whose legal drafting I also participated—the word *baldio* was never used, but during the final debates by Parliament’s Commission A, it was suddenly introduced into the law.⁶² The possible reasons for this sudden appearance are debated below.

The way in which the word *baldio* is used in the law leaves much room for interpretation and can be a source of confusion. Article 9.4 establishes that “land without a known owner, and the *baldios*, are state land.” The law does not define *baldio* and, depending on the interpretation applied, the word’s consequences can have effects ranging from the inconsequential to an open door to attack the land rights of individuals and communities. I will use the various definitions of *baldio* analyzed above to show how at least three different interpretations are possible. First, if *baldio* is used to refer to *land with an unknown owner*, its use is inconsequential, but a clear example of poor legislative drafting.⁶³ Using this definition, the article would read, “the land without owner and the land without owner is state land,” which repeats the same idea twice. A second definition of *baldio* defies the internal logic of the law. As debated above, from a Portuguese legal point of view a *baldio* is land that belongs to and is collectively used by a community. If such interpretation is followed, the article would read, “the land without owner, and the land that belongs to and is collectively used by a community, is state land.”⁶⁴ However, one of the key features of this law is precisely establishing the collective ownership of land by communities; such an interpretation would completely contradict chapter 6 of the law, and leave those applying it with a question: Who, then, owns the land that is communally used? The state or the communities? A third interpretation is achieved if we define *baldio* as *uncultivated land* or *land without buildings* or *land without a clear use*. In this case article 9.4 would mean that “the land without owner, uncultivated, without buildings, or without a clear use is state land.” However, such an interpretation would make this article clearly unconstitutional. Landowners—individuals and communities—have no legal obligation to cultivate, build on, or give a visible use to their land, and for all kinds of reasons their land can remain uncultivated or unused. While ownership is not an absolute right, and the use of land by landowners can be conditioned by public interests, such conditioning needs to serve a clear interest and be part of a legally regulated process.⁶⁵ The possibility that the state might consider itself the owner of land just because land is, at a certain moment, uncultivated or not used clearly violates the right to private property established in article 54 of the Timor-Leste constitution.⁶⁶ As further argued below, especially when considering the voracity of the Timorese state’s claims to

land ownership, such an interpretation would open a (new and) very dangerous Pandora's box for arbitrary state-led dispossessions.

The former Timorese President Taur Matan Ruak, aware of the problems regarding the interpretation of the word *baldio* introduced by Parliament in article 9.4 of the Land Law, requested in 2017 that the Court of Appeal conduct a preventive review of the constitutionality of this and a few other articles.⁶⁷ However, the reply given by the court showed little understanding of the problem raised by the use of this word, and revealed some of the fragilities of the Timorese justice system in providing adequate legal reasoning to address the gaps and contradictions of the system, to promote legal certainty, and to work as a buffer against unjust legislation.⁶⁸ In five lines, and without much legal reasoning, the court replied that it saw no problem with the inclusion of the word *baldio*, and defined it as “land without owner, characterized by lack of maintenance, high bush, and trash.” Coincidentally or not, this definition is the same as that used in the Portuguese Wikipedia entry for the word *baldio*.⁶⁹ This court decision is a double-edged sword in the protection of communal land rights. On the one hand, by defining a *baldio* as “land without owner,” the court takes a more benign interpretation of *baldio* in the context of article 9.4, saying twice that land without an owner belongs to the state. On the other hand, the court's definition introduces new criteria in the definition of *baldio*: the *lack of maintenance, high bush, and trash*. The problem is that, in the Timorese context, a selective and biased interpretation of the law by politicians and state officials in favour of the state, to the detriment of individuals and communities, is a very common practice.⁷⁰ For those familiar with the current Timorese land administration, it is not difficult to imagine a situation where, through a quick look at a piece of land, a state official declares that it “lacks maintenance,” and therefore belongs to the state, leaving landowners with the uphill battle of proving that the official's approach does not comply with the law. Moreover, these new elements can also be used to push for a more limited definition of communal land. In summary, introducing the word *baldios* in the Land Law created a possible problem of interpretation in the application of the law, and the Court of Appeal did not definitively solve the issue.

