

SOCIAL EMBEDDEDNESS, INSTITUTIONS FOR RURAL LAND MANAGEMENT AND LAND GRABBING: THE CASES OF AFGHANISTAN AND BRAZIL

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1. Introduction

Land management and other issues related to land have been generating controversy throughout countries and the human history. While the developed countries have rather sophisticated and costly systems for land management that also regulates land markets, many undeveloped do not have it. The social embeddedness behind the institutions that made the rural land management function or not has not been much discussed until the present. Less has been discussed about the social embeddedness that makes the land management much less effective than it should be, mostly in the developing countries. This paper tries to focus on these issues, showing based on two different but not developed countries: Brazil and Afghanistan. What is seen there is that the lack of social embeddedness of the rural land management results in its contrary: the absence of rule and regulation over land. And the main solution is the return to the communities to obtain their view and proposal of organization of the land for its adequate management by the state.

The first item will be a presentation, based on the literature, of the understanding of social embeddedness and its relations with the institutions, based on the Institutional Economics. These authors show how the institutions interfere and play an important role in the economic setting. Particularly Polanyi, that stated that land as private property and the land markets as institutions need the state to manage and rule it, mostly after the XIX century.

The next two items will, based in some historical facts and the most relevant land policies for Afghanistan and Brazil, show that their states, at this historical moment, do not rule important parts of their land markets in both countries for different reasons and determinates. In Afghanistan, the experience of having a very strict land regulation (communist period), the wars and the social rules embedded in its laws and institutions have made it difficult to have clear rules and regulations for the land issues and the grabbing of government land.

The state being unable to regulate the land is one of the causes of the great political instability and contradictions between the different ethnical groups that fight for the land presently in the country. The rules are there but the effective possibility of making them work needs changes in the policies, the land management institutions and a more integrated to the social embedded situation.

In Brazil the lack of integration between the social embeddedness and the institutions created to rule the land is the main reason for lack of effective regulation on land issues causing land grabbing.

The last item will propose some solutions that will create the conditions for the society to have the means to regulate its land markets and so diminish their social, economical, political and environmental problems in both countries. It is rather strange to imagine that both countries so different socially, economically and historically have to search for solutions that pass through the

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same needs of how to regulate their land ownership through: good cadastres, good deeds and social control over land use.

2. Institutional regulation of land and social embeddedness: theoretical aspects

The traditional economical analysis of the reality mostly does not take in account all its aspects. The Institutional economics has given an important step to understand the reality of the economies when introduced the institutions as a specific category in the scenario. For the purposes of this study on the land policies and the land administration for the cases of Afghanistan and Brazil they play a great role, as it will be showed.

Torok (2005) presented in figure 1 the upper level to the lower ones and there is an influence from beneath to the upper levels but much weaker and in the long run. As Torok (2005) pointed, many authors have studied the great influence on the economy of the more general aspects of the countries or regions like its costumes, conventions, religion, history and others. A classical study of this kind was made by Weber on the influence of the relations between the embeddedness, the institutional environment, the control and management and the economical reality (markets and prices) in a very clear way. The determination is from the Protestantism in the genesis of the Capitalism system. This level of influence on the economic situation changes very slowly, and is taken as given by most institutional economists. This article does not pretend to explain how this influences or why it influences, it will only note and try to show that it plays an important role in these two countries and specially when working with land issues.

For the second level, the institutional environment, the general legislation and characteristics of the state and their influence on the land issues, will be analyzes more in depth.

The third level, of how the effective control and rules, established by the institutions (level 2) and are implemented and enforced will consolidate the way the reality or the markets are ruled. On the land issues again it has a very particular and important role and it can be characterized as the land administration and management.

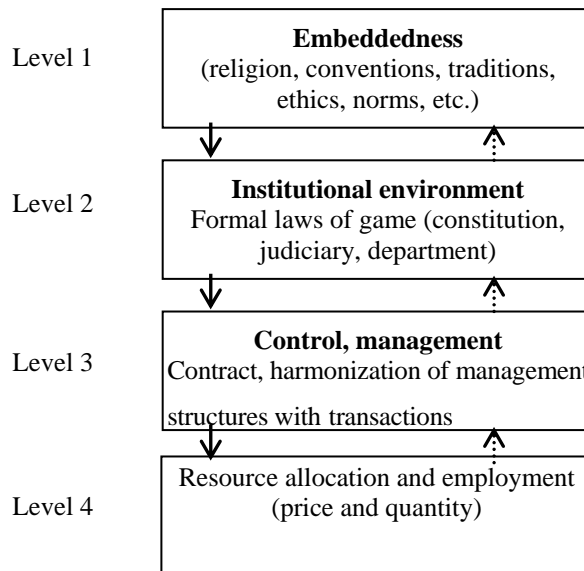


Figure 1. Levels of social analysis

The continuous arrows connecting a higher level with a lower one indicate that the higher level sets limits to the level directly below it. The dashed arrows pointing backwards connecting the lower levels with the higher ones represent the feedback, the response.

