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Piercing The Veil of Coloniality in The Concept of Property in Brazil

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Abstract: This study seeks to analyze the coloniality that permeates discussions about property rights over land in Brazil. The hegemonic speech brought by colonial Modernity seeks to naturalize a conception of absolute, exclusive, and exclusionary private property, which serves the interests of an agrarian elite, which seeks to increase its influence and profits through the concentration of land, monoculture, and speculation. The observed result of the prevalence of the liberal concept of private property in the Brazilian legal framework is the exclusion, marginalization and invisibilization of social groups, such as the peasantry and traditional people, with the consequent increase in poverty and social conflicts. To demystify the hegemonic concept of private property, it is necessary to highlight its historicity and ideological connection, to then present other concepts and experiences of property, which, in the light of democratic logic, will result in the consecration of a plurality of experiences of property, that will better adapt to the multifaceted reality of the Brazilian population. Some new views of property have already been accepted into the Brazilian legal system, but they depend on a political and social effort to be implemented.

Keywords: Coloniality. Property right. Agrarian Law. Legal Pluralism.

Perfurando o Véu da Colonialidade no Conceito de Propriedade no Brasil

Resumo: Este estudo busca analisar a colonialidade que permeia as discussões sobre o direito de propriedade sobre a terra no Brasil. O discurso hegemônico trazido pela Modernidade colonial procura naturalizar uma concepção de propriedade privada absoluta, exclusiva e excludente, que serve aos interesses de uma elite agrária, que procura aumentar a sua influência e lucros através da concentração da terra, da monocultura e da especulação. O resultado observado da prevalência do conceito liberal de propriedade privada no campo jurídico brasileiro é a exclusão, a marginalização e a invisibilidade de grupos sociais, como o campesinato e as populações e povos tradicionais, com o consequente aumento da pobreza e dos conflitos sociais. Para desmistificar o conceito hegemônico de propriedade privada, é necessário realçar a sua historicidade e ligação ideológica, para, depois, apresentar outros conceitos e experiências de propriedade, que, à luz da lógica democrática, resultarão na consagração de uma pluralidade de experiências de propriedade que melhor se adaptará à realidade multifacetada da população brasileira. Algumas novas visões de propriedade já foram

aceitas no ordenamento jurídico brasileiro, mas dependem de um esforço político e social para serem implementadas na prática.

Palavras-chave: Colonialidade. Direitos de propriedade. Direito Agrário. Pluralismo jurídico.

Introduction

The present essay aims to elaborate a critical analysis of coloniality in the legal concept of “property” in Brazil, considering that a hegemonic speech called liberal Modernity¹ entangles it.

In actuality, the arena for political hegemony is being fought within “language”, a sociocultural entity that engulfs the union of an observer, the interpreter, and of the reality being observed, the context, and, as a result, the particularities and limitations of the observer will alter his or her perception of world, because things are not what they are (essentialism), but what we can tell about them (meaning).

Language, and the concepts it brings into light, is the true measure of our perception of the surrounding world. Thus, considering that essence loses space to meaning, and meaning is built with the use of language, the observer and the reality being observed merge into a single entity, becoming illegitimate the use of universal, uniform, and immutable concepts: there is no unique perception of the real, and advocating such a thing is to work with a dynamic of submission, dominion and coloniality.

The study of the legal use of the universal concept of “property” in Brazil, and its consequences over the entire framework of Brazilian Law, in the constitutional level, is the purpose of this work.

To address the object of study, this paper will be divided in three sections.

In the first section, this paper will present a historical overview of the process of consolidation of the liberal concept of private property in the West, with special cutout in the Brazilian’s History, dating from the initial colonization times to actuality.

Following, the second section of this study will denounce the fragilities and detrimental effects of this liberal conception of private property in the Brazilian social tissue, by the analysis of legal instruments and its interpretations by Brazilian jurists

Last, with the support of a decolonial perspective of the legal institute in analysis, this study will present and explain alternatives to the liberal and colonial conception of private property, managing new and insurgent concepts such as “socioenvironmental function of the land”.

The theoretical standards of this study are given by the works of Carlos Frederico Marés de Souza Filho, “A Função Social da Terra”². In addition, the allure of the universal concepts will be unraveled by virtue of Ricardo Sanin Restrepo’s “Teoria Crítica Constitucional”³.

The methodology used in this scientific effort will use dialectical, hypothetical-deductive, and historical materialism methods. The comparison between the hegemonic and colonial concept of Modernity and the insurgent

1 When we mention “modernity”, we think about a way of seeing the world characterized by the ideas of standardization, homogenization, normalization, universalization, abstraction, and systematic denial of diversity, not only in the scope of Law, but in all aspects of life (social, cultural, economic, sexual, epistemological, cultural and political).

2 SOUZA Filho, Carlos Frederico Marés de. A função social da terra. Curitiba: Arte e Letra, 2021.

3 RESTREPO, Ricardo Sanin. Teoria Crítica Constitucional; rescatando la democracia del liberalismo. Bogotá; Pontificia Universidade Javeriana. Faculdade de Ciencias Jurídicas: Grupo Editorial Ibanez, 2009.

emancipatory discourse will be made with the aim of, in the end, proving that there is no single speech of property, but only a discourse of power that is encrypted in legal texts.

The Build of The Artificial Concept of Property In Brazil: An Example Of Colonialism

The development of the current liberal and colonial conception of private property was developed from Mercantilism, with three centuries of theoretical controversies and a somewhat evasive formulation.

Under Mercantilism, the function of the State was to guarantee property, which, in turn, needed freedom and formal equality to exist – an assumption of legitimacy, at least theoretically. The existence of the free worker was necessary – the abolition of slavery, so that land could be an absolute and full right, a counterpart to such freedom of the worker.

The free worker contracted his work with the owner of the land, receiving his salary, so that he could, then, acquire, from the owner of the land, the fruit of his own labor, but not enough to acquire the land – the process of alienation.

Personal freedom was not an abstract philosophical assumption of Mercantilism, but a contractual necessity, a guarantee of capital for the expropriation of the fruit of the peasantry's labor and the guarantee of the interdiction of their access to land.

Until Locke, Christian civilization understood property as an “utility”, as it can be seen in the work of Santo Tomás, only becoming an independent and abstract right after the advent of Capitalism; and this abstract right would reach extreme degrees of application and interpretation with the Coloniality of Law, Arts, Aesthetics, Thought and Life, brought to South America by the conquerors, which we will assume and define as the method of gaining hegemony by the Modernity.