But this case raises another question: Why was the word *baldio* introduced in the Land Law? Was this last-minute change a legal mistake introduced by a member of Parliament with experience in Portuguese administration, or a result of poor legal advice from one of the many *go-betweens*—Portuguese-speaking legal experts participating in the development of the Timorese legal system?⁷¹ Or is it, rather, a colonial land legacy, identified in other newly independent post-colonial countries, in which the state retains colonial land frameworks that centralize the state's rights over the land and becomes a “property monster”?⁷²

In my opinion, both factors played a role in the introduction of the word *baldio* in the Land Law. On the one hand, the weak procedural devices of the Timorese law-making process easily allow for changes in legal drafts without much consideration for their impact on the logic and implementation of the law, which happens often.⁷³ Moreover, even for lawyers trained in Portugal, the history and legal framework of the *baldios* described above is mostly unknown, unless they come from Portugal's northern interior, where the *baldios* still exist. Considering these circumstances, it is easy to imagine this change in the Timorese law being rushed in the approval process, without enough time or technical assistance to fully assess the consequences of introducing the word *baldios* in the draft.

On the other hand, the introduction of *baldios* in the Land Law also appears to be a colonial legacy. While the specific colonial-era legislation for Timor-Leste did not use the word *baldio*, it was for a while used in general colonial legislation for Portuguese colonies to classify land as “empty” and “unproductive.” Also, the word was used by the Portuguese colonial administration in Timor-Leste in other legal documents, such as public announcements, to describe land that was perceived as having neither a visible use nor a clear owner. Moreover, the different meanings of *baldio*, and the conceptions of land they represent, were part of tense political debates in Portugal and its colonies throughout most of the twentieth century. Also in Timor-Leste, throughout the Portuguese administration, the communal claims to land were mostly reduced to land that was being farmed, and the objective of a more intense and scientific exploitation of “unproductive” land was constant.⁷⁴ The resurgence of this concept with colonial origins in the Timorese legislation, inserted in the law in such a way that it can be understood as further enabling large state claims, seems to represent a legacy of a particular way of seeing land. As seen in the case of the Portuguese administration, politicians and state officials tend to render invisible the local norms, practices, economies, and connections to land, thereby making land “empty” and “unproductive” in their eyes. They also tend to support strong state control of land, justified by a need to make the use of land “more productive.”⁷⁵ As in the Portuguese internal colonization described above, in Timor-Leste we observe a strong determination on the part of the central state to extract more economic profit from rural areas without a careful understanding of, and respect for, the way of life of those residing there, or the impact that state interventions can have in their lives.⁷⁶

Conclusion

This chapter discusses the Portuguese colonial land legacy in legal language and political thought in Timor-Leste through the concept of *baldio*. Nowadays the word has a clear legal meaning in Portugal: land that belongs to and is managed independently by communities and is used mostly for rural activities such as grazing and collection of firewood. But in Portugal today the word is also used colloquially to refer to abandoned, unused, unfarmed, or underused land. The reason for such contradictory meanings can be understood once one considers that communal land has been seen by many in Portugal as not being exploited to its highest economic potential. This idea of unproductive use of land has been invoked throughout the history of Portugal and in its colonies to justify several attacks on communal land rights: in the colonies, mostly by restricting legal recognition of land rights over cultivated land; and in Portugal through the nationalization of *baldios*, implemented by the Commission for Internal Colonization.

In independent Timor-Leste, after centuries of struggle under colonial policies, the same law that in 2017 finally gave strong legal recognition to communal land rights risks undermining this recognition with the last-minute introduction of the word *baldio* in the law without a clear definition. In other words, a legal concept inherited from colonial times, used with an outdated and unclear meaning, risks disrupting the first Timorese legal protection of communal land rights, central to the lives and livelihoods of most Timorese.

One commonality between the struggles around communal land in Portugal and in Timor-Leste is politicians' desire to offer limited recognition of communal land rights. If, in the eyes of central governments, land is deemed unproductively used, unused, and without ownership, they argue that it should belong to the state. This way, it can be reallocated for productive use, with the profits from such use benefiting the nation. While this may seem logical, such a simple argument resonates with the paradigm of a "natural evolutionary process" from (underproductive) communal to (productive) individualized land rights that persists since colonial times, which has a clear bias against some uses and users of land and has been disproven in practice.⁷⁷ In both Portugal and Timor-Leste, decisions about land located far away from decision makers were made at best with little knowledge of, and at worst with blunt disrespect for, the roles and social functions that land has for (often poor rural) communities, and even the economic value that these types of land produce at the local level.⁷⁸ As argued by Brouwer, the nationalization of *baldios* in Portugal diverted "the revenues of the 'communal good' from the community to the 'public good' as perceived by the national authorities in Lisbon."⁷⁹ Moreover, as the case of the above-mentioned

Commission for Internal Colonization well exemplifies, politicians and state officials tend to have a certain fascination for “technical and scientific solutions” to what they perceive to be the problems of rural areas, and in which communal land rights can be understood by those at a distance to be an obstacle to progress.

