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Law, Extralegality, and Space: Legal Pluralism And Landscape From Colombia to Puerto Rico

Érika Fontánez Torres*

I. INTRODUCTION

This article tackles the question: what is the relationship between law and the social construction and configuration of space? Two questions come up in this undertaking. The first question is: how do regulation and the norms of the legal system contribute to the configuration of spaces? And the second question is: how do legal practices and discourses co-construct social spaces? In approaching these questions, I will take into account the arguments of legal pluralism. I will discuss these relationships as they were fleshed out at the "Study Space II" workshop in Bogotá, Colombia, during which we illustrated these subjects with the case of the Jerusalén community. I will also discuss a phenomenon of the Law-Space relationship that occurred in the Bogotá case, but through a Puerto Rican case study. Namely, I will examine the case of Vieques, in which both militarization and informal processes (squatting) have, in large part, configured the socio-spatial landscape. Law, in its official and unofficial capacities, also has played a key role in the configuration of this landscape.

I am interested in analyzing two ways of looking at the Law-Space relationship that came up during the workshop. We asked ourselves, "what role does law play in the *transformation* of a city?" We approached this question from both structural and normative perspectives. I will expand the question to include how the law not only influences a city's transformation, but its very *configuration*. By this, I mean in what manner law is involved in the configuration of spaces, whether in its institutional, normative, symbolic, and discursive forms. However, I should clarify that, in order to explore the Law-Space relationship, I will be approaching

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the topic from a normative pluralist perspective and identifying law as social discourse and a social practice.

I am also interested in the criticisms brought up in a lecture in Bogotá, which were aimed at various public policies based on excessively legalistic worldviews.¹ These views exclude any issues rendered invisible when viewed through legal lens, despite the issues' important roles in our social fabric. As noted in the study of legal pluralism, these views are flawed from a descriptive point of view because they concede that the State is the only body capable of creating and promoting norms. Likewise, excessively legalistic worldviews are restrictive in the sense that they presuppose that legal discourse can flow only through the spaces of formal legal institutions. Such a legalistic worldview necessarily excludes any extralegal action, the creation of informal orders and norms and communicative actions that do not flow through formal institutional spaces. As such, an analysis of the Law-Space relationship cannot stem from a monolithic conception of normative law because a good deal of reality would be left out. For an analysis more in line with the realities of space and its configuration, therefore, it is necessary to take into account conclusions described in the study of legal pluralism.

II. THE LAW-SPACE RELATIONSHIP: THEORETICAL CONSIDERATIONS

We know that space—above all, the space we call the city—is in a constant state of flux: we manage it and we construct it. For Nicholas Blomley, as well as others who have studied the relationship between geography and law, space is not merely something that exists, but something that is actively created.² In Henri

1. During a lecture titled "The Transformation of Bogotá: 1995-2007" by Professor Juan F. Pinilla on March 10th, 2008, the speaker (quoting Brazilian planner Raquel Rolkin) alluded to the need to adopt the "worldview of an intermediate urban landscape, in between the legal and the illegal" in place of an excessively legalistic point of view. Similarly, when we analyzed the case of the Jerusalén community in Study Space II, we noted how urban planning and ordinance plans represented a problem for the community since the city's official maps did not acknowledge the existence of these communities. Technically, these communities were illegally situated, which prevented the state from recognizing their rights during efforts to include them in official planning policies. Juan F. Pinilla, *The Transformation of Bogotá: 1995-2007* (Mar. 10, 2008).

2. "What has been called the spatiality of social life is an aspect of social reality that is enormously complex and dynamic, fluid and shifting. Many geographers and other have sought to grasp some of the dynamics of social space through reliance on the view that sees space not as simply *being* but as having been actively *produced*. This idea highlights the unfolding specialties—and the attendant creation or

Lefebvre's terms, a city is not a space constructed *for* people, but a space constructed *by* people.³ In his criticism of space as a static concept, Blomley advocates Edward Soja's argument that states, "social life is the formation of space and its contingencies."⁴ Likewise, Blomley explains how Massey describes the same relationship: "[s]pace is, by its very nature, power, and symbolism, a complex framework of relationships of domination-subordination, solidarity, and cooperation."⁵

This fact opens up myriad questions about how and through which practices, with respect to the social and political spheres, "social space is produced, maintained, and transformed."⁶ In order to examine, understand, and flesh out the dynamics of spaces and landscapes, we must look at their construction process. This process includes undertaking various social practices and projects through which geographic forms and spaces are produced and transformed. Bearing in mind the goal of understanding this process, it is important to understand how power mechanisms and discursive mechanisms affect the construction and co-construction of spaces.