In the progress of time the system becomes more and more complex. The NIE mainly deals with levels 2 and 3.

2.1. Land and the Institutions

Land is an essential mean of production and also the source of life for most of the population. For the rural population, besides being the way of economical survivor, land is also a symbolic representation that ensures the continuity of traditions and values. Land is, after all, nature itself, that is to say, the natural habitat in which men are placed.

In order to understand the role of institutional regulation in the land market, one might resort to Polanyi (1980), who remarked that, in capitalism, as land became a fictitious commodity, there was a tendency to transfer the regulation of land (i.e., of nature) to the market, subordinating life to the market economic system. It is his idea that the three markets, those of money, work and land, being fictitious, demand strict state control. These are markets that will never be 'self-regulated', as the markets of other commodities. According to Polanyi (1980:88):

'The social history of the nineteenth century was thus the result of a double movement: the widening of the organization of the market in relation to genuine commodities went along with its restriction in relation to fictitious commodities. Whereas, on the one side, markets spread all over the world and the quantity of goods involved reached unbelievable proportions, on the other side, a network of measures and policies were integrated in powerful institutions aimed at limiting the action of the market in relation to work, land and money... Society protected itself against the dangers that were inherent to a self-regulated market system, and this was the sole generalized aspect of the history of these times.'

The degree to which the restriction of market factors in the use of land was successful, as well as the manner in which this effort was carried out, may be the way to distinguish international experiences through the levels of social welfare and efficiency in agriculture. As a matter of fact, institutions and the institutional environment² can be developed in order to regulate the land market attempt to define, regulate and limit the ownership rights on land, favoring socially defined objectives.

Ownership rights are the rights of individuals on goods and services. Such rights comprise the right to sell (or rent) an asset, the right to use and to derive income from an asset, and the right to transfer it (passing on these rights to others). According to Alston (1998:3):

'Ownership rights are enforced in three different ways. The individuals themselves impose their rights, such as when we put bolts on our doors and protect our property. Social sanctions such as ostracism may keep individuals from infringing upon the rights of others. Finally, the coercive power of the State is also used to enforce ownership rights, such as when the police drive away those who have broken into the property of somebody else.'

Based on enforced ownership rights, North (1988) and Alston (1998) show that the form and the nature of ownership rights influence economic performance because they establish conditionality to the transformation and transaction costs. They therefore play a crucial role in defining the forms of economic coordination in the different spheres of human activity. From what was said above, one

² By *institutional environment* are meant "the rules of the game that define the context in which economic activity takes place" Williamson (1996:378)

might draw the conclusion that there is the need for the State to regulate the land market, since this is not a self-regulated market.

The form, the instruments, actually the very pattern of regulation of the land market interferes directly on the rural and urban land uses dynamics: from the speculative, passing by the productive, and has social and environmental impacts.

The cases of Afghanistan and Brazil will be presented to show that land administration with all its regulations, laws and institutions have guaranteed agriculture production but has some important gaps that creates important instabilities. One of the most important is the incapability of avoiding the grabbing of land. In Afghanistan that creates strong instabilities: economical, social and political, mostly because of its embedded institutions like the religion and the general expectations of the people. In Brazil on the other hand also because of a kind of embedded institution the same grabbing problem does not cause this kind of problems. The speculation with land in many different ways (from rural to urban, from small to large speculators) because it is a constitutive part of the country's history and culture is accepted. It is accepted but with large opposition of the next kind of people that suffer the consequences of being displaced by the speculators: small landowners, landless and rural workers.

3. The Institutions and the Land Regulation in the history of Afghanistan

The background of Afghanistan is that it is a country with a long history of wars, invasions of different ethnical groups, nomadic and not, coming from other regions using or occupying (legally or not) the land. Its integration comes, when as most of the region, Islam entered and was converted into the major religion in the years 800. The Islam besides having a more general influence in the embeddedness of a country, as well known, is a religion that has a larger influence than others: from the common behavior, passing through the calendars and the laws and the way laws are used.

The central state always had difficulties in establishing its policies and control over all the regions of the country. So there are very different strong regional differences. The same happened with Land Tenure, no much control and great regional differences. The kings and other authorities issued deeds and ownership rights all around the country with no clear organization and records, creating many of the landownership problems. Since the XIX century there was land tax charging, but it only got organized with cadastres of owners in the 1930's. And the capability of paying the land tax has been the major mechanism to maintain ownership over land.

In general terms the period from 1964 to 1975 is characterized to be the one where at the same time most changes occurred and the most were done to try to have an effective land administration and management. This period went from the creation of a constitutional monarchy passing by the proclaiming of the republic until a communist revolution. Besides being a period of important political change in the country the international aid was large and very much applied to the rural sector. For that in the same year of 1964 the state created an independent department supervised directly by the Ministry of Finance (AMLAK) with the main task of charging land taxes.