In the construction of the liberal and colonial concept of private property, Locke deepens into Santo Tomás's idea that the right to property is restricted to use, with the production surplus not belonging to the producer, but to another person (the process of expropriation, alienation)⁴.

The property would not be de-characterized by its non-use, but by its deterioration.

To avoid deterioration (of the surplus), society invented non-perishable goods (such as metals and precious stones) in such a way that the perishable goods would be exchanged for non-perishable goods, thus allowing the process of accumulation. The State would be created precisely to allow such accumulation⁵.

The introduction of the concept of non-perishable goods distances Locke from Santo Tomás, as the latter did not admit the possibility of any accumulation.

Locke understood the limit of property in the existence of perishable goods that cannot be exchanged for non-perishable goods. Corruptible assets must be exchanged for non-perishable assets, to allow their transformation into “capital”⁶.

4 LOCKE, John, 1632-1704. Segundo Tratado sobre o governo civil: ensaio sobre a origem, os limites e os fins verdadeiros do governo civil/John Locke: introdução de J. W. Gough; tradução de Magda Lopes e Marisa Lobo da Costa – Petrópolis, RJ: Vozes, 1994, p. 104.

5 LOCKE, John. Idem, p. 110.

6 LOCKE, John. Ibidem, p. 109.

Non-corruptible goods can be accumulated infinitely; the possibility of having production that generates surpluses that can be transformed into non-perishable goods, that is, into capital accumulation, depends on the exploitation of other people's labor. Work produces property, and, ironically, property produces poverty.

Land, a producer of goods, starts to be considered a merchandise, a simple good, therefore having an exchange value, ceasing to be a provider of food, and becoming a reproducer of capital, of wealth accumulated at the expense of the alienation of other people's work.

In sec. XVIII, the right and the thing, the right to property and the land, start to be merged: the land is called property.

The logic of land ownership was profoundly modified: "from producing goods for immediate consumption for those who worked it into a device for producing goods that could be transformed into the nascent industry, which would not result in consumable goods, but infinitely accumulating capital"⁷.

The Modern Liberal State was born based on the conception of individual rights: the possibility of each man acquiring rights for himself. The Constitutions of these States enshrined equality, freedom, security, and property.

In the Liberal State, clearly the right to property was the most prominent right. In fact, in these Constitutions, what is really protected is the right to property, because freedom, equality and security are presuppositions of modern property: a contract between free and equal men, guaranteed by the State⁸.

"The law was built on the idea of private property capable of becoming patrimonial, that is, of being a good, a thing, which could be used and enjoyed, with the absolute availability of the owner, and accumulated indefinitely."⁹

Therefore, this property should be exercised over a material, concrete good, thus being a thing that was subordinated to the free will of its owner, who could use and abuse it, excluding any interest or right of others.

7 SOUZA Filho, Carlos Frederico Marés de. *A função social da terra*. Curitiba: Arte e Letra, 2021. P. 37. Original em português: "de produtora de bens de imediato consumo para quem a trabalhava à produtora de bens que pudessem transformados na nascente indústria, que disso faria não bens consumíveis, mas capital infinitamente acumulável".

8 As we already had the opportunity to mention in GONÇALVES, Daniel Diniz; TÁRREGA, Maria Cristina Vidotte Blanco. *Resgatando as ciências (jurídicas) do fetiche da modernidade*. In: Carlos André Hüning Birnfeld; Samyra Haydée dal Farra Naspolini Sanches; Orides Mezzaroba. (Orgs.). *Direito, educação epistemologias, metodologias do conhecimento e pesquisa jurídica* I. 24^{ed}. Florianópolis: CONPEDI, 2015, v. , p. 111-139. F. 112:

"The legal, political, social, cultural and scientific models of modernity, uniform, homogeneous, universal models, permeate almost all contemporary societies and are based on a common theoretical source: the National State, which brought with it the central power, the armies national laws, the national police, the national currency, the national banks, the national standardizing law, the state bureaucracy, the uniformed and standardizing schools and when we talk about "standardizing schools" (schools in the broadest sense), we are talking about standardizing science and, ultimately, of standardizing epistemology (if not imperial, as we will see below)".

Original em português:

"Os modelos jurídicos, políticos, sociais, culturais e científicos da modernidade, modelos uniformes, homogêneos, universais, permeiam quase todas as sociedades contemporâneas e baseiam-se em um nascedouro teórico comum: o Estado Nacional, que trouxe consigo o poder central, os exércitos nacionais, a polícia nacional, a moeda nacional, os bancos nacionais, o direito nacional uniformizador, a burocracia estatal, as escolas uniformizadas e uniformizadoras e quando falamos em "escolas uniformizadoras" (escolas em sentido lato), estamos falando em ciência uniformizadora e, em última instância, de epistemologia uniformizadora (senão imperial, como veremos a seguir)".

9 SOUZA Filho, Carlos Frederico Marés de. *A função social da terra*. Curitiba: Arte e Letra, 2021. P. 46. Original em português: "O direito foi se construindo sobre a ideia de propriedade privada capaz de ser patrimoniada, isto é, de ser um bem, uma coisa, que pudesse ser usada, fruída, gozada, com absoluta disponibilidade do proprietário, e acumulada indefinidamente". SOUZA Filho, Carlos Frederico Marés de. *A função social da terra*. Curitiba: Arte e Letra, 2021. P. 37. Original em português: "de produtora de bens de imediato consumo para quem a trabalhava à produtora de bens que pudessem transformados na nascente indústria, que disso faria não bens consumíveis, mas capital infinitamente acumulável".

The Brazilian Civil Code of 2002, repeating the Code of 1916, does not define property, taking care only of the owner's powers to use, enjoy, dispose of, and claim the thing, from the hands of whoever unjustly possesses or holds it.

Property has become a given of reality, an object of protection under the laws of late-capitalist countries, considering its exclusive and exclusionary aspect.

There was, therefore, a privatization of spaces and, therefore, of nature, which unbalances society¹⁰.

The Brazilian Constitution of 1824 provides that "public property" is for "concrete use" and "private property" is for "abstract use". In this sense, the possibility of expropriation of private assets for public use, through compensation, is foreseen. Thus, private property did not even need social utility, being, as stated, an abstract right of the owner, including its own uselessness.

Land is no longer a right for everyone, but to an individual, an exclusive right, hence the need for expropriation to deprive the owner of its right. If land were a good available for everyone, there would be no need for expropriation, just its redistribution, as it is prescribed in the Colombian Legal Framework ¹¹.

The creation of modern property places in opposition, in one hand, the person who owns the property, and, in the other hand, the thing that makes up the individual patrimony.