Norms play a key role in our concept of material space because they are a means of determining property categories, urban planning laws, and zoning regulations. Property categories are probably the most direct way of configuring space.⁷ Property norms determine limits and borders of exclusion by creating categories such as owner and trespasser. Owner and trespasser delineations are exemplified rather crudely with fences, the symbol *par excellence* of exclusion. For example, on the topic of property regulation, Jeremy Waldron examines property and space

attenuation of difference—as social processes that are integrally connected to other social processes such as accumulation and the maintenance and transformations of relations of production more generally. This focus on process, in turn, implicates the various social projects and practices through which geographical forms and spatial relations are changed. Thus capitalism generally, its various more specific historical and geographical manifestations and its range of historical-geographical contradictions and crises are seen to be reflected in the dynamic reorganization of social space at all scales of reference from the micro-architectural to the global." THE LEGAL GEOGRAPHIES READER: LAW POWER, AND SPACE xvi (Nicholas Blomley et al. eds., Blackwell Publishers 2001) (citation omitted).

3. See generally HENRI LEFEBVRE, THE PRODUCTION OF SPACE (Donald Nicholson-Smith trans., Blackwell Publishers 1991).

4. THE LEGAL GEOGRAPHIES READER, *supra* note 2.

5. *Id.*

6. *Id.* at xvii-xviii.

7. See Nicholas Blomley, *Landscapes of Property*, 32 LAW & SOC'Y REV. 567, 570 (1998).

relations in the case of the exclusion of the homeless and notes that one of the main functions of property law is to provide the foundations and criteria for determining who can be in a particular space and who can be excluded.⁸

On the other hand, legal practices also structure landscapes and spaces. While it is important to take into account daily practices and scenes to identify the manner in which the legal system constitutes a discursive field of power, that same power that constructs social spaces runs through and overlaps the social relationships that are found in those spaces. Therefore, the second facet of the Law-Space relationship involves attending to the social spaces that host all manner of legal discourse.⁹ It is necessary to understand how the legal system is present in the social construction of any certain reality; in this case, the configuration of space. Blomley also calls attention to how the imagination and representation of space is profoundly molded by our notions of legal concepts such as property and rights. The premise is that social spaces are hyper-saturated with legal jargon and discourse. The demarcation of spaces with legal categories is, without a doubt, one manner of co-constructing space. In this sense, Blomley tells us:

Boundaries *mean*. They signify, they differentiate, they unify the insides of spaces that they mark. *What* they mean refers to the constellations of social relational power. And the form that this meaning often takes – the meaning that social actors confer on lines and space – is *legal* meaning. How they mean is through the authoritative inscription of legal categories, or the projection of legal images and stories on to the material world of things. The trespasser and the undocumented alien, no less than the owner and the citizen, are figures who are located within circuits of legally defined power by reference to physical location *vis-à-vis* bounded spaces.¹⁰

These categories, either vouched for or constructed by the

8. Jeremy Waldron, *Homelessness and the Issue of Freedom*, 39 UCLA L. REV. 295, 296 (1991).

9. See Michel Foucault, *Truth and the Juridical Forms*, in POWER: ESSENTIAL WORKS OF FOUCAULT (1954-1984), 1-89 (James Faubion ed., Robert Hurley et al. trans., New Press 2000). For a summary of this type of environmental controversy in Puerto Rico, see Érika Fontánez Torres, *El derecho y lo "legal/ilegal" en los escenarios de conflicto ambiental*, in ÉTICA Y ECOLOGÍA: LA RESPONSABILIDAD SOCIAL CORPORATIVA Y LA PRESERVACIÓN DEL MEDIOAMBIENTE 87-108 (Luis Galanes ed., Tal Cual 2008).