After that a big effort to improve all the registration system was made with the help of USAID during the period of 1967 to 1974 developing all resources (from material to personnel) to modernize the Cadastral process in Afghanistan. Two problems occurred: only 30 % of agricultural land was surveyed and the Court system that should legalize did not take part in the process. Creating one of the land tenure problems: all the properties in the cadastre are not registered. This is the reality of the private, common and government land. At this time the AMLAK made a survey of about 80 % of the properties to charge more taxes, to which the landowners mostly under declared their amount of land.

With the ascendance of the communist regime in 1978 many large changes occurred in the country, from large investments in infrastructure (transport, irrigation, housing and others), to a radical land reform passing by the creation of state owned industries and agricultural enterprises. For the agriculture sector besides growing the production, through irrigation and agro industrial enterprises, had to reduce poverty mainly through a massive land reform. For that the AMLAK was transferred to the Ministry of Agriculture and Land Reform, changing its role. The land reform for settling 340,000 families, with certificate of ownership, the government expropriated land, with no compensation, from large landowners (more than 6 ha) and the ones that had not declared the right amount of land in the last survey. During this process the war against the communist system started and increased as part of the fight against land expropriation and it finished with the withdrawing of the Soviets in 1986. But the way this land reform process was done is clearly one of the reasons for the instability in land tenure issues until the present.

The end of the Soviet invasion did not end the agony of the country, until 2001 war and vanish of the rule of law where the main reality. Different types of wars were fought in the country, between different ethnical/regional groups, against the Taliban and at the end with the US attack the Northern Alliance has obtained political hegemony. During this period all the new regimes (Najibullah, Rabani and Taliban) made important changes in the laws and the Land Tenure Policies but most of them were not implemented. The lack of state structure, resources and the wars itself are the main reasons for that. Only the ruling that land expropriation of the communist period was illegal had some effectiveness with the return of some previous landowners, because many people had fled the country. During the Taliban regime the small grabbing of rural government land increased largely. These are some of the problems that have not been solved and are important reasons for the large instability in land tenure matters.

The last period, from 2001 on can be characterized by being of instable peace caused by the partial control over the country by the Northern Alliance and the tentative of reconstructing a country and of the state, after 25 years of war. Most institutions and also the related to the Land Tenure issues are being reconstructed having as starting point the last moment of steady activity in the end of the 70's. So they are completely outdated and have lack of people, resources and infrastructure.

3.1. Land Ownership regulation and grabbing of government land

After this long history of wars, big changes in the country management and a civil war the institutional setting for the country is rather destroyed. The confidence in the capacity of the state to rule the country and particularly the land ownership is very weak. The history of the main laws and regulations concerning the property rights can show that clearly.

Until the present the private property formal protection is rather weak, a king in the past and a court presently, as punishment under the Afghan Penal Code, can order the confiscation of a property. Nevertheless the property rights have been guaranteed by the Constitutions of 1923 and reaffirmed in the Constitutions of 1932, 1964 and 1977.

The issue of government land is directly related to the issue of private land because all what is not private is government land (Master Plan 2005). So the issue of private property registry is the base for the definition of governmental land. Some of the private land and some of the government land was surveyed in the sixties (USAID/Cadastre), but it was never legalized. So the institutional setting and its organization for the land management is very important.

The land registry system is based on deeds and three institutions play the major role: the Courts, the Cadastre and the AMLAK. The cadastre has the maps and the properties information from a survey

done over around 30 % of the land in sixties. The AMLAK, using an unmapped survey of landowners for tax purposes (1976/77) has books with records of the 80 to 90 % of the private properties at that time, not actualized. Besides that the kings and the presidents have been granting along the times some clan and tribes special legal titles of ownership of government land. This information is not integrated to the previous ones making the registry system very inaccurate and creating the environment for the land grabbing of government land and instable land tenure situation.

Trying to improve this situation the government and international donors are making strong efforts to improve the land registering system on one side and on the other has been issuing the decrees to stop and control the land grabbing.

Until now the effort to maintain the government land under control was through decrees establishing that land with no owner was government land and regarding the definition by type of land. The pasture land has been defined in some laws (Land Survey and Statistics Law of 1965 and the Law of Pasturelands of 1970 and the Constitution of 1987) as public land prohibited for other uses and to be bought, sold and leased. About this kind of land there is much controversy, because the villages are using it for their cattle and sometimes for rain fed agriculture.

3.2. A summary of the Afghanistan land ownership problems

Of Afghanistan's total 62.2 million hectares, 9.6 million hectares are classified as of agricultural use, of which around 2.5 million hectares are irrigated. Presently only about half of usable agriculture land is in use. Besides the security and investment problems the reality of the land tenure in the country is one of the structural problems that create difficulties for the growth of the agricultural sector.

As well known this sector is responsible in a direct and in an indirect way for the major part of the wealth, jobs and economical development of the country. Its growth will be an important part of a general growth and reduction of absolute and relative poorness (Master Plan 2005).