The consequence to this individualist logic is the conclusion that anything that was collective and could not be understood as being of public use, would have no legal relevance. Anything that could not be traduced to market price was outside legal protection: in fact, outside the very understanding of the Law. The object of the individual right to property must, therefore, be something individually determined, known and economically evaluable. In this moment, we can assert that the liberal concept of property successfully achieved the status of a hegemonic concept, the "universales" described by Ricardo Sanin Restrepo¹².

10 POLANYI, Karl. *A grande transformação: as origens de nossa época*. Rio de Janeiro: Campus-Elsevier, 2000.

11 ROSERO, Mauricio Chamorro. *A questão fundiária não solucionada na Colômbia: desenvolvimento econômico e reformas agrárias*. Rev. Faculdade de Direito | ISSN: 0101-7187 10.5216/rfd.v46.74658.

"Due to the persistent problem of ownership and concentration of rural property, Law 135 of 1961 provided that the property extinction figure would be applied in three distinct cases: "when possession ceased to be exercised, that is, if the land was not explored economically for three continuous years; whether owners have violated environmental provisions; or, when the property was used to exploit illicit crops" (FRANCO and DE LOS RIOS: 2011; p. 103). With the aim of accelerating the process of extinguishing the domain and consolidating agrarian social reform, Law 1 of 1968 introduced some modifications to Law 135 of 1961, allowing the extinction of the domain through administrative means, the delivery of land to sharecroppers and the creation of the National Association of Peasant Users (ANUC)".

Original em português:

"Devido ao persistente problema de propriedade e concentração da propriedade rural, a Lei 135 de 1961 previa que a figura da extinção da propriedade seria aplicada em três casos distintos: "quando a posse deixasse de ser exercida, ou seja, se a terra não fosse explorada economicamente por três anos contínuos; se os proprietários violaram as disposições ambientais; ou, quando a propriedade foi utilizada para a exploração de cultivos ilícitos" (FRANCO e DE LOS RIOS: 2011; p. 103). Com o intuito de acelerar o processo de extinção do domínio e consolidar a reforma social agrária, a Lei 1 de 1968 introduziu algumas modificações na Lei 135 de 1961, permitindo a extinção do domínio por via adminis-trativa, a entrega de terras aos meeiros e a criação do Associação Nacional de Usuários Camponeses (ANUC)".

12 RESTREPO, Ricardo Sanin. *Teoria Crítica Constitucional; rescatando la democracia del liberalismo*. Bogotá; Pontificia Universidade Javeriana. Faculdade de Ciencias Jurídicas: Grupo Editorial Ibanez, 2009. P. 31.

The “universales” would be a product of a particular historical instance, which paralyzes and explains the dynamics of reality, promoting a predestination of all subjects of Law to the social places designated by ideology.

In a first approach of logical nature, one could correctly assert that if universals are products of a particular historical instance, they could not be universal.

The hegemonical status of a particular content, which remains elevated to the status of “universal concept”, through the political clash, is what Restrepo calls “suture”¹³. The suture is the moment in which a particular concept takes on the form of the universal concept, becoming a neutral and independent concept, a symbol of identity and unity of the entire system.

As it can be observed, in Brazil, as well as in the totality of the other South America countries, the private property has become the major possibility of comprehension of property itself, the one worthy of legal recognition and protection.

During the initial process of colonization of Brazil, Portugal used a system of land occupation named “Sesmarias”, which consisted in donating huge portions of land to people loyal to the Portuguese Crown, in exchange to the obligation to effectively occupying the land and make it profitable¹⁴.

The land concession in Brazil had the aim of limiting land occupation, concentrating production, keeping workers in their production positions, like slaves, thus guaranteeing the interests of European merchant capital.

There was an imposition on the “sesmeiros”¹⁵: that the land granted must comply with the beneficiary’s ability to use it. The limit was largely disrespected multiple times, becoming a source of creation of large estates and a powerful oligarchy.

Recognizing the legitimacy of Sesmarias implies granting them the quality of private property, with all the powers available in the legal system. Therefore, the first title to grant private land ownership in Brazil was the title granted by Sesmarias.

The use of Sesmarias was abolished in 1824, with the Imperial Constitution, but its consequences in the creation of an ideology of land as a concession of political power, of the supremacy of title (paper) over work, and in the ordering territorial homeland, which is plagued by accentuated concentration of land, made themselves felt until today.

Inheriting Sesmarias’ logic, lands should be, as a rule, private, with owners being able to dispose of them as they see fit, including having the right to speculate and produce nothing. Public lands, being the exception to the rule, should have a well-defined purpose, use, employment, destination.

The Sesmarias mentality still resonates in the perception of many Brazilian jurists, as the de-constitution of the property would only be possible if the former owner receives another property in return, an indemnity. This erroneous and outdated sacralization of private property is at odds with current public interests in protecting the environment and cultural diversity, placing private property as a true obstacle to the defense of collective and diffuse intangible rights, also making access to land very difficult for workers and obstructing the guarantee of life and cultural reproduction for groups not integrated into consumer societies: traditional cultures.

13 RESTREPO, Ricardo Sanin. Ob. Cit., p. 31.

14 FAUSTO, Boris. História do Brasil. São Paulo: USP: 1999, p. 43-46.

15 The people who received the huge portions of land, in the name of the Portuguese Crown, to occupy it and make it profitable.

First Insurgencies Against the Hegemonic Liberal Conception of Property And Other Conceptions Of Property In Brazil

A hegemonic speech advocates that universal concepts would be rational concepts, inferable or deducible by reason, from which it would be inferred positive prescriptions, which would suppose by-products with the genetic code of the respective mother keyword, which would extend and prolong the content of these. The validity of logical by-products is removed from the ascending chain of derivation, up to genesis, which is the universal concept itself.

The universal concepts of property, for instance, are presented as neutral and complete landmarks in themselves, so that the ethical, the aesthetic and the language itself would be mere instruments of interpretation to prove the belonging from a certain concept to a universal one. As a result, other conceptions of the “property” are considered just miscomprehensions of the neutral and pure concept presented by the liberal hegemonic formula, or, in the worse perspective, are considered illegal and criminal.

One must consider the place of the so-called universal concepts in the context broader hermeneutic, which is that of language itself. When such concepts are considered universal, it is difficult to contextualize them with such precision that their content can be identified and expressed in language. When offering an answer to such questions, it is necessary to know that one is offering a particular concept, not a universal one.

As it can be seen, universal concepts have a rather indeterminate content, because its meanings would be dispersed in multiple singular concepts that, to validate themselves, must return to the source, so that the hermeneutics of the dominant discourse consists of the reconstruction of meanings to a matrix origin.

