

Tera di famia: collectively owned family land and private law in the Dutch Caribbean

The 'Tera di famia' is a cultural-institutional form of land tenure common to citizens of Afro-Caribbean descent, known in the whole Caribbean and as such not limited to the islands of Curacao, Aruba, and Bonaire. Groups of siblings with their spouses lived near to each other on family land, often a donation dating back to the moment of manumission in the first half of the 19th century. It is a system of unrestricted cognatic descent whereby land ownership is inherited by all descendants of the original owner as a group. The land is not partitioned when someone dies by heirs, but rather held in common with all rightful heirs as a shared claim to the overall parcel. Rightful heirs, as the family sees them, are not always identical to those identified as owner by the authorities. Co-owners of family land are entitled to use a portion of the land, to build their house here and to bequeath it to their children in turn, but they should not sell or otherwise dispose of it. There is also a religious aspect involved. The 'Tera di famia' is the place where children, grand-children, and future generations can return to commemorate their ancestors, and in that way, the place also has a religious meaning. In some Caribbean islands, these family lands are used as a burial ground. According to the sociologist and historian Jean Besson (1994) 'that family land is thus a symbolic expression of lineage solidarity, serving to unite the living with the ancestors and with those yet unborn.' Family land – and maintaining this type of collectively owned property is seen by Jean Besson in his book *'Martha Brae's two histories: European expansion and Caribbean culture-building in Jamaica'* (2002) to be a key institution to Creole Culture building. When the number of family members became too large after several generations, living together was not possible anymore, but the family land offers an unlimited symbolic resource as a place of origin, and source of identity, to which return was always possible.

The concept of 'Tera di famia' does not fit into the legal forms of land tenure of the civil codes in force in the Dutch Caribbean. According to inheritance law a division of property must be made, and at this moment taxes have to be paid as well. There are legal entities which make collective property possible, for example, a limited company or foundations and associations. But are these fit for a 'Tera di famia'? In The Netherlands special legal entities are introduced in the past years to own historic country houses under the Estates Act (Natuurschoonwet), mainly providing fiscal advantages. A shortage of land, urbanization and a more professional government has created a new situation on the relatively small island of Curacao. Recently introduced legislation in Curacao tends into another direction, aiming at splitting up 'undivided estates' and distributing the plots to individuals occupying the grounds nowadays. The co-owners of family land are de facto expropriated, the 'family land' is governed like an estate in bankruptcy.

The aim of this paper is to identify this clash between Afro-Caribbean ways of possession of land and positive law, and to describe the (limited) forms of community engagement in the process of the 'undivided estates'-legislation to preserve the knowledge of the 'Tera di famia'.

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