There is a high degree of inconsistency among the various legal classifications of types of ownership. The Civil Code, Law on Land Management, Presidential Decrees, Agricultural Master Plan and Sharia all classify land differently. The Master Plan (2005) and LTERA (2005) categorizes land as:

- Private property - defined through records, deeds and customary deeds or custom acceptance of ownership;
- Tribal/clan ownership - land use and claims of ownership based on custom or decrees of former kings or presidents which are not integrated into registers or records.
- Community land - areas around villages that are used communally by the villagers. Currently, since there are no titles or records under the present legal framework, this category is considered government land.
- Government land - the remainder land which may include public, unusable land and even the roads and others.

Table 1 is indicative of the complexity of land tenure in Afghanistan expressed in a variety of ownership forms, subcategories, and the presence of records not just "legal" records currently.

Table 1 Summary of Land Tenure Situation in Afghanistan

Category of Ownership	Type of land	Land Tenure Information¹	Land Tenure Situation
Private	Agriculture (irrigated and rain-fed), pasture	Some information about holdings but only until 1977	Some conflicts – high degree of land tenure insecurity - shura and courts could resolve
Tribal/Clan	Agriculture (irrigated and rain fed), pasture	Very limited	Some conflicts among tribes/clans, and squatters from other areas
Community	Pasture and forests	Very limited	Some conflicts between community users and squatters from other areas
Government	Agriculture (irrigated, rain-fed), pasture, forests, wasteland, barren, deserts and mountains	Low level of information about public lands (only until 1973); leases to private holders may be up to date in some provinces	Many squatters

¹ Tenure data are based on the books and maps from the USAID/Cadastre Survey and the 1976/77 AMLAK holder actualization survey. The Presidential Archives and some courts have copies of decrees of allocation of land to individuals and groups, but is inaccessible at the present time.

After the table on the summary of land tenure situations and a clear vision of what is happening with the different types of land tenure, it is necessary to systematize the main conflicts around land to create a hierarchy that in consequence will create the possibilities to propose solutions.

The private land even though has very little legal deeds (only between 10 and 20 %) has not much disputes. Only the returnees and the people that were displaced by the land reform still have problems to obtain their land back. But these are problems that have to be solved by the existing institutions: shuras and courts.

Table 2 is a synthesis of the conflicts over land tenure in Afghanistan related to government land. The table shows in the first column the agents in conflict over land, and in the next columns: the main reasons for the conflicts, the relative importance of it and the possible policy to solve it. The qualified quantification is based on the literature, the local assessments, opinion of specialists and governmental authorities.

The first three types of conflict are between the government and different types of agents: the private owners, the villages and the tribes and clans. In reality these conflicts are called the grabbing of land and are caused by the way the state deals with the government land. It is this institution, mainly based on its communist past that plays the most important role in the instability of the rural land tenure security.

The worse of these conflicts is between the private owners and the government institutions around what is called government land. The numbers of these occurrences are very large and AMLAK

estimates that about 2.6 millions of Jeribs in all the country has been informally occupied (grabbed) lately.

Table 2. Main types of conflict over land rights related to governmental land in Afghanistan - 2006

Conflict between		Characteristics	Size	Responsible for solution	Policy or action necessary
Government	Privates	Commanders and landless grabbing land	large	Central Amlak and governors	Community base clarification, Policy of Government land use.
	Villages and Villages	Communal use of government land	medium	Central Amlak	Community base Clarification and Adjudication of property or users rights.
	Clan and tribes	Clan/tribe for use or ownership of government land	small	Central Amlak, Courts and Ministries	Community base Clarification and Adjudication of property or users rights.
Villages		Villages over ownership and use of government land	small to medium	Central Amlak and Courts	Community base Clarification and Adjudication of users rights
Clan/tribe and villages		Kuchis and villages over government land	small	Central Amlak, Courts and Ministries	Community base Clarification and Adjudication of users rights

The grabbing of land is in reality not one problem but is composed of several different types of problems that is treated as one. The main types of cases of what is called land grabbing are:

- commanders that grab government land using part of it and selling other part to their followers;
- commanders that obtain government land and distribute it to followers and poor people that need land;
- medium landowners that obtain government land for their use;
- small landowners that occupy unused government land
- nomadic groups that use temporarily or more permanently government land
- villages that claim, use or sell government land.

The fourth and fifth cases are less important in quantity, but very important because they are also caused by the lack of an adequate policy for government land. Most disputes between villages and between the villages and the clans or tribes are over the so called government land. And they are the result of the threat of being invaded or for the use of rain fed land that is considered government land.

Even though all those types of conflicts are important causes of the instability of the land tenure in the country; most villages of the country have a mostly clear but undocumented rural land tenure situation. The villagers have been using their land productively mostly depending on the availability of irrigation system and water.

So the development of the country is in high need of facing and solving these problems. The first one a more institutional and organizational one, of having a reliable system of adjudication/recording is the basis of all other problems. If this one is solved adequately much of the other problems will also in part be solved.