Thus, it can hardly be offered a concept of “property”, which is properly contextualized in language, that does not rely on concepts such as “a thing that can be used, enjoyed, disposed of, and claimed, from the hands of whoever unjustly possesses or holds it”. The universal concept densifies in language with the recourse to its logical by-products.¹⁶

However, a universal concept could not consist of an amalgam of concepts. The universal concept could not be the neutral landmark of a myriad of contents that has already been realized and that activates the process of realization since its origins.

The relationship between universal concept and the particular is not symbiotic. Universal nature destroys individualities.

What is relevant to be recorded is the conclusion that a universal concept would always be one of its own species – one or more of its by-products. The great contradiction of universal concepts would be that their entire existence is guided by impossibility of its complete conceptual realization and, to be understood in language, needs pre-understandings that are based on a particular concept, by-products of the universal.

Along these lines, Gilles Deleuze¹⁷ states that “The first principle of philosophy is that universals do not explain anything, they themselves must be explained.”

16 GONÇALVES, Daniel Diniz, “Conflitos Sociais e Juspóliticos na Consolidação Fundiária dos Parques Nacionais Brasileiros” / Daniel Diniz Gonçalves. Ribeirão Preto, 2016. 221 f.

17 DELEUZE, Gilles. O que é a filosofia. São Paulo: Ed. 34, 1992, p. 15. Original em português: “O primeiro princípio da filosofia é que os universais não explicam nada, eles próprios é que devem ser explicados”.

In this way, the universal concept always asserts itself in the form of a particular content that aims to embody it directly. The universal concept does not exist outside language, and it is only possible to be understood when a particular concept takes its place. Adjacent to the concept of universal, there would only be fractured and individual cases.

Likewise, Karla de Almeida Chediak asserts that “What Deleuze presents to us is the possibility of conceiving a movement that goes from singular to singular without passing the universal concept. The universal, in this case, is not the general; on the contrary, it is a mere (differential) repetition of the singular”¹⁸.

So, to undermine the hegemonical status of the liberal conception of property, it is necessary to activate its historical matrix, particularly in its elements of legitimacy.

The argumentation of legitimacy of private property, under the hegemonic speech of modernity, is based on the contract: if it is legitimate, the property will be legitimate. The accumulation of goods, in the form of non-perishable goods, based on the increase of patrimony through the appropriation of another person's work, gains contractual legal legitimacy and protection of the State.

“Freedom” in the Liberal State is considered only the conscious ability to contract. The worker and the capitalist must be free; buyer and seller must have the same degree of freedom of choice, without any interference from the State. Freedom and equality are combined into merely formal concepts.

Property, therefore, is conceptualized as the product of the meeting of two wills, in which one transfers to the other what was legitimately his.

But there was no question of whether some of the parties wanted to make the contract, or whether they needed to, whether the price was fair, etc.

Marx and the socialists dealt with such questions, as did the Church, in *rerum novarum*, inaugurating the process of demystification of the liberal concept of private property.

The Socialists, for instance, tried to delegitimize private, liberal, and exclusive property at its very origin, while the Church understood that the contract, in addition to being legitimate, would have to be fair¹⁹, so it added a moral element to the pure formal initial standard.

These critics from the Socialists and from the Church had provoked a new perspective from the role of the State towards property: the State, in addition to overview and guarantee the formal aspects of the contract, should pay attention to its justice, so that the salary paid to workers would enable a dignified life and the right to be able, through savings, to acquire property of things and of the land.

Though the debates about private, liberal property were developing new political arrangements in the Theory of the State, namely the advent of the Welfare State, conversely, in Latin America, especially in Brazil, the hegemonical conception of the property of the land remained greatly untouched, and the original legitimacy to acquire land would be only a concession from the State.

18 CHEDIAK, Karla de Almeida. O universal na filosofia de Deleuze. Revista O Que nos Faz Pensar, v. 21, p. 161-172, 2007. Original em português: “O que Deleuze nos apresenta é a possibilidade de se conceber um movimento que vai de singular a singular sem passar pelo geral. O universal, nesse caso, não é o geral, ao contrário, se diz da repetição diferencial do singular”.

19 SOUZA Filho, Carlos Frederico Marés de. A função social da terra. Curitiba: Arte e Letra, 2021. P. 57.

The project of Liberal Modernity seats the legitimacy of land ownership on the transfer contract, surrounded by formalities, such as property registration in Bureaus.

The new South American States were created to legitimize the illegitimate and concentrated land ownership, forbidding access to it by the great mass of peasant workers and it is necessary to erode this perspective, as we already could register²⁰:

This political and legal model of Modernity (cultural, economic and social, too), the Nation-State, was imposed, by force of the European conqueror, in the countries of Latin America. By imposing a standardizing, homogenizing, normalizing and universalizing model of reality on a reality context as diverse as Latin America, we observe a Nation-State built “for a minority portion of the population of white men and descendants of Europeans” (G H , 2012, p.17). In effect, this is what happened in *terrae brasillis*: a republic made for white, Christian, heterosexual men, large landowners, and descendants of Europeans. The claim to standardize life and reality that modernity brings with it, however, has its limits in reality itself. The law can extend and distend to a certain extent to follow social changes: however, there is a saturation point, where the inadequacy of the law to govern reality generates such social repercussions that it continues to be challenged by citizens.

When land enters the world of private property, it stops being a utility and becomes a formality, a document, an abstraction. “The Earth stops being land and becomes property”²¹.

Likewise, the exclusive and exclusionary liberal concept of property ignores other perceptions of it, namely the conceptions of the original people of Brazil, so called indigenous people, of “tribal structure”²².

There was a notable opposition between European mercantilist interests, based on the appropriation and accumulation of gold, silver, brazilwood and sugar cane, and the interests of indigenous people, focused on maintaining their way of life, cultural reproduction, and ancestral appropriation of the land.

With the advance of mercantilism, and the transformation of land into property (a commodity), the contradiction was accentuated to the point that the Brazilian original societies were forgotten and exterminated – a true genocide.

More recently, other traditional peoples, those who develop a collective appropriation of land and directly extract their livelihood and life from it, such as communities of African descents, had their lands disregarded when the fiction of property took the center stage over the possession and use of land, for the purposes of recognizing rights in Latin America.