10. THE LEGAL GEOGRAPHIES READER, *supra* note 2, at xviii.

legal system, are examples of what Blomley calls a manner of giving form to power.¹¹ This perspective requires the observation of daily practices as well as the identification of communication in which we find legal discourse, always remaining conscious of the fact that, "[t]he point, again, is that the connections between the legal and the spatial *in the world* may, in some situations, be so tight as to be seen as identical."¹² The concept of landscapes is useful for defining and understanding the processes described previously, materially, as well as imaginary. In each case, the conclusions of legal pluralism permit us to draw closer to the importance of those daily practices and to the manner in which the legal system affects social and power relationships that constitute spaces.¹³ In writing about extralegal property, legal monism, and legal pluralism for the Seminar in Latin America on Political and Constitutional Theory (SELA) in Buenos Aires on June 26-29, 2008, Daniel Bonilla notes the utility of legal pluralism in understanding reality.¹⁴ For Bonilla, a monolithic conception of the legal system that only takes into account the norms enforced by the State is descriptively erroneous and normatively limited.¹⁵ For the moment, I am interested in concentrating on the descriptive aspects of this monolithic conception. An examination of the Law-Space relationship that only emphasizes the formal legal system runs the risk of ignoring the diversity of regimes and systems that exist, as well as limiting the extent to which one can comprehend the complex social relationships that constitute space and its reality. Only from this conclusion does the necessity of a pluralistic conception of the legal system become evident for the understanding of the relationships between law, politics and society.¹⁶

11. *Id.*

12. *Id.* at xix.

13. Daniel Bonilla Maldonado, Professor at Universidad de los Andes, Study Space II: Extralegal Property and Legal Pluralism in Colombia Conference (Mar. 11, 2008). Bonilla recounted the premises of these theories, as well as their different approaches, criticisms, utility, and limitations of their proposals. See also Libardo Ariza Higuera & Daniel Bonilla Maldonado, *El Pluralismo Jurídico: Contribuciones, Debidades Y Retos de un Concepto Polémico*, in PLURALISMO JURÍDICO 86 (Siglo del Hombre Editores, 2007). In this article, one can find Spanish translations of three seminal articles on legal pluralism: Sally Engle Merry, *Legal Pluralism*, 22 LAW & SOC'Y. REV. 869 (1988); John Griffiths, *What is Legal Pluralism?*, 24 J. LEGAL PLURALISM & UNOFFICIAL L. 1 (1986); Brian Z. Tamanaha, *The Folly of the "Social Scientific" Concept of Legal Pluralism*, 20 J.L. & SOC'Y 192 (1993).

14. DANIEL BONILLA MALDONADO, *EXTRALEGAL PROPERTY, LEGAL MONISM AND PLURALISM* 10 (2008), <http://www.law.yale.edu/documents/pdf/sela/Bonilla.pdf>.

15. *Id.* at 2.

16. *Id.* at 13.

In the normative framework, if the legal system contributes to the construction of our landscapes, it is necessary to examine it in both its formal interactions as well as extralegal ones. This calls into question any kind of public policy that explicitly negates the validity of extralegality, such as the case of the Jerusalén community.¹⁷ The description of the landscape and its configuration is not complete without looking into those norms that arise from informality.¹⁸ In a recent symposium about the cities of San Juan and Barcelona at the Universidad de Puerto Rico, Jordi Borja stated that “one must construct the city over the city.”¹⁹ And, in order to do that, Borja said, “reality is worth more than any norm.”²⁰ Therefore, we should cast our eyes to the wider social scenes, including communities such as Jerusalén and Vieques, in their uses and creation of judicial and legal elements.

III. LAW AND SPACE IN VIEQUES, PUERTO RICO

In order to illustrate these points previously mentioned, we analyzed the case of the Jerusalén community in Study Space II.²¹ Some of the conclusions of the case were: (1) there exists a normative system that has been created by the community, even though most members seek to incorporate themselves into the traditional legal structure rather than maintain their own informal structure; (2) the community members’ concepts of property and property owner are different from formal definitions (for example, for them a property owner is one who is in possession of the land and works it); and (3) both systems interact through the incorporation of language and concepts. Even though the case study focused on the normative pluralistic facet, we noted what seemed to be a dialogue concentrating on a traditional monist definition of property.

17. *Id.* at 31.

18. In his essay, Bonilla offers a revealing fact: “50% of the population in the global South lives in peripheral districts where property is controlled by norms other than those of the State’s legal order.” BONILLA MALDONADO, *supra* note 14, at 2 (data provided by UN-HABITAT, PRO POOR LAND MANAGEMENT: INTEGRATING SLUMS INTO CITY PLANNING APPROACHES 1 (2004)).

19. Jordi Borja, Strategies, References, and Judicial Regimes in Public Spaces and Urban Projects, Barcelona-San Juan Symposium at the Universidad de Puerto Rico (Mar. 28, 2008).