As argued by Berasain,⁸⁰ communal land rights do not necessarily ensure that community members benefit from the land in an equal or equitable way, and this kind of romanticized view of such systems is misguided. However, as demonstrated by Ostrom,⁸¹ it is similarly naive to think that inequalities at the local level can be easily addressed by state systems, especially when state systems are physically, socially, and ideologically distant from those who depend on communal rights. This was clear in the case of the intervention of the Commission for Internal Colonization in the *baldios* in Portugal. Commanded by the physically and culturally distant central government, and with little respect for the lifestyles and livelihoods in the rural areas, the intervention became a source of many grievances and more misery for the local populations.

The sudden appearance of the word *baldios* in the Timorese legislation, especially insofar as it was inserted without clarity of meaning, raises concerns about opening a new door to similar processes in independent Timor-Leste. For now, the law gives room to several interpretations, and the use of the word *baldios* might be only a legal mistake to ignore. However, if a more harmful interpretation of the word *baldio* in the Timorese legislation were to prevail, this imperial debris could cause another “aftershock of the empire.”

NOTES TO CHAPTER 4

The author would like to express his gratitude to António Bica, Laura Yoder, Laura Ogden, Ingrid Samset and Bárbara Direito for their support and knowledge in the drafting of this chapter.

- 1 On “imperial debris,” see Ann Stoler, “Imperial Debris: Reflections on Ruins and Ruination,” *Cultural Anthropology* 23, no. 2 (2008): 191–219.
- 2 In English, *baldio* is often translated as “wasteland” or “commons,” but these concepts can be misleading when debating the specificities of *baldios*. Roland Brouwer, “Planting Power: The Afforestation of the Commons and State Formation in Portugal” (PhD diss., University of Wageningen, 1995), 7. Therefore I do not use these terms in this chapter. However, this chapter relies heavily on literature on the commons.
- 3 Stoler, “Imperial,” 2008.
- 4 João Antunes Barroca, “Os baldios portugueses—Breve comentário à Lei n.º 75/2017, de 17 de Agosto” (master’s thesis, University of Coimbra, 2018), 12; Brouwer, “Planting Power,” 7; Teresa Rebelo da Silva, “Baldios,” in *e-Dicionário da terra e do território no Império Português* (CEHC-IUL, 2014), <https://edittip.net/2014/03/04/baldios/>.
- 5 Teresa Rebelo da Silva, “Maninhos, baldios e bens do concelho no Algarve medieval,” *Revista do Arquivo Municipal de Lólé* 14 (2014): 61.
- 6 António Bica, *Baldios—Quadro histórico; caracterização do direito sobre os baldios* (s.n., 2010), 23, cited by Diogo Filipe Pinheiro Frazão, “O Regime Jurídico dos Baldios e a sua importância no desenvolvimento de regiões desfavorecidas” (master’s thesis, ISCTE—Instituto Universitário de Lisboa, 2013), 7.