20 GONÇALVES, Daniel Diniz; TÁRREGA, Maria Cristina Vidotte Blanco. Pluralismo epistemológico no direito e nas universidades. *Revista da Faculdade de Direito da UFG*, v. 39, p. 175-193, 2015, p. 178. Original em português:

“Esse modelo político e jurídico da modernidade (cultural, econômico e social, também), o Estado-Nação, foi imposto, à força do conquistador europeu, nos países da América-Latina. Ao se impor um modelo uniformizador, homogenizador, normalizador e universalizador da realidade a um contexto de realidade tão diversos quanto a América Latina, observamos um Estado-nação construído para uma parcela minoritária da população de homens brancos e descendentes dos europeus. Com efeito, é o que se verificou em *terrae brasillis*: uma república feita para homens brancos, cristãos, heterossexuais, grandes proprietários de terras e descendentes dos europeus. A pretensão uniformizadora da vida e da realidade que a modernidade traz consigo, todavia, tem seus limites na própria realidade. O direito pode se estender e distender até certo ponto para acompanhar as mudanças sociais: todavia, há um ponto de saturação, onde a impropriedade do direito para reger a realidade gera tal repercussão social que o mesmo segue desafiado pelos cidadãos.”

21 SOUZA Filho, Carlos Frederico Marés de. *A função social da terra*. Curitiba: Arte e Letra, 2021. P. 59. Original em português: “A Terra deixa de ser terra e vira propriedade”.

22 Vide convenção 169, OIT.

Modern law and national elites did not recognize traditional communities as a collective right entity, but as displaced, marginal, outlawed individuals, a true reserve of cheap labor, or simply made them invisible. As we already pointed in another work²³:

“In a modern legal science, which is what we are interested in analyzing, we observe a centralizing, standardizing, universalizing, estate-centered and monist model, which seeks to prescribe and conform behaviors, in the desire to feedback and reproduce a model of perceiving reality, notably in the family and property rights, including imposing legal sanctions on possible insurgency, and it is no surprise that the majority of social movements challenging the legitimacy of the established order remain marginalized and criminalized.”

Despite Convention 169 of ILO – International Labor Organization recognizes the way of life of traditional peoples, they remain invisible, or barely visible in Brazil. Ana Beatriz Vianna Mendes and Ricardo Alexandre Pereira de Oliveira point out this²⁴:

In the two situations analyzed, both in the Serra da Canastra National Park and in the Serra do Cipó National Park, there is a paradox regarding the recognition of rights for communities that for decades have been living with restrictions on their way of life. In the first case, the mechanism activated (legal reserve compensation through donation) resulted in the removal of several families from the traditional territory. In the second, the provisional right to remain in the territory was granted to the ten families through a Term of Commitment signed with the Park management. In a way, one Park became more aligned with the ideal supported by the logic of the Ecological Leviathan, that humans are incompatible with the ends of nature preservation and the other became more flexible to recognize the integration between human communities and what It was decided to call it nature, considering the low environmental impact of the few families that live in the area. It is paradoxical to recognize rights after having imposed all sorts of restrictions and violence against the ways of life of families and communities that lived in territories that became Parks.

23 GONÇALVES, Daniel Diniz; TÁRREGA, Maria Cristina Vidotte Blanco. Resgatando as ciências (jurídicas) do fetiche da modernidade. In: Carlos André Hüning Birnfeld; Samyra Haydêe dal Farra Naspolini Sanches; Orides Mezzaroba. (Orgs.). *Direito, educação epistemologias, metodologias do conhecimento e pesquisa jurídica I*. 24ªed. Florianópolis: CONPEDI, 2015, v. , p. 111-139. P. 112. Original em português:

“Em uma ciência jurídica moderna, que é o que nos interessa analisar, observamos um modelo centralizador, uniformizador, universalizador, estatista e monista, que busca prescrever e conformar comportamentos, no afã de retroalimentar e reproduzir um modelo de perceber a realidade¹, notadamente no direito de família e propriedade, inclusive cominando sanções legais à eventual insurgência, não sendo de se admirar que a maioria dos movimentos sociais de contestação da legitimidade da ordem posta seguem marginalizados e criminalizados.”

24 VIANNA MENDES, Ana Beatriz; PEREIRA DE OLIVEIRA, Ricardo Alexandre. Conservação ambiental e territórios tradicionais: alguns apontamentos sobre estratégias adotadas para a gestão de vidas. *Novos Cadernos NAEA*, [S.l.], v. 25, n. 3, dez. 2022. ISSN 2179-7536. Disponível em: <<https://periodicos.ufpa.br/index.php/ncn/article/view/10424/9482>>. Acesso em: 29 fev. 2024. doi:<http://dx.doi.org/10.18542/ncn.v25i3.10424>. P. 117-118. Original em português:

Nas duas situações analisadas, tanto no Parque Nacional da Serra da Canastra como no Parque Nacional da Serra do Cipó, há um paradoxo no que se refere ao reconhecimento de direitos a comunidades que há décadas passaram a conviver com restrições ao próprio modo de vida. No primeiro caso, o mecanismo acionado (compensação de reserva legal por meio de doação) implicou na remoção de várias famílias do território tradicional. No segundo, o direito provisório de permanecerem no território foi conferido às dez famílias através de um Termo de Compromisso firmado com a gestão do Parque. De certa forma, um Parque tornou-se mais alinhado ao ideal sustentado pela lógica do Leviatã Ecológico, de que os humanos são incompatíveis com os fins da preservação da natureza e o outro se flexibilizou de modo a reconhecer a integração entre comunidades humanas e o que se convencionou a chamar de natureza, considerando o baixo impacto ambiental das poucas famílias que vivem na área. É paradoxal reconhecer direitos depois de se ter impingido toda a sorte de restrições e de violências contra os modos de vida de famílias e comunidades que viviam em territórios que viraram Parque.

The conceptual difference between liberal, private property and “traditional territory” is that the former comes from a legal conception of individual rights based on a contract (of purchase and sale) and the latter is based on the conception of collective use, utility to provide for the needs of the group and coexistence with nature. The liberal conception comes from fiction, from a hegemonic speech; while the communal perspective comes from reality, from the effective use and purpose of the land.

It was against this peasant culture that Capitalism sought to make judicial and legal efforts to develop all sorts of prohibitions on access to land: the so-called capitalist agrarian reforms²⁵.

We can reasonably conclude that private property in Brazil is far from being the sole view on the institute: there are other conceptions, such as “collective property”, “traditional territory”, in which the concept of land ownership is associated to other aspects such as ethnicity, historicity, ancestralism, and symbiosis with nature, and “property as possession, utility”, to name a few examples. Also, many perspectives do not abide by the fragmented view of nature²⁶: we are inserted in the context named nature.