20. *Id.*

21. For more details on Jerusalén, see Daniel M. Bonilla, *Pluralismo jurídico y propiedad extralegal: clase, cultura y derecho en Bogotá*, in REVISTA DE DERECHO: PROPIEDAD, POSESIÓN & DERECHOS REALES 207-33 (Universidad de los Andes 2006); see also BOAVENTURA DE SOUSA SANTOS Y MAURICIO GARCÍA VILLEGAS, EL CALEIDOSCOPIO DE LAS JUSTICIAS EN COLOMBIA 230-73 (Siglo del Hombre 2001) (discussing the Jerusalén case and the resolution of conflicts in urban community spaces).

This is important, because as we saw in our case study and as in the Bogotá case, this traditional monist definition of property was present even in informality and thus shaped the landscape in a particular form. Finally, from the perspective of landscape construction, we clearly saw how the community structure and its norms formed a particular landscape of that area of Bogotá, which was occasionally recognized by the State. It is evident that the norms that have been internalized by this community have been crucial with respect to the influence of the legal system on the configuration of space.

In Puerto Rico's case, the socio-spatial landscape has been created not only by the formal concepts of the legal system (from a monolithic point of view), but also by the influx of extralegal and pluralistic influences as well as the novel concepts that arise from any sort of social discussion of legal norms. A detailed discussion of these points cannot be addressed here, as research on the subject is in its early stages in Puerto Rico. Further investigation will be necessary to apply pluralistic theories to Puerto Rico's legal realities. There are some references, however, that can give us an idea of how Puerto Rico's landscape is shaped through legal pluralism.

Rural-to-urban immigration patterns, as well as the informal settling of Puerto Rico's so-called *barrios populares* have affected the landscapes of our cities and metropolitan areas, apart from being constrained by formal rules. In his study on the development of the city of San Juan during the 19th century, the architect Edwin Quiles notes that communities "were the makers of cities, in that they constructed living spaces, as well as provided content and meaning to the places in which they lived."²² For Quiles, "the poor, out of necessity to redefine their own lives and acclimate themselves to land that was often theirs by virtue of illegal appropriation, adapted the forms of their spaces to their own contents."²³ This implied, in many cases, the creation of new normative paradigms.²⁴

22. EDWIN QUILES, *SAN JUAN TRAS LA FACHADA: UNA MIRADA DESDE SUS ESPACIOS OCULTOS (1508-1900)* 145 (Instituto de Cultura Puertorriqueña 2003).

23. *Id.* at 146. This is the case of La Perla, one of the first popular shantytowns, whose location, outside the walls of the city of San Juan, meant an escape of the regulations and codes of urbanization, since it offered the opportunity to do works restricted within the city, like the raising and slaughter of pigs. La Perla was hidden (it still is to a certain degree) behind the defensive walls. Thus, it was not part of the officiality nor of the urban landscape. *See id.* at 147.

24. *Id.* at 148. Writing on the complementarity of the formal space and the popular districts in Puerto Rico, Quiles says: "[in] their relation with the city, the

This last point is evident in the cases of land occupations, which have been important in creating spaces in the metropolitan areas of Puerto Rico. In the 1960s, an acute housing crisis brought attention to the grave situation faced by the disadvantaged and produced one of the most important social movements in Puerto Rico's history: the *rescates de terreno* (land rescues). There have been two major waves of land rescues, one from 1968 to 1972 and the other occurring from 1973 to 1976.²⁵ Those people who settled on State or private property called themselves *rescatadores* (rescuers), and not squatters, as a manner of legitimizing what they believed to be their rights, according to urban sociologist Liliana Cotto.²⁶ These rescues were, in many cases, organized systematically, to the point of relying on internal norms that regulated the placement and size of the dwellings, the necessary qualifications to be a community member (to prevent speculation), and other norms that promoted cooperation.

The Vieques case

Vieques is a Puerto Rican island approximately eight miles to the east of the Puerto Rican mainland. For more than sixty years (1941-2003), the U.S. Navy assumed control of more than two-thirds of Vieques, leaving people to settle the middle of the island. Vieques was used by the U.S. Navy as its training grounds and for target practice for air and naval bombings. In the 1940s, the people of Vieques were evicted from their homes, relocated, and confined to the center of the island, specifically to the communities of Monte Santo and Santa María.²⁷ The purpose the eviction was to provide the U.S. Navy with two-thirds of the island (the island was divided into three parts, with the navy in possession of the east and west ends) for warehousing, war exercises, and other mil-

barrios populares take references from the city, reinterpreting their codes. However, their entailment to the city, the spaces of the officiality, the districts maintain a duality. This ambiguous condition between the being and not being the city, between wanting and not wanting to be it, is part of its strategy of survival, and is a way to affirm its personal and collective identity. For that reason, from the outside they are seen as contradictions to the projects of the city, when in fact they are complementary constructions."