- 7 Barroca, “Os baldios,” 16; António Bica, Armando Carvalho, and João Carlos Gralheiro, *Breve enquadramento histórico e jurídico em áreas comunitárias* (BALADI—Federação Nacional dos Baldios, 2018); Margarida Sobral Neto, “As estruturas agrárias: A força da tradição,” *Revista de História* 10 (1990): 131; Margarida Sobral Neto, “Propriedade e renda fundiária em Portugal,” in *Terras Lusas: A questão agrária em Portugal*, ed. Márcia Maria Menendes Motta (Editora da Universidade Federal Fluminense, 2007), 15; Silva, “Maninhos.”
- 8 Brouwer, “Planting,” 7; Silva, “Maninhos.” *Compásco* is another word that at times surfaces in the literature to refer to communal grazing rights. See Bica et al., *Breve*, 10; Neto, “As estruturas,” 16.
- 9 “Baldio,” *Dicionário Priberam da Língua Portuguesa* (2008–21), accessed 7 January 2025, <https://dicionario.priberam.org/baldio>; “Baldio,” *Infopédia: Dicionários Porto Editora* (2003–23), accessed 7 January 2025, <https://www.infopedia.pt/dicionarios/lingua-portuguesa/baldio>. The word *baldio* is used in Spanish (from Spain) to refer to unfarmed, empty, or abandoned land that belongs to the state and can be transferred to private parties, but with not reference to communal land. See “Baldio,” *Diccionario de la lengua española*, accessed 7 January 2025, <https://dle.rae.es/bald%C3%ADo?m=form>
- 10 Barroca, “Os baldios,” 16; Brouwer, “Planting,” 4; Frazão, “O regime,” 8; Rita Paiva, Ricardo Cabral, and Critiana Lopes, “Baldios—Historia e legislação,” *Voz da Terra* 92 (2019): 12; António Cardoso, Goretti Barros, and Carlos Matias, “Communities’ Resistance Towards Common Lands: A Communal Property Historically Disputed by Private Entities, Municipalities and the Government,” *Journal of Agriculture and Environmental Sciences* 8, no. 2 (2019): 87.
- 11 Frazão, “O regime,” 9.
- 12 Neto, “Propriedade e renda,” 15.
- 13 Phillipe Steiner, “Physiocracy,” *Encyclopedia of Political Theory* 3 (2010): 1053.
- 14 Barroca, “Os baldios,” 17; Bica et al., *Breve*, 24, 27; Frazão, “O Regime,” 10; Neto, “As estruturas,” 130. Although outside the scope of this work, it is essential to highlight that the economic and political environment in Portugal during this period must be considered in conjunction with the changes occurring in its colonies.
- 15 Margarida Sobral Neto, *O universo da comunidade rural—Época moderna* (Terra Ocre, 2010), 314; Maria Elisa Oliveira da Silva Lopes da Silva, *Estado, território, população: As ideias, as políticas e as técnicas de colonização interna no Estado Novo* (PhD diss., Universidade de Lisboa, Iscte—Instituto Universitário de Lisboa, Universidade Católica Portuguesa, Universidade de Évora, 2020), 130; Cardoso et al., “Communities’ Resistance,” 88. Also note similarity to the reasoning Tania Murray Li describes in this volume for maligning smallholders’ land uses elsewhere.
- 16 Barroca, “Os baldios,” 17; Frazão, “O regime,” 12; Neto, “Propriedade e renda,” 14; Neto, *O universo*, 315.
- 17 Neto, “Propriedade e renda,” 27. Art. 8 of Decree No. 177, known as the Lei dos Forais, from 10 June 1822.
- 18 The push for the privatization of communal land was not exclusive to Portugal. For instance, on the issue of enclosures in the United Kingdom, see E. P. Thompson, *Whigs & Hunters: The Origin of the Black Act* (Breviary Stuff Publications, 2013).
- 19 Bica et al., *Breve*, 26; Brouwer, “Planting,” 10; Cardoso et al., “Communities’ Resistance,” 90.
- 20 Bica et al., *Breve*, 27.
- 21 Brouwer, “Planting,” 166; Margarida Sobral Neto, “Propriedade e usos comunitários em Portugal,” in *O domínio de outrem*, vol. 1, ed. Márcia Motta and Monica Piccolo (Editora UEMA, 2017), 19. It was at the time estimated that there was a total of 7,638 *baldios*, covering around 507,369 hectares. José Estevão, “A florestação dos baldios,” *Análise Social* 19, nos. 77–9 (1983): 1190.
- 22 Silva, “Estado.”
- 23 Abel Pereira de Andrade, “Parecer referente a dois projectos de colonização interna,” *Diário das Sessões*, 10^o complemento ao nº 192, 1938, 842, as cited by Silva, “Estado,” 119.
- 24 Silva, “Estado,” 123. See also Dulce Freire, “Os baldios da discordia: As comunidades locais e o Estado,” in *Mundo rural: Transformação e resistência na Península Ibérica (Século XX)*, ed. D. Freire, I. Fonseca, and P. Godinho (Edições Colibri, 2004), 200.
- 25 Fernando Rosas, “Rafael Duque e a política agrária do Estado Novo (1934–44),” *Análise Social* 26 (1991): 778.
- 26 Silva, “Estado,” 281. See also Freire, “Os baldios,” 199.
- 27 Estevão, “A florestação”; Neto, “Propriedade e usos,” 20; Silva, “Estado,” 131.
- 28 Freire, “Os baldios,” 193
- 29 Freire, “Os baldios,” 193, 199; Silva, “Estado,” 129.
- 30 Silva, “Estado,” 132.