So, the choice of legally acknowledge and protect a single concept of property (the private property) is an ideological choice, made by those who run the hegemonical speech.

There is no “correct” concept of property, and agreeing with it is just to live under a veil of pure coloniality.

25 SOUZA Filho, Carlos Frederico Marés de. A função social da terra. Curitiba: Arte e Letra, 2021. P. 183-184.

26 Joaquim Shiraishi Neto. Diante da queda do céu, “endireitar” o direito ambiental à luz do pensamento dos povos indígenas. Rev. Faculdade de Direito | ISSN: 0101-7187 10.5216/rfd.v46.72236.

“The idea of a fragmented, separate Nature, whose value is given by its economic utility, does not come close to the dimensions experienced by these culturally differentiated groups. Davi Kopenawa’s words, taken from a class taught to postgraduate students in Earth Policies at the Federal University of Minas Gerais (UFMG), are illustrative of this coexistence that expresses profound wisdom:

Hutukara is the universe where we live and that takes care of us. We live with him; in it, we work, we raise our children, we teach our children... The priority, the fundamental thing, is hutukara. Why? Because she is generous, xiihete! She is generous to everyone. Not just for the Indians, but for everyone, xiihete! Hutukara is generous to everyone... So Hutukara is very powerful, but very energetic: this is how we learn, this is how I learned. I started small, since I was little, smelling yakoana, listening to my older classmates singing, dancing, talking... I think I learned.

[...]

This is how we, Yanomami, were created with Omama: we were created Yanomami from the forest, to care for and protect the hutukara (KOPENAWA: 2021; p. 8, emphasis added).”

Original em português:

“A ideia de Natureza fragmentada, separada, cujo valor é dado por sua utilidade econômica, nem de perto se aproxima das dimensões vividas por esses grupos culturalmente diferenciados. As palavras de Davi Kopenawa, extraídas de uma aula ministrada aos estudantes de Pós-Graduação em Políticas da Terra da Universidade Federal de Minas Gerais (UFMG), são ilustrativas dessa convivência que expressa uma profunda sabedoria:

Hutukara é o universo onde moramos e que cuida da gente. Nós moramos com ele; nele, trabalhamos, criamos os filhos, ensinamos nossos filhos... A prioridade, o fundamental, é *hutukara*. Por quê? Porque ela é generosa, *xiihete!* Ela é generosa para todo mundo. Não só para os índios, mas para todo mundo, *xiihete!* *Hutukara* é generosa para todo mundo... Então *hutukara* é muito poderosa, mas muito enérgica: assim aprendemos, assim aprendi. Comecei pequeno, desde pequeno, cheirando *yakoana*, escutando os colegas maiores cantando, dançando, falando... acho que aprendi.

[...]

É assim que nós, Yanomami, fomos criados com Omama: fomos criados Yanomami da floresta, para cuidar e proteger a *hutukara* (KOPENAWA: 2021; p. 8, grifo nosso).”

Ricardo Sanin Restrepo brings universal concepts closer to the figure of psychoanalytic analysis of the typical: the typical is a particular content, from which a symbolic content of an ideological conception is built, that is, it is a process in which the content embodies the universal concept, as an element of fantasy²⁷.

The Colombian *magister* also asserts that the true democrat would understand that sovereignty is an original act of popular power, so those who believes in a democracy of inclusion must consider that the people are the sovereigns which decides on the exception: democracy would be the government of the people, enshrining that all political power comes from the people and all political organization comes from the people²⁸.

In this way, one could not conceive, in democracy, any concept of property which systematically excludes any of the people – and, in Brazil, which excludes huge masses of people: peasants and traditional people, for instance.

A democracy of inclusion, which implies inclusion in its multiple key institutes, such as property, goods, and justice, is axiomatically linked to collective rights and public equality of the people. In this sense, Costas Douzinas teaches that:

“Liberal equity as a regulatory principle has failed to close the gap between rich and poor. Equality must become an axiomatic assumption: People are free and equal, equality is not the effect, but the premise of the action. Anyone who denies this simple truth creates a right and duty to resist. The equality of rights has always supported inequality, the axiomatic equality (each one counts as one in all relevant groups) is the impossible limit of culture of rights.”²⁹

In Democracy, it must be considered that people are the true index of the realization of Justice (legitimacy) and Legality.

However, people are a plural and changing reality, which does not allow monistic and immutable views of its creations. Therefore, the concept of property must embrace, recognize, and enshrine such diversity of existence of the people. Democracy must cultivate a pluralism of thought that develops respect for difference, creating spaces that offer equality of conditions for all subjects to create, signify, recreate, and make worlds, in the ethnic, cultural, sexual, social, economic, political, epistemological, and spiritual aspects.

The Social context in Latin America denounced conflicts with a pronounced land-based aspect, revealing the leading role in these struggles of the peasantry, indigenous, and traditional peoples against a system of territorial ordering that constantly seeks to interdict their access to land.

In Europe, at the end of the 19th century, there was no one who believed that liberalism, with its conception of absolute property, could solve the problems of workers' misery, of which the proletarian insurrections experienced from England to Russia are symptomatic.

27 RESTREPO, Ricardo Sanin. *Teoria Crítica Constitucional; rescatando la democracia del liberalismo*. Bogotá; Pontificia Universidade Javeriana. Faculdade de Ciências Jurídicas: Grupo Editorial Ibanez, 2009, p. 53.

28 RESTREPO, Ricardo Sanin. *Ob. Cit.*, p. 68.

29 DOUZINAS, Costas. Os paradoxos dos Direitos Humanos. *Anuário do Núcleo interdisciplinar de Estudos e Pesquisa de Direitos Humanos da UFG. Pensar os Direitos Humanos: desafios à educação nas sociedades democráticas*. V. 1, n. 1, 2011, p. 14. Original em português:

“A equidade liberal enquanto princípio regulador não conseguiu fechar a lacuna entre ricos e pobres. A igualdade deve tornar-se um pressuposto axiomático: as pessoas são livres e iguais, a igualdade não é o efeito, mas a premissa da ação. O que quer que negue essa simples verdade cria um direito e dever de resistência. A igualdade de direitos sempre apoiou a desigualdade, a igualdade axiomática (cada um conta como um em todos os grupos relevantes) é o limite impossível da cultura de direitos”.

In Brazil, the insurgencies of Canudos and Contestado are examples of this peasant uprising against agrarian oppression.

The capitalist promises in Europe to appease the proletarian and peasant insurrections was to create a Welfare State, which was concerned with the citizen, providing them with health, schooling, old age support and employment. To this end, the land should be divided into parcels that guarantee the survival and maximum production of those who work on it, through incentives from the State.