25. See LILIANA COTTO, DESALAMBRAR: ORÍGENES DE LOS RESCATES DE TERRENO EN PUERTO RICO Y SU PERTINENCIA EN LOS MOVIMIENTOS SOCIALES CONTEMPORÁNEOS (Tal Cual 2006) (urban sociologist Liliana Cotto analyzes these rescues as one of the more important social movements in Puerto Rico).

26. *Id.*

27. For details on the expropriations and evictions of Viequenses, see ARTURO MELÉNDEZ LÓPEZ, LA BATALLA DE VIEQUES 82-86 (Edil 1982); Maribel Veaz, *Las Expropiaciones de la Década del Cuarenta en Vieques*, 56 REV. COL. AB. 159 (1995).

itary uses, including bombardment. The U.S. Navy used the eastern end of Vieques as a bombing range, where it conducted military training exercises. On the western side of Vieques, the U.S. Navy maintained an ammunition dump. Throughout the years, many accidents occurred during the military practices in Vieques. The last one was in 1999, when a navy bomber jet missed its target and dropped two bombs on an observation post, killing a civilian guard.²⁸

The people of Vieques have continually been engaged in acts of resistance ever since the U.S. Navy first occupied the island. Even to this day, after the navy was forced out due to a massive campaign of civil disobedience, the people of Vieques engage in acts of resistance. Those acts of resistance included marching, lobbying, filing legal suits and participating in acts of civil disobedience. It also included squatters on U.S. Navy lands. We can say that Vieques's landscape and its spatial configuration have had a lot to do with these dynamics between militarization and people's resistance. The processes of militarization had profoundly affected the socio-spatial landscape of Vieques.

From 1965 to 1975, three land rescues took place on the island municipality of Vieques, in Bravos de Boston, Villa Borinquen and Monte Carmelo; these municipalities today are essential parts of Vieques's landscape and factor heavily into public policies related to land use and housing. One of these communities, Monte Carmelo, had a direct impact on changing the borders of military bases on the island, as its actions provoked a reconfiguration of the possession of Vieques lands, and as a consequence, of Vieques's landscape.

Along with the waves of land rescues going on in Puerto Rico, many communities in Vieques, due to lack of housing and subsistence, started rescuing lands that were considered property of the U.S. Navy.²⁹ This is how Monte Carmelo, which established infor-

28. See Karl Ross, *Death at Navy Bombing Range Resonates Through Puerto Rico; Island Officials Seek Lasting Cease-Fire*, WASHINGTON POST, Aug. 19, 1999, at A10. In 1950, two Navy bombs exploded, killing four people on the main island. Another accident happened in 1953, when a bomb killed a 13-year-old boy and injured his brother in Vieques. See *De Legrand v. U.S.*, 182 F. Supp. 184 (D. P.R. 1900).

29. See generally KATHERINE T. MCCAFFREY, *MILITARY POWER AND POPULAR PROTEST: THE U.S. NAVY IN VIEQUES, PUERTO RICO* (Rutgers University Press 2002). As McCaffrey describes: "Migrants poured foundations for one-day dream houses to return to after years after working in New York City or Saint Croix. These homesteaders carved erratic roads snaking to homes that sprouted like mushrooms on the hills. They pressed the municipality to deliver electricity, water, telephone service, and mail to homes that had no addresses. The Félixes [Monte Carmelo

mal mechanisms of territorial organization through the implementation of extralegal norms and altered official designations of property, was created. From an informal settlement, Monte Carmelo has become a community that is recognized in the cartography and Vieques's landscape.³⁰

I had the opportunity to visit Carmelo Félix Matta and María Velázquez, the founders of Monte Carmelo, when I was a second-year law school student in 1997. They lived on top of a hill that was a fortress-like structure with a Puerto Rican flag on the roof. When I went there for the first time, Carmelo and his family had lived on rescued land for more than twenty years. As we spoke, Carmelo recounted his relationship with the U.S. Navy: "They told us we were invaders. I understood that I was not an invader, that I was a rescuer, that the land had been seized by the navy." In 1988, A U.S. federal judge ordered Carmelo to appear before the court for an eviction proceeding instituted by the United States.³¹ When the U.S. Marshals came, Carmelo armed himself with the beehives he used to gather honey. Today, Monte Carmelo is still there and is called the "Land of the Braves." According to Katherine McCaffrey, these leaders "called the takeover an act of self-defense for the survival of the *Viequense* people."³² What follows is (1) a descriptive recounting of the ways in which the Monte Carmelo community organized themselves from a normative but informal point of view; (2) the ways in which they conceived space and property; and (3) the possible implications their actions have had on the Vieques landscape.

leaders] were just one family who had staked a claim in this no-man's land. Their home was modest, built of concrete with no plumbing or electricity." *Id.* at. 101. For more on the land rescues of Villa Borinquen and Monte Carmelo, see Corro, *supra* note 25, at 179-215.