Table 3 shows the amount of government land based on the survey of the 67/73, and the amount that the same directory estimates that was grabbed during the recent period. It can be seen that the activity of grabbing land plays an important role in the country. But differently from the Brazilian case the land grabbing is a pre-capitalist activity. The land, being by and large of deserts and pasture, is grabbed mostly not for economical reasons, but for power or security reasons. There is not enough economical activity and the land that is grabbed is mostly not agriculture land. The main reason for the grabbing is the power. The larger numbers of land is grabbed in the provinces where the North Alliance does not have political control. That occurs mostly in the provinces of Kandahar, Nangarhar, Logar and Nimroz.

Table 3 Government Grabbed Land

Province	Size of Grabbed Land in Jerib	Estimated Agriculture land (in Jerib)	Participation of total land %
Ghazni	10,068	400,000	2.5
Paktiya	777	140,000	0.6
Kunar	212	30,000	0.7
Farah	202,365	300,000	67.5
Herat	23,589	650,000	3.6
Kandahar	343,261	310,000	110.7
Laghman	771	20,000	3.9
Bamiyan	6,445	1400,00	4.6
Nangarhar	95,117	119,000	79.9
Badakhshan	2,762	500,000	0.6
Baghlan	375,082	340,000	110.3
Balkh	401,420	511,200	78.5
Logar	114,100	60,000	190.2
Kabul	8,182	150,000	5.5
Jowzjan	2,7221	206,439	13.2
Nimroz	118,291	148,200	79.8
Maidan Wardak	5,789	80,000	7.2
Kapisa	201	3,805	5.3
Takhar		316,600	0.0
Faryab	30,773	600,000	5.1
Samangan	1,940	300,000	0.6
Parwan	40,837	100,000	40.8
Helmand	206,560	230,000	89.8
Khost	4,7976		
Ghor	259	50,0000	0.1
Sari Pul	500,000		
Kunduz	3,731	260,000	1.4
Total	2,567,729	5,025,244.0	51.1

Source: Department of Land Management of AMLAK,(2005)

As seen in table 2 the main solutions of the main land tenure problems related to government land need changes in the institutional setting and organization, government land policy and a community based clarification and adjudication process. So the solutions of most of the land tenure problems pass by an institutional reform of the land management system, land policy changes and on the restoration of the rural social embedded institutions and traditions.

4. The agrarian problem and the genesis of land markets in Brazil: regulation for grabbing and speculation

To understand the Brazilian land policy characteristics and relate to its embeddedness first there is a need to chase the land laws and regulations. After that it is showed, in a very schematic way the institutional structure for land Management in Brazil.

The Brazilian Land Act (1850), must be understood in the general context of laws that restricted access to land in all the colonial world.³ The main objectives of this Land Act were:

- regulating the access to land;
- forbid the access to vacant land;
- establish a land cadastre in order to define vacant properties (i.e., belonging to the State);
- transform the land into a trustworthy asset as a surety for loans (collateral).

However, due to the interests of the country's landowners, the Land Act kept the possibility of regulating possession, enabling the occupation of vacant land and preventing the creation of a cadastre. That is to say that there is always the possibility of regulating the possession that results from the occupation of vacant land. Besides the possession by prescription principle, the States themselves (or the provinces, according to the political division that lasted until the end of the Empire) did in a few historic moments grant ownership with or without title deeds. This is the basic mechanism that ensured and still ensures that a proper cadastre was never drawn, which would also enable the State to define vacant land, liable to use for other land policies.

The history of the agrarian legislation concerning the rights of land ownership in Brazil has developed in accordance with two tendencies. On the one hand, the State, legislating and trying to wield (more or less intensely) its power with a view to defining and restricting ownership rights in Brazil, and, on the other hand, the interests of the large property, opposing any means of restriction of land ownership rights, either by opposing the land legislation, or by circumventing and actually working against its proper enforcement. In this dispute, which was continuously re-enacted in Brazil's land history, private interests have managed to impose themselves and engulfed the rights of private ownership, disregarding the social and environmental uses of land. (Osório Silva; 1997).

This did not mean the democratization of access to land for the majority of the population. In point of fact, the large rural property, itinerating and predatory, seizes upon public and occupied land, expelling, as it advances, small owners, occupiers, etc., incapable of opposing the (political and economic) power of the large property. By negotiating such property, these classes may profit enormously with speculation, to the detriment of the poor and of the environment.

³ As in Australia, USA and others.

The economic dimension of this process is frequently underscored, but economic profit derived from the private appropriation of public property or the transformation of agricultural land into urban without benefit to the society cannot be conceived of in a country with so much poverty – partially a result of this very same process.

Thus, the land is “free according to the class”, that is to say, it is only at the disposal of social groups with political and/or economic power, which may appropriate this land. Even when the establishment of norms to regulate the access to land is attempted, such as in the case of zoning, either rural or urban, the State is incapable of enforcing these rules, for there are always other rules that end up confirming the ultimate right of the owner.