Mass production on large areas of land and monoculture would be left outside Europe. The cheap and abundant fruits would be left to be produced in South America and Africa.

The new Capitalist State produced after the Great War asked for Constitutions that not only allowed, but determined, state intervention in the economic order.

In 1919, the ILO was created, whose scope was to protect workers against abusive working conditions, advocating for the creation of entities that stood between the State and citizens: trade unions.

On one hand, socialists advocated a solution to the proletarians' misery through the suppression of private property; on the other hand, the Church, with "Rerum Novarum", defended the legitimacy of property through the justice of the relationships that gave rise to it, not just its formal correction.

Keynes proposed a new adaptation of capitalist property, abandoning its absolutism, creating some obligations for the owner, in the wake of the Constitution of Weimar.

Those "new" obligations imposed on the owner of the land are the new perspective created by lifting the veil of the private property of Liberalism³⁰; but these new concepts must be enforced by continuous social and political pressure, because the needs of Capitalism in the peripheral countries still demands the embrace of an absolute view of property.

The perspective of a new relationship with the land, based on the experiences of traditional people and communities and based in limitations of the right of property derived from social and ecological imperatives, had produced in Brazil a new Constitution of promise, with substantial potencies in working a more plural and democratic view of the right of land property.

New (Socioecological) Perspectives of Property In Brazil

There are, in the Brazilian Constitution of 1988, notorious restrictions on private property:

Firstly, regarding the territory of Indigenous people, the Brazilian Constitution states that the land belongs to the Federal Union³¹. If there is indigenous property, there is no need to talk about private property: the case is of

30 But these new obligations must not be simple formalities or obligations stipulated only by the land oligarchy.

31 Article 231 (omissis):

§ 6 – Acts that have as their object the occupation, control and possession of the lands referred to in this article, or the exploitation of the natural resources of the soil, rivers and lakes, are null and void and do not produce legal effects. existing in them, subject to relevant public interest of the Union, as provided by complementary law, not generating the nullity and extinction of the right to compensation or actions against the Union, except, in accordance with the law, regarding improvements derived from occupation in good faith.

Original da CRFB/88, em português:

Artigo 231 (omissis)

§ 6º – São nulos e extintos, não produzindo efeitos jurídicos, os atos que tenham por objeto a ocupação, o domínio e a posse das terras a que se refere este artigo, ou a exploração das riquezas naturais do solo, dos rios e dos lagos nelas existentes,

public property. The right to land belongs to the community, collectively.

As for quilombolas³², in article 68, of the Transitory Constitutional Act, the Brazilian Supreme Court's interpretation of ADIN 3239³³ is that there is a collective right to land to the entire community.

There is also a restriction on the right to property in the chapter dealing with the "right of culture", because when it is determined that it is everyone's responsibility to protect Brazilian cultural heritage, private property is subordinated to its maintenance.

In the same constitutional text, each time private property is mentioned, it is determined that it must have a social function, making it clear that compliance with this assumption is a condition of its existence and protection.

Combining the fundamentals and the objectives of the Brazilian Federal Republic³⁴ with the social function of property, especially land property, private property would have to be designed, consequently, as an instrument to pursue collective rights to life, the end of inequalities and an ecologically balanced environment, the promotion of the cultural diversity, and not just a property that fulfilled a social or economic function.

The land is the one with a social function, not the right of property, which is a mere concept, an abstraction; the land and the human action of working it is what can perform a social function. Therefore, the social function is of the land and its use, and not of the right that is exercised over it.

In this way, property rights over a land that does not fulfill its social function can be assumed to be non-social and unconstitutional.

Articles 184 and following of Brazilian Constitution of 1988 establish that rural property must fulfill its social function, and this social function is fulfilled when the property of rural areas simultaneously serves:

- a) adequate use of available natural resources and preservation of the environment.
- b) rational and adequate use (of the land).
- c) compliance with the legal provisions that regulate labor relations.

ressalvado relevante interesse público da União, segundo o que dispuser lei complementar, não gerando a nulidade e a extinção direito a indenização ou ações contra a União, salvo, na forma da lei, quanto às benfeitorias derivadas da ocupação de boa-fé.

32 Brazilian African descendants, who opposed the State policy of slavery and violation of human rights.

33 BRAZIL, Supreme Court. ADIN 3239. Item 4, abstract:

Art. 68 of the ADCT ensures the right of the remnants of quilombo communities to have their ownership over the lands they historically and traditionally occupy recognized by the State – a fundamental right of an ethnic-racial minority group that is fully effective and immediately applicable. It defines the holder (remnants of quilombo communities), the object (land occupied by them), the content (property right), the condition (traditional occupation), the taxable subject (State) and the specific obligation (issuance of titles), art appears to be suitable. 68 of the ADCT to produce all its effects, regardless of legislative integration.

Original em português:

O art. 68 do ADCT assegura o direito dos remanescentes das comunidades dos quilombos de ver reconhecida pelo Estado a propriedade sobre as terras que histórica e tradicionalmente ocupam – direito fundamental de grupo étnico-racial minoritário dotado de eficácia plena e aplicação imediata. Nele definidos o titular (remanescentes das comunidades dos quilombos), o objeto (terras por eles ocupadas), o conteúdo (direito de propriedade), a condição (ocupação tradicional), o sujeito passivo (Estado) e a obrigação específica (emissão de títulos), mostra-se apto o art. 68 do ADCT a produzir todos os seus efeitos, independentemente de integração legislativa.

34 Constitution of the Federative Republic of Brazil, articles 1º, III e 3º, I, II, III e IV.

d) relations that favors the welfare of owners and workers.

There is, thus, an understanding of “property” that adds to the “traditional” notions: the imperatives of preservation of the environment and respect for human dignity, materialized in the respect for the legal provisions that regulate labor relations and promote well-being of owners and workers. It is a socio-environmental property.

It must also be considered that the understanding of property that enshrines its socio-environmental function is a guiding principle of the entire constitutional Brazilian system, and, therefore, must be considered in an overall understanding of the institute.

The socio-environmental understanding of property brings with it a restriction on “traditional” powers of the owner (using, enjoying, and disposing of the thing). Juliana Santilli understands that³⁵:

The new Constitution, by expanding the concept of cultural heritage, further strengthened plus the socio-environmental function of ownership of cultural goods, which will be limited and restricted according to the public interest in preserving cultural heritage. More than a limitation or restriction on the right to property, it is, in fact, of a modification in its own structure, which gives it a new normative content, determined by respect and protection of goods and values collectives protected by the Constitution.