30. Telephone Interview with Ramon Pagán, Adjudicator of Land Titles at the Division of Housing for the Municipality of Vieques (July 23, 2008). The governmental civil servant indicated to us that at the moment, 300 families live in lots of approximately one acre each and that throughout the years there have been an increase in transactions and segregations of lots. These transactions occur despite the lands' legal titles being subject to the Department of Housing. There have been many attempts to transfer ownership to the Municipality of Vieques. In the rescued lands of Villa Borinquen and Bravos of Boston, between 60 percent and 70 percent are still without proper title, in spite of municipal ordinances that establish a procedure for legalization. See VIEQUES, P.R., DECREE 14 of 27 and 15 of 26 (Sept. 2006). In Villa Borinquen there are 860 lots in 683 cords. Eugene Hopgood Davila, *Ordenanza en Letra Muerta*, EL NUEVO DIA, July 19, 2006.

31. Summons, *United States v. Felix-Matta*, No. 88-00563 (HL) (D. P.R. 1988).

32. McCaffrey, *supra* note 29, at 102.

Monte Carmelo's Informal Arrangement

The founding members, along with a committee of rescuers, wrote a "private legal contract of acceptance for the Monte Carmelo Sector."³³ In it, they established the parameters that would determine who could be considered a member of the community and the terms of their commitment. Among the main points of the document were the following: (1) that the residents were conscious of the fact that their property was the "result of land rescue" (even though this meant in legal terms that they were on the land without a deed and in bad faith, the authors of the document described themselves as being in possession of the land in good faith); (2) in order to settle, a resident had to accept that his/her "conceded rights" would be revoked (a) if there had been no physical construction within 90 days of receiving possession, (b) if he/she had not paid \$100 for costs of having access to Monte Carmelo and (c) if he/she had violated the rules established by the Monte Carmelo land committee; and (3) the resident had to accept limits on his/her capacity to cede or sell the property: "the property that is ceded to you may not be sold or 'speculated' on pain of losing all rights to the property due to conflict with the no-sell rule."³⁴ The committee also reserved the right to repossession each lot and to cede it to another citizen in the case of a breach of the contract.

This contract established that whoever wished to be a part of the community had to justify their need to have land. It provided norms that dictated lot sizes, dwelling sizes and dwelling placement, as well as forbidding non-justifiable fences. Some other clauses of the contract stated that access and maintenance costs would not be refunded, the minimum size of dwellings would be 12' x 12', lots would be either 100' x 300' or 75' x 150' (avoiding the consolidation of lots) and dwellings can resemble small farms.³⁵ According to McCaffrey, the rescue was well planned; there were registry forms and membership dues processed by an executive committee. In this sense, the Monte Carmelo community is similar to Jerusalén.

Among the documents that Monte Carmelo representatives

33. Acuerdo Privado Legal de Aceptación, Sector Monte Carmelo (on file with author).

34. *Id.*

35. According to Maria Velázquez: "Carmelo distributed all the land in quite great piece, so there would not be overcrowding." Interview with Maria Velázquez, spokeswoman for the community in Vieques, Puerto Rico (Dec. 22, 1997).

presented during several governmental transactions and public hearings was one in particular that noted how the community was conceived and existed in respect to any outside, official interpretation.³⁶ In one of the resolutions adopted by the community, several conclusions were established:

1. That land rescues in Puerto Rico had not altered nor would alter society's extant social structure.
2. That the law of July 1st, 1975, which was passed to grant deeds to land rescuers, had failed upon its implementation.³⁷
3. That "the Monte Carmelo community had been careful to regulate its own territory in the absence of local government attention, as well as the disdain and persecution of the community government of Puerto Rico at the national level. [The community] does not require any kind of ordinances, save the most basic services necessary for survival."