- 31 Freire, “Os baldios,” 209.
- 32 Bica et al., *Breve*, 30, 32; Brouwer, “Planting,” 12.
- 33 Brouwer, “Planting,” 169; A. de Vale Estrela, “A reforma agrária portuguesa e os movimentos camponeses: Uma revisão crítica,” *Análise Social* 14, no. 54 (1978): 251.
- 34 Brouwer, “Planting,” 175.
- 35 Frazão, “O Regime,” 16; Neto, “Propriedade e usos,” 20.
- 36 Freire, “Os baldios,” 191; Cardoso et al., “Communities’ Resistance,” 91.
- 37 Silva, “Estado,” 20.
- 38 Bica et al., *Breve*. Bica and colleagues detail the different ways in which the management of *baldios* has been organized throughout Portuguese history.
- 39 See “Perguntas Frequentes,” BALADI— Federação Nacional dos Baldios, accessed 12 February 2025, <https://www.baladi.pt/a-baladi/faqs/>. See also Brouwer, “Planting,” 11.
- 40 Fernanda Paula Oliveira and Dulce Lopes, “A ponderação entre o interesse comunitário e o interesse público: Equipamento público em baldios,” *Cooperativismo e Economia Social (CES)* 39 (2017): 2017. One relevant point for the purpose of this article is the possibility of a *baldio* becoming state property if clearly not used for more than fifteen years (art. 38.2 of Law 75/2017). However, this would depend on a request from the local public administration (*freguesia*), and judicial recognition of the lack of use.
- 41 Barroca, “Os baldios,” 43; Bica et al., *Breve*, 21, 35; Brouwer, “Planting,” 231; Cardoso et al., “Communities’ Resistance,” 93; Pedro Manuel Hespánha, “The Role of Communal Land in the Revitalization of Rural Areas in Portugal,” in *Sharing Society: The Impact of Collaborative Collective Actions in the Transformation of Contemporary Societies*, ed. Benjamín Tejerina, Cristina Miranda de Almeida, Ignacia Perugorria (Proceedings of the International Conference Sharing Society, 2019); Oliveira and Lopes, “A ponderação.” For instance, while the 2014 law allowed the lease of *baldios*, the 2017 law terminated this possibility (art. 51) and limited the use of *baldios* to more traditional ends, such as grazing and collection of wood (art. 3.1). However, the law also includes production of energy in the list of possible uses, to encompass the now common situation in which the *baldios* are used for wind farms and the local communities receive a rent for this use.
- 42 Barroca, “Os baldios,” 25; Brouwer, “Planting,” 224; Frazão, “O regime,” 20; Cardoso et al., “Communities’ Resistance,” 93.
- 43 José Vicente Serrão, “Property, Land and Territory in the Making of Overseas Empires,” in *Property Rights, Land and Territory in European Overseas Empires*, ed. José Vicente Serrão, Bárbara Direito, Eugénia Rodrigues, and Susana Münch Miranda (CEHC-IUL, 2014), 9.
- 44 Tor A. Benjaminsen, Stein Holden, Christian Lund, and Espen Sjaastad, “Formalisation of Land Rights: Some Empirical Evidence from Mali, Niger and South Africa,” *Land Use Policy* 26 (2008): 28; Christian Lund, *Local Politics and the Dynamics of Property in Africa* (Cambridge University Press, 2008), 13.
- 45 Bárbara Direito, “African Access to Land in Early 20th Century Portuguese Colonial Thought,” in *Property Rights, Land and Territory in the European Overseas Empires*, ed. José Vicente Serrão, Bárbara Direito, Eugénia Rodrigues, Susana Münch Miranda (CEHC-IUL, 2014), 260.
- 46 Henri A. I. Dekker, *In Pursuit of Land Tenure Security: Essays on Land Reform and Land Tenure* (Pallas Publications, 2005), 163; Laura Suzanne Meitzner Yoder, *Custom, Codification, Collaboration: Integrating the Legacies of Land and Forest Authorities in Oecusse Enclave, East Timor* (PhD diss., Yale University, 2005), 300.
- 47 J. G. Montalvão Silva, *Mão d’obra em Timor* (A Editora, 1910), 34. On the same topic in the Dutch Indies, see Franz von Benda-Beckmann and Keebet von Benda-Beckmann, “Myths and Stereotypes About Adat Law: A Reassessment of Van Vollenhoven in the Light of Current Struggles Over Adat Law in Indonesia,” *Bijdragen tot de Taal-, Land- en Volkenkunde* 167, nos. 2–3 (2011): 179.
- 48 Fernando Augusto de Figueiredo, *Timor—A presença portuguesa (1769 – 1945)* (Centro de Estudos Históricos da Universidade Nova de Lisboa, 2011), 205.
- 49 Art. 1. Published in *Diário do Governo*, no. 202, 27 August 1856. I adapted the translation of this provision for simplicity; the law does not use the expression “collective use,” but instead says that the areas of *logradouro* of local communities cannot be sold.
- 50 At times legal documents refer to “*baldios* or uncultivated land [*incultos*] that belong to the state.” See for instance Government of Portugal, *Colecção da Legislação Novíssima do Ultramar—Volume V, 1864 e 1865* (Imprensa Nacional, 1895), 4, 49. Later documents dropped the final part of the expression and only refer to “*baldios* or uncultivated land.” See for instance Government of Portugal, *Colecção da legislação novíssima do Ultramar—Volume IX, 1875 e 1878* (Imprensa Nacional, 1880).
- 51 Arts. 7 and 8.2. Published in *Boletim Oficial de Timor*, no. 33, 17 August 1901.