The institutional setting for Land Administration in Brazil that makes land grabbing possible is composed by three main institutions:

- a. The notaries system – linked to Ministry of Justice this autonomous system is in charge of the control of the contract of selling and buying of land and the legal signature;
- b. The registries office of properties – also linked to the ministry of Justice – has land books of the properties where all trade is registered. Every property has to have a unique number given by the INCRA that is the basis of all the land ownership. But the registered property is not linked to maps so there is no possibility to have a clear vision of what is not private land.
- c. Instituto Nacional de Reforma Agraria (INCRA) in the Ministry of Agrarian Development is responsible to create and inform the unique number of the property to the registration system. Besides that it has the self informed Cadastres of land ownership.

This structure and the legislation previously analyzed are the main pillars for, at one side, the rather important agriculture production and on the other the grabbing of governmental land. Because there is no cadastre and the government land is not defined, the possibility for a legalized landowner to obtain under the same number more land is quite easy. Or with some relations with the notary and the registry office the possibilities to fraud the number and on possession of a government land legalize it. The consequences of the process of these kind of frauds is showed bellow trough some historical and some more recent case in Brazil.

4.1. A history of land grabbing in Brazil

There is widespread conscience that the regulation of the rural lands markets in Brazil permit and makes it possible for some owners to speculate with or to grab land and have high gains from its later selling. The important author to show that is Hunebelle, a French researcher who wrote an article in order to present a broad picture of the Brazilian situation in the late 1970s to international investors, drawing the conclusion that the lack of regulation enables speculation and land grabbing. Hunebelle (1982:17) also shows that there is less interest in creating mechanisms for the regulation of the land market, since the Brazilian elites also benefit from the occupation of land:

‘Land speculation, however, is no business for novices; legal support is necessary in order to overcome the many legal barriers. It all comes down to a game bearing on the notion of “title deed”. A 30-year old title is worth much more than a 10-year old one, which can be cancelled (especially if the invaders/illegal occupants can buy titles). Some careful speculators would rather buy “occupied” land, for which they will pay 10 out of US\$ 100 for an unoccupied property in the States of Acre and Rondônia. On the opposite side, refined investors use the most specialized lawyers to purchase land.

The stroke of genius, however, put to practice by certain multinationals as well as by small private groups is the following: one buys “occupied” land for a trifle; soon afterwards, just as in the American West of the 19th century, armed bandits chase (or massacre...) the occupiers. All of sudden, the property is appreciated in 100%, or even 1000%...

What must be emphasized is the fact that the process of occupation of land in Brazil underwent many different processes in which speculative occupation played a decisive role and that its historical analysis, which will be developed below, will enable a more adequate understanding of the problem.

Monbeig (1984:108), in his work on the occupation of the western lands of the State of São Paulo, stated that ‘the movement of conquest of the land between 1890 and 1900 was a vast financial speculation’. One should notice that the processes of land occupation, of farm-settling and of entering into new territory are determined by the expectation of an appreciation of these lands through the expansion of the production of coffee.

Monbeig (1984:108) shows that, in the end of the 19th century, inflation mounted:

‘easy money developed an environment that was favorable to speculation (...) a farm was bought at 230 contos de réis, resold at 500 and then passed on to a third agent at 1000 contos, all in a few years. With the profit derived from such speculation, virgin soil was bought and millions of coffee trees were planted’.

The fast movement of occupation of public land starting in the Parahyba Valley region, reaching Campinas, Ribeirão Preto, then São José do Rio Preto and eventually Ourinhos and Araçatuba is caused by the erosion of the old soil and the resulting fall in productivity, but is only made possible by the profit gained from land speculation.

After the political coup of 1964, a new form of profiting from land, besides speculation, came into being: tax incentives and the policy of subsidized agricultural credit⁴. The first of these elements was the granting of a reduction in the income tax for landowners who implemented agricultural and livestock projects in the region of the SUDAM (Superintendence for the Development of the Amazonian Region). Ianni (1979-79) discusses the unfolding of the process:

‘without leaving aside the practice, very current among Amazonian squatters, landowners, farmers and entrepreneurs, of buying land to use them as “reserves of value”, against the depreciation of the currency, for future economic activities or for speculation’.

Despite the inexistence of tax incentives for the occupation of new areas in the Amazonian region, as existed in the 1970s and 1980s, the current potential profits of land occupation and speculation in Acre still is very high. Deforesting itself is an outstanding form of earning money through the appreciation of property. Land speculation, first in the process of appropriation and then in the process of transforming forest into pasture. As regards the absence of proper regulation, there is no economic activity that may compete with the matching of land occupation for wood extraction and livestock breeding for slaughter.

⁴ The impact of this policy is presented, among others, by Rezende (1982) and Reydon (1984).