In this resolution, the representatives stated that, "[t]he lots that had been distributed in Monte Carmelo are well-ordered and well-suited to grant 1,500 m² per family, with the intention of avoiding any kind of consolidation or conglomeration of families, with the understanding that [density] promotes criminality"³⁸

By 1986, the community had established a system of water pipes from the mountain to one of the main roads, as well as providing some basic services, such as the erection of electric poles, by 1992. There was a major protest when the local power company decided to remove the electrical poles because of the community's failure to receive legal recognition.³⁹ Even though their ordinance

36. On March 26, 1994, Carmelo Félix Matta, as spokesman of the community, presented before the Legislature of Puerto Rico a resolution in opposition to a proposal that would allow the Municipality of Vieques obtain ownership of the territories of Monte Carmelo. Carmelo Félix Matta, spokesman for the community, oral presentation of community opposition of proposed legislation (Mar. 26, 1994) [hereinafter Carmelo Resolution].

37. Referring to P.R. LAWS ANN. tit. 132, §§ 751-764 (1975). This law considered "occupants," for the purpose of granting them a title, "a family which on or before January 18, 1973, entered into possession of a lot or part thereof on private lands or lands belonging to a public agency or instrumentality without authorization and has been permitted to hold it through the owner's tolerance."

38. See Carmelo Resolution, *supra* note 36.

39. Servicios Combinados, *Resurgen Líos Terrenos en Vieques*, EL VOCERO, July 15, 1992, at 5, 27. Residents of Monte Carmelo moored themselves to posts to prevent the authorities from leaving them without electricity. In 1997, the residents lacked electrical services and generated power with electrical plants that were installed to the motors of their vehicles and by means of a small set of photovoltaic cells.

declared them to be in possession in bad faith, the Monte Carmelo residents considered themselves to be the legitimate owners, using their spaces for living purposes rather than speculation.⁴⁰

Some Notes on Monte Carmelo and Vieques Landscape

An analysis of Monte Carmelo in such a brief essay would not do it justice. In any case, there are some elements that can be summarized for use in a future work, which could get as deep as the one in the Jerusalén case, and even extrapolate some similarities and differences. Notwithstanding the brevity, there are some points to be highlighted.

There is no doubt that the regulations that were adopted by the community—though indefensible from a formal, normative point of view—were important in constituting the spaces and concepts that currently configure the Vieques's landscape. The norms that the community adopted in the vacuum of government enforcement configured and marked this territory. Anti-consolidation rules, mandatory lot and dwelling sizes, residency requirements and restrictions on alienability (even if some of these norms failed in the long run) all had an impact on the configuration of this community and on Vieques.

The land rescues of Monte Carmelo led to the reconfiguration of the lands that had once belonged to the U.S. Navy and instigated the need to negotiate with the navy to transfer the disputed lands to the government of Puerto Rico. For residents of Monte Carmelo, two things were clear. First, the legitimacy of their claims against the navy—the residents believed that they should be the legal owners of the disputed lands because the settled lands were abandoned, unused and the settlers had the right to use, farm and inhabit them for subsistence purposes. Second, the legitimacy of their claims against the government of Puerto Rico—they saw the Puerto Rican government as having failed in their duty to protect Puerto Ricans from the U.S. Navy and not providing for housing and other social necessities. For this reason, on many occasions, Carmelo Félix alluded to human rights, international law, and the Puerto Rican Constitution. Such conviction and perseverance in occupying U.S. Navy land led to those lands being handed back to Puerto Rican authorities, and later on to the Vie-

40. "And they wrote down in papers that we were in bad faith, but we were in good faith. We had farmed the land, and they knew that my husband and I lived here, we were not speculators." Velázquez, *supra* note 35.

ques municipality, giving those lands a different use: in this case, removing them from the military's jurisdiction.

On the other hand, we must say that even Monte Carmelo adopted an informal way of organization and established its own normative framework. That framework was very much grounded in formal conceptions about property, contractual relations and the rights of the individual owner in our formal legal system. Like in the case of Bogotá, even in informal cases, property monism and legal discourses concerning it seem to be unchallenged. We can say that the organization of land rescues could not change the underlying monist and absolute property model of Puerto Rico, and that these models are provoking a crisis in many ways. I am referring to problems such as urban sprawl, exclusion, lack of housing and gentrification and the environmental problems associated with urban development. There are serious criticisms that question the manner in which the lands were actually organized and distributed. There is no doubt that today, one of Vieques's pressing problems is the lack of housing for its residents and the displacement of these residents as a result of fluctuations in property markets and the sales of rescued lands that have not been recognized as legitimate by the government.⁴¹