Though the new concept of agrarian property in Brazilian Constitution is substantively clear, it does not indicate the legal consequences of non-compliance with the social function of the land for the violator. However, the logic follows that whoever does not comply with a legal obligation loses their right. It would be legitimate, therefore, to assume that whoever does not fulfill the social function of the land does not have property rights over it.

However, there is no rule that allows the State to declare the non-existence of a right over a land that does not fulfill its social function, so that, to correct the violation, expropriation is the only solution provided for in the Brazilian Constitution and legal framework. And if expropriation is the only measure to correct the violation of misuse of land in accordance with its social function, it should be considered an obligation to the State do so.

Notwithstanding, even though expropriation being the only legally prescribed providence in the Brazilian Legal framework, it is greatly resisted by the hegemonical speech, which articulates all kinds of interpretations to mitigates its effects over absolute property.

The article 185 of Brazilian Constitution states that productive properties and small rural properties are not subject to expropriation.

The hegemonic speech set a hermeneutic trap on the issue, by the means of an ordinary law, describing productivity as synonymous with profitability, which could possibly imply that productivity is a mere merchant or economic concept, isolated from the rest of the Constitutional text.

However, at the Brazilian Constitution whole context, productivity only translates into fulfillment of the social function.

35 SANTILLI, Juliana. Socioambientalismo e novos direitos: proteção jurídica à diversidade biológica e cultural. São Paulo: Peirópolis, 2004, p. 55. Original em português:

“A nova Constituição, ao alargar o conceito de patrimônio cultural, fortaleceu ainda mais a função socioambiental da propriedade sobre bens culturais, que será limitada e restringida em função do interesse público na preservação do patrimônio cultural. Mais do que uma limitação ou restrição ao direito de propriedade, trata-se, na verdade, de uma modificação na sua própria estrutura, que lhe imprime um novo conteúdo normativo, determinado pelo respeito e proteção a bens e valores coletivos tutelados pela Constituição”.

Productivity implies repeated production, which presupposes soil conservation and nature preservation. This is sustainability.

Thus, the productive property is one that, in addition to fulfilling the requirements of the social function, that is, rational use of the soil, preservation of the environment, observance of labor legislation and protection of all involved, also manages to maintain the continuity and constancy of production cycles.

Another innovative perspective of land property is portrayed in the Article 1,228 of the Brazilian Civil Code, which establishes that the owner may be deprived of the property, if the claimed property consists of an extensive area, in uninterrupted and good faith possession, for more than 5 years, by a considerable number of people, who have carried out, jointly or separately, works and services of relevant social and economic interest.

This is a case of judicial expropriation, as it cannot be considered “collective adverse possession”³⁶, as there is price arbitration for the owner deprived of property.

The requirement of good faith assumes that the possessor ignores defects or obstacles to the acquisition of the area. The mere existence of third-party private property cannot constitute an obstacle to the acquisition of property, under penalty of making the institute unfeasible. Good faith, therefore, constitutes social, collective hope, added to the work of building and maintaining housing and production.

In judicial expropriation, as a policy of territorial ordering and redistribution of resources, the judicially arbitrated price must be paid to the owner by the Public Authority.

Conclusion

The colonization of the concept of agrarian property in Brazil, carried out by a State policy of, at least, 300 years, has clearly produced two forms of injustice: socioeconomic and cultural or symbolic³⁷.

Socioeconomic injustice is rooted in the political-economic structure of society, being examples of this exploitation, marginalization, and deprivation. In the other side, cultural injustice or symbolic injustice is related to social patterns of representation, interpretation and communication, examples being cultural domination, non-recognition, and disrespect. Both are rooted in processes and practices that privilege some groups to the detriment of others. Both are interconnected. Economic and cultural injustices are intertwined, reinforcing each other.

Unfair cultural norms are institutionalized by the State and the Economy, causing exclusion, marginalization, and deprivation, while the disadvantages that came from economic constraints limit the production of cultures in the public sphere and in everyday life. There is, thus, a vicious cycle.

The traditional and peasant culture suffers greatly in the political, legal, and social arenas of discussion, being impoverished, and silenced in the process.

The implementation of Colonialism required the massive use of labor, including slavery; on the other hand, contemporary Capitalism has reduced the participation of workers in the countryside as much as possible.

The intensive use of large machinery, powered by fossil fuels, of pesticides that serve as fertilizer and biocide, of seeds developed to coexist with poisons, especially transgenic ones, has been transforming agriculture into

36 It could not be considered adverse possession, which is the original way of acquiring property, as there is a legal prevision of a price to be paid for the lost property.

37 FRASER, Nancy. *Justice Interruptus: Critical Reflexions on the post-socialist condition*. Routledge: New York, 1997, p. 246.

business, food into merchandise.

The liberal concept of private property in Brazil has brought dynamics of domination, creating relationships in which human beings are discriminated, marginalized, or even eliminated, being considered outlaws in most cases. The solidarity and the horizontality of relationships are lost, and hegemonic and hierarchical processes are established, in which humans become manipulable, dispensable, based on the superiority of some over others. The private property, taken in its absolute assumption, interdicts the democratic access to land property to a huge mass of citizens, workers, peasants, and traditional people or communities, which implicates denning social, cultural, and economic rights to them, effectively stealing their dignity in the name of profit.

This whole situation is largely perpetuated by the embrace and enforcement of the concept of absolute private property of Modernity/Liberalism in Brazil, notably by the Courts, jurists, and legislators.

In the theoretical plane, the solution to economic injustice is political-economic restructuring of some kind, which may involve redistribution of income, reorganization of distribution of work etc... The “remedy” for cultural injustice, from another perspective, is some type of cultural or symbolic change, encompassing positive reevaluation of identities disrespected and their cultural products, and the recognition and positive recognition of cultural diversity³⁸.

In this perspective, it is necessary to promote discussions that advocates an holistic view of property in the Brazilian legal framework, acknowledging multiple possibilities of experiencing agrarian property, not only the official concept proclaimed by the State, because it does not exhaust all the possibilities of social dynamics. All kinds of legitimate experiences with the land, which are equal in the light of a constitution that embraces and protects cultural diversity, must be acknowledged.

But, in the end, any theoretical formula, no matter how refined it is, must be enforced by political and social will, by the strength of the streets and fields, because Law itself is generated by social praxis, by the claims and fights of those denied and deprived of living in dignity, and Justice is, by democratic standards, the promotion of common good.

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38 FRASER, Nancy. Idem, p. 248-254.

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