- 52 Arts. 12.4, 12.6, and 12.7.
- 53 Arts. 69 to 75.
- 54 Besides general colonial legislation, each Portuguese colony had the power to, within certain limits, approve specific legislation for that colony. Esmeralda Simões Martinez, “Legislação portuguesa para o Ultramar,” *Sankofa: Revista de História da África e Estudos da Diáspora Africana* 3, no. 5 (2010): 42–65. Published in *Diário do Governo*, no. 53, 7 December 1910.
- 55 Published in *Boletim Oficial de Timor*, no. 31, 1 August 1914.
- 56 Published in *Boletim Oficial de Timor*, no. 39, 25 September 1971.
- 57 Art. 9.
- 58 Arts. 8 and 55.
- 60 See for instance the preamble of Decreto No. 47486 of 6 January 1967, which establishes a process through which land occupants can obtain ownership and *aforamento* rights. Published in *Diário do Governo*, no. 5, 6 January 1967; arts. 4 and 8 of *Diploma Legislativo*, no. 865, 25 September 1971 further regulates the Regulation of the Occupation and Concession of Land at the Province of Timor, published in *Boletim Oficial de Timor*, no. 39, 25 September 1971; Lei No. 6/73 of 3 August 1973, which approved the Land Law of the Overseas Provinces, *Diário do Governo*, no. 189, 3 August 1973, but never entered into force in Timor-Leste.
- 61 Its official name is Law 13/2017—Special Regime for the Determination of Ownership of Immovable Property (Regime Especial para a Determinação de Direitos de Propriedade sobre Bens Imóveis), but it is often simply called the Land Law.
- 62 Bernardo Almeida, *A Sociolegal Analysis of Formal Land Tenure Systems: Learning from the Political, Legal and Institutional Struggles of Timor-Leste* (Routledge, 2022), 130; Méabh Cryan, “Property, State Land and Lisan: Assembling the Land and the State in Post-Independence Timor-Leste” (PhD diss., Australian National University, 2019), 186.
- 63 I should highlight that, contrary to what often happens in practice in Timor-Leste, it can only be considered as land without an owner if the land was not claimed by individuals or communities in the land claims process established in this law. Random declarations from state officials that a piece of land does not have owner are common practice, but legally these do not suffice to classify it as such. On this topic and on legislative drafting in Timor-Leste, see Almeida, *A Sociolegal*.
- 64 In some countries customary communal land rights are recognized for communities, but the ownership of the land still belongs to the state. In the case of Timor-Leste is clear that communities own their communal land (art. 27.1 of the Land Law).
- 65 For instance, many legal frameworks allow municipalities or other legal entities to order landowners to clean their land to prevent risks of fire.
- 66 The details about the protection given to private property by article 54 of the constitution are beyond the scope of this chapter, but it suffices to say here that, even considering article 289.3 of the Civil Code, such a simplistic provision would clearly be unconstitutional. On the interpretation of article 54 of the constitution see Bernardo Almeida, “Expropriation or Plunder? Property Rights and Infrastructure Development in Oecusse,” in *The Promise of Prosperity: Visions of the Future in Timor-Leste*, ed. Judith Bovensiepen (ANU Press, 2018), 105.
- 67 Process n.º 03/Constitucional/17/TR. On the preventive review of constitutionality, see Bernardo Almeida, “The Main Characteristics of the Timorese Legal System: A Practical Guide,” *Verfassung und Recht in Übersee VRÜ* 50, no. 2 (2017): 184.
- 68 On the topic of the importance of legal interpretations, see Adriaan Bedner, “Autonomy of Law in Indonesia,” *Recht der Werkelijkheid* 37, no. 3 (2016): 10–36.
- 69 *Wikipedia: A enciclopedia livre*, “Terreno baldio,” last modified 18 May 2021, https://pt.wikipedia.org/wiki/Terreno_baldio.
- 70 Bernardo Almeida, *Land Tenure Legislation in Timor-Leste* (Asia Foundation, 2016); Almeida, *A Sociolegal*, chap. 7.
- 71 On the concept of go-between, see Raj, Kapil. “Go-Betweens, Travelers, and Cultural Translators,” in *A Companion to the History of Science*, ed. Bernard Lightman (Wiley and Sons, 2016).
- 72 Franz von Benda-Beckmann, “Mysteries of Capital or Mystification of Legal Property,” *Focaal: European Journal of Anthropology* 41 (2003): 189. See also Lorenzo Cotula, “‘Land Grabbing’ and International Investment Law: Toward a Global Reconfiguration of Property?,” in *Yearbook on International Investment Law & Policy 2014–2015*, ed. Andrea K. Bjorkund (Oxford University Press, 2016), 195; Liz Alden Wily, “Communities and the State: Rethinking the Relationship for a More Progressive Agrarian Century,” in *Environmental Forum* (Environmental Law Institute, July–August 2016), 70.