TABLE 4. Land Prices in the Amazon region. Relative variation in value as a result of deforestation – 2000 and 2001 – State of Acre

Municipality ACRE	LAND & FEATURES - R\$/ha				
	Forest with hardwood	Non-mechanized pastures	Mechanized pastures	%	%
	(a)	(b)	(c)	(b/a)	(c/a)
RIO BRANCO	90	120	375	133.3	416.7
BRASILEIA	19	120	-	631.6	
SENA MADUREIRA	82.5	120	350	145.5	424.2
TARAUACA	30	190	-	633.3	
ELVIRA	35	190	-	542.9	
JURUA	65	200	400	307.7	615.4

Source: BASA several years

According to table 4, there is at the start great homogeneity in the prices of land in the different municipalities for the following categories: non-mechanized pasture, and mechanized pasture. The most important conclusion, however, is that, in all cases, deforesting always appreciates the property. In the cases for which there is data on woods with no hardwood (in the regions of Tarauacá, Elvira, and Juruá), the appreciation resulting from the transformation of the woods into non-mechanized pasture varies from more than 140% to 633% per hectare of land, according to the municipality envisaged.

Perhaps the clearest evidence of the gaps in the ability of the Brazilian State to regulate the land and the grabbing of government land comes from the Executive Order 558/99 of the INCRA, which imposed on all owners of real state property larger than 10,000 ha the need to present documents that proved their ownership. The difficulty of the government becomes evident through two elements of this E.O.:

a) the fact itself that it should require such documents, once the State should have the necessary information concerning all real estate property, and

b) the fact that 1,438 (46,9%) of the 3,065 properties did not answer, which alone add up to 46 million ha (as can be seen on table 5).

Those that did not answer, regarded as suspects of squatting, appropriated 11% of the total area of real estate property in the country. The data from table 5 also make evident that, among properties whose total area ranges from 200,000 to 500,000 ha, more than 55% did not present the required documents. In other words, the bigger the property, more illegal it is. Most of this land is surely government land that has been appropriated. This shows once again the need of drawing public policies that will effectively control the land in the country. But as it could be seen the efforts to do it have been less able to achieve its final aims of stopping the grabbing. But the difficulty is that culturally in the country the issue of land grabbing and speculating with land are so much an inner part of the people that it seems impossible to avoid. And it is not, as in Afghanistan, a pre-market grabbing it is a very market driven grabbing and speculating with land. As always has been.

TABLE 5. Rural Properties suspected of illegal occupancy and the attested by no reply. Brazil.

TOTAL AREA CATEGORIES (in 1000 ha)	TOTAL NOTIFIED		NO REPLY (illegal occupancy)		NO REPLY / TOTAL NOTIFIED.	
	# properties	area in 1000 ha	# properties	area 1000 ha	% properties	% area
NOT INFORMED	7	0,0	0	0,0	-	-
UNDER 10	19	63,2	0	0,0	-	-
10 up to 20	1.846	25,270.30	863	11,780.40	46,7	46,6
20 up to 50	882	25,854.00	413	12,158.10	46,8	47,0
50 up to 100	184	12,616.80	94	6,400.00	51,1	50,7
100 up to 200	85	11,786.50	46	6,342.10	54,1	53,8
200 up to 500	34	9,964.50	19	5,757.00	55,9	57,8
500 up to 1,000	6	4,996.20	2	1,667.70	33,3	33,4
above of 1,000	2	3,251.90	1	2,050.10	50,0	63,0
TOTAL	3.065	93,803.30	1.438	46,156.60	46,9	49,2

Sources: INCRA, Data bank of the real estate affected by Executive Order 558/99, and List of properties that did not reply to the notice issued under Executive Order Port. 558/99.

5. Conclusions and an institutional proposal for regulating the land market

This article started showing how the economical analyses, of the prices markets and others needs to take in account the Institutions that are above this reality regulating it. But besides the general known institutions there is one other category that has very strong influence on the economical reality: that is the social embeddedness, understood as the costumes, conventions, religions history and others. Surly in land issue both levels: the social embeddedness and the institutions play a very significant role. The land markets are formed by the combination of both, the traditions, the religious view and the institutions that are created to organize them.

The main aim of the article is to show how two different countries, with different histories, cultures and others could have a similar problems related to the land administration system: a big effort in creating institutions and legislation to avoid land grabbing in both countries. But none of the countries was able to avoid the grabbing of government land. In both countries the solutions passes by: changing the institutions that are in charge of land administration, changing the operational system of the land administration and finally have a community base clarification and adjudication of properties or users rights.

Table 6 tries to summarize the most important ideas of the article. As always when summarizing some simplifications are made, but it helps in the comprehension of the main issues.

In reality before the social embeddedness there are environmental conditions like land availability, climate and others. In those there are already important differences between Brazil and Afghanistan. In the social embeddedness the differences are also rather large: besides the religion and traditions the view of the land is very important for our purposes. While in Afghanistan the land is mainly seen as a mean of production to guarantee the subsistence of the family, in Brazil it is generally seen as an asset to speculate with and use for production. This is an issue that has to be highlighted as making a great difference between the countries. This difference comes from the social embeddedness of the countries.