The above can be seen in different studies that refer to Vieques's territorial problems. As part of a post-navy territorial organization, the Technical and Professional Support Group (GATP, Grupo de Apoyo Técnico y Profesional) was created so that professionals from various fields could, with the input of Vieques residents, prepare a set of "Guidelines for the Sustainable Development of Vieques" ("Guidelines").⁴² In these Guidelines, the GATP states that the communities that sprang up in Vieques in the last few decades are the product of land rescues of either local government or U.S. Navy land. As a result, Vieques residents have constructed those dwellings. According to the GATP, this has led to "a landscape filled with unfinished houses, which far from being a symbol of desolation, attests to the initiative and work capacity of the people."⁴³ The Guidelines also note that the land rescues have served to promote an underground or secondary property market, which has led to the sale of many properties to

41. Eugene Hopgood Davila, *Inalcanzable el "Paraíso,"* EL NUEVO DÍA, July 18, 2006.

42. Grupo de Apoyo Técnico y Profesional, *Guías para el Desarrollo Sustentable de Vieques* (2002), http://www.viequeslibre.addr.com/pdf/creditos_y_contenido.pdf

43. *Id.* at 236.

non-locals.⁴⁴ On this point, the Guidelines admit that the land rescues “present a problem of bad land use and deficient infrastructure,”⁴⁵ due to the dispersal of the rescued communities.

In a positive light, however, the Guidelines point to Monte Carmelo as an example of sustainable development, where the residents—to a limited extent—rely on wind turbines and photovoltaic arrays for power generation.⁴⁶ With respect to the use and organization of the land, the Guidelines acknowledge the limitations of development in planned communities and propose, among other things, “the development of previously urbanized areas, such as Villa Borinquen and Monte Carmelo, by means of infrastructure improvements.”⁴⁷

In legal terms, the abstract concepts provided by the land rescuers for the configuration of their spaces included legal concepts that did little to alter established institutions, save those that concerned the rescuers who, according to the legal system, were capable of being legitimate property owners. Perhaps the most significant alteration was the challenge to the legitimacy of the U.S. Navy’s exercise of its powers of expropriation in holding the lands in the interest of American national security. But without a doubt, one can observe the reproduction and repetition of traditional property discourse; that is to say, the owner is the master of his/her castle, should not be over-regulated, and should be allowed to work his/her land without too many planning concerns. The idea that, “this is my land, I have or should have superior title and my goal is to obtain the most from my land,” has a lot to do with urban sprawl and shapes space and landscape. The property paradigm and the desire for a community of property owners—each with his/her own lot—seemed to encourage what many consider to be an example of urban sprawl and bad urban planning, as well as sensitivity to the ups and downs of property markets.

Even though there have been tensions with respect to the sale and speculation involving the properties,⁴⁸ Monte Carmelo is renowned as an icon in the land rescue movements of Puerto Rico, and particularly in Vieques, as a symbol of retaking land originally confiscated by the U.S. Navy.⁴⁹ The line between military and civil matters was questioned and altered by these rescuers,

44. *Id.*

45. *Id.* at 239.

46. *Id.* at 237.

47. *Id.* at 238.

48. McCaffrey, *supra* note 29, at 112-13.

49. In 2005, Carmelo Félix Matta passed away and the press emphasized his

but in doing so they also altered the line of power between Puerto Ricans and Americans. This was exemplified on more than one occasion: there were several confrontations between Vieques residents and other activists with FBI officials and military guards on the very slopes of Monte Carmelo that bordered navy lands.⁵⁰ As such, the settlement of Monte Carmelo was a key part of the civil disobedience movement that flourished from 1999 to 2002 with the goal of pushing the navy out of Vieques.

What has been presented here is limited in scope with respect to the wider trends of legal pluralism, extralegality and the configuration of space in the legal sense. Regardless of the need to delve deeper into the study of the Jerusalén and Monte Carmelo cases, this is an opportunity to obtain a fruitful analysis of the Law-Space relationship. Overall, it serves to shed light on the complex social relationships that play such a critical part in the configuration of space.

deeds in a symbolic sense. See Camille Roldán, *Fallece un Guerrero Incansable de la Lucha Viequense*, EL NUEVO DÍA, Feb. 14, 2005.

50. One of the decisive episodes that led to more social protests occurred in 1989, when the U.S. Navy tried to evict its neighbors in Monte Carmelo. Hundreds of protesters blocked the street to block the U.S. Navy trucks that took their possessions. The event spurred marches in support of the residents of Monte Carmelo and received the attention of the press. The case of Monte Carmelo, as McCaffrey describes, brought up tensions regarding the issue of the lands in the U.S. Navy's control. See McCaffrey, *supra* note 29, at 102.