- 73 Almeida, *A Sociolegal*, chap. 5.
- 74 Gonçalo Pimenta de Castro, *História de Timor* (Editorial Atica, 1944).
- 75 Almeida, *A Sociolegal*, chap. 4; Cryan, “Property”; Daniel Fitzpatrick, Andrew McWilliam, and Susana Barnes, *Property and Social Resilience in Times of Conflict: Land, Custom and Law in East Timor* (Ashgate, 2013), 10. Such positions were common in the debates over the Land Law. For instance, Cryan reports how during the debate of the law in Parliament, the members of FRETILIN (Frente Revolucionária de Timor-Leste Independente) consistently tried to bolster the definition of state land. Cryan, “Property,” 186. She also reports how, just before the change about the *baldios*, MPs had considered declaring all national parks as state land, ignoring the impacts of such a decision on the thousands of residents in these areas. Cryan, “Property,” 186. As often happens in law-making processes in Timor-Leste, such a disastrous decision was avoided by a providential coffee break that allowed NGOs in the audience to lobby MPs about the impacts of such a decision.
- 76 For a few examples on this matter, see Almeida, “*A Sociolegal*.”
- 77 David A. Atwood, “Land Registration in Africa: The Impact on Agricultural Production,” *World Development* 18, no. 5 (1990): 659.
- 78 Atwood, “Land,” 662; Christian Lund, *African Land Tenure: Questioning Basic Assumptions* (International Institute for Environment and Development, 2000), 13; Jan Michiel Otto and André Hoekema, “Legalising Land Rights, Yes but How? An Introduction,” in *Fair Land Governance: How to Legalise Land Rights for Rural Development*, ed. Jan Michiel Otto and André Hoekema (Leiden University Press, 2012), 20; Liz Alden Wily, “From State to People’s Law: Assessing Learning-by-Doing as a Basis of New Land Law,” in Otto and Hoekema, *Fair Land Governance*, 85–110.
- 79 Brouwer, “Planting,” 14.
- 80 José Miguel Lana Berasain, “From Equilibrium to Equity: The Survival of the Commons in the Ebro Basin: Navarra from the 15th to the 20th centuries,” *International Journal of the Commons* 2, no. 2 (2008): 162–91.
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