Table 6. Embeddedness, Institutions on Land Management and proposition of solutions for land grabbing in Afghanistan and Brazil

	Type	Afghanistan	Brazil
Natural environment	Climate	Cold and dry	Hot and wet
	Land availability for agriculture	5.1 % of total , with much desert and high mountains	8 % of total, much tropical forests and rivers
Embeddedness	Religion	Has a big role in all issues from the legal to the customary	Small role
	Traditions	Have a big role in all social and personal aspects	Small role
	Land view	Subsistence use	Highly productive and Speculative view
Institutional environment	General Ruling	Two levels of laws – from the Al Koran and from the laws itself	Not always clear because of excess of laws
	Institutions in general	Destroyed by the wars	Rather well organized
	Rule of Law	Low	Rather height
Control and management over land	Rules for Land Management	Many - sometimes contradictory – possibility of grabbing	Well ruled – with gaps that legalizes the grabbing land
	Institutions for land Management	Registering - courts Cadastre – outdated Management - inoperative and not integrated	Register – notaries and register offices Cadastre – auto informed Management – lacking of information and integration
Consequences	Land ownership	Mostly small parcels. Some have larger plots. Many with not enough land and many landless.	Land is very concentrated and there is a large demand for land reform by landless.
	Land use	Mostly used Depending on irrigation Much governmental rain feed land available	Much idle land When used highly productive
	Land markets	Rigid and socially controlled	Active and speculative
Proposition of solution for Government Land Policy	Institutional Setting	Integration of AMLAK Cadastre and Courts	Organization of information from the notaries; Integration of all land cadastre information and Institutions
	Information Policy	Integrate all existing information (including maps) with the community base clarified users and property rights	Integrate all existing information (including maps) with the community base clarified users and property rights
	Other policies	Government land use policy	

In Afghanistan it is clear that the lack of rule of law and the lack of a state been able to rule the land ownership helps to create the situations that the country is at this moment. But at looking at the reality of the social embeddedness of this Islamic people where the al-Koran establishes clearly that all what is public should be preserved that way, the grabbing of land is a very large sin. So the land grabbing that is occurring now is at the same time a consequence of the lack of the state ruling over the land, because of the wars and all what goes around it, but also because of some very deep and embed concern about the future. Until very recently title deeds were conceded by kings and presidents with little concern about its consequences. But presently these same deeds are being reason for fights and wars in the country. Most of this land that is being grabbed is of deserts or very week pasture lands. So the main reason is not economical or speculative as the Brazilian case. It is a matter of surviving. So the role of the State is still larger in order to create the conditions to effectively rule the land and particularly the governmental land. The nation needs in a more embedded level the felling that their rights to land are guaranteed, and they do not have to be afraid of land reforms or of the state getting their land.

In Brazil, despite the legislation and the existence of institutional responsibilities that regulate access to land, these are either ambiguous or allow for their unpunished non-abidance, which always happens to the benefit of speculators and squatters of land to the detriment of its collective use.

It is taken for granted that it is impossible to prevent land speculation in a country such as Brazil, for the majority of those who have any wealth will include land in their asset portfolios. These possibilities of speculating with land are partially analyzed in Reydon et alii (2006).⁵This stems from the fact that, in Brazil, land speculation is inherent to both rural and urban sectors, and there is much economical activity centered around such speculation, whereas there are neither the means for nor a tradition of controlling it. This condition entails the need for creative elaboration of policies aimed at enabling the regulation of the patterns of occupation and use of the land, shifting the bulk of these practices away from speculation purposes and towards social and environmental improvement.

What is therefore necessary is a regulation with a view to redirecting speculation, since it will never cease to exist altogether, avoiding above all that, under the claim of non-intervention, only a few should benefit from the speculative use of land property and, on top of that, destroy the environment.

Based on this evidence, it becomes imperative to regulate the market effectively so that it functions better and so that speculative processes do not develop excessively. For the World Bank (2002) and for the IDB (2001), market regulation is the main focus of their activities. In a paper published by the World Bank, BURKI and PERRY (1998:37) propose that:

‘The formal institutions of the land market should include the register of real estate property, title services and the mapping of real estate property. When designing these institutions, there are four features that must be taken into account:

- *definition and clear administration of ownership rights;*
- *simple mechanisms for identifying and transferring ownership rights;*
- *careful compilation of title deeds and free access to this information;*
- *mapping of real estate property’.*

⁵ In this paper, the evolution of the price of land in São Paulo in the 1980s and 1990s is compared to that of other assets. One of the findings is that whenever land is part of the theoretical portfolio that includes shares, during crises affecting the São Paulo Stock Exchange land will be treated as an asset comparable to savings accounts, valuating and giving credibility to the portfolio. This evidences that land can be an important asset in the portfolio of economic agents, as proposed in Reydon.

The main issue is that the cost of the whole system with mapped survey is too high and the registration system does not solve the question. So the solutions are: use the satellite image and make a community base clarification and adjudication process of the private, government and communal land use and ownership rights. In these solutions not only the higher levels of social embeddedness, like the specifics of the religion, the costume of speculating with land and the laws, have to be taken in account, but also the social constructions the nations already have. So for the land management although having a rather common role and institutionalization, it has to take in account the levels that mostly economists and other scientist do not take that is from the social embeddedness. If they do not take that into account the possibilities of the policies having good results is rather